

1.1-1 PBGC Benefits Administration Policy Governance and Review

Edition	2nd Edition
Issue Date	08/28/2014
Transmittal	Transmittal 2014-10
Last Review Date	N/A
Signed Policy	1.1-1 PBGC Benefits Administration Policy Governance and Review
Contact	ASK PPD

In this policy

- [A. Introduction](#)
- [B. Scope and Effective Date](#)
- [C. Benefits Administration Policy Development](#)
- [D. Benefits Administration Policy Governance](#)
- [E. Publication](#)
- [F. Periodic Policy Review](#)
- [G. Policy Records Management](#)
- [Addendum A: Policy Template](#)
- [Addendum B: Policy Transmittal Template](#)
- [Addendum C: Decision Log Template](#)
- [Concurrence, Endorsement, and Approval](#)

A. Introduction

PBGC's policies on benefits administration are located in the *PBGC Operating Policy Manual*. The policies in this manual provide the rules that PBGC follows in performing its mission and responsibilities, primarily in its calculation, valuation, determination, and payment of pension benefits. These policies reflect the provisions of ►ERISA, the ►IRC, PBGC regulations in 29 ►CFR, and other pension-related legislation and regulations, and provide additional detail. The impetus for creating such a policy or revising or rescinding an existing one includes changes in:

- federal legislation, regulations, and policies;
- corporate mission, goals, and strategic direction;
- benefit administration, payment, and customer service issues;
- stakeholder needs; and/or
- external systems, processes, and environment.

B. Scope and Effective Date

Policy [1.1. PBGC Benefits Administration Policy Governance and Review](#) provides the rules that PBGC follows in developing and revising or rescinding ►benefits administration policy, and specifically:

- 1) documents the rules PBGC follows, many of which have historically been followed, in developing, revising, or rescinding benefits administration policy;
- 2) establishes the rules of governance PBGC applies in implementing benefits administration policy; and
- 3) establishes a review program to ensure that these policies remain up to date and continue to support PBGC's benefits administration and other operations.

The 1st edition of this policy became effective 6/27/2013 and applies to all PBGC benefits administration policies issued after this date. This 2nd edition of the policy reflects that the position formerly titled Director of the Office of Benefits Administration has been changed to the Chief of Benefits Administration and Director of the Office of Benefits Administration.

Pursuant to the Note in section C of this policy, this 2nd edition is not required to be approved through the formal approval process because the changes are merely editorial and do not affect the substance of the policy. Accordingly, this 2nd edition is approved by

the Acting Manager of the Policy & Procedures Division (PPD).

Note: The subsequent use of the term policy within Policy 1.1-1 means *benefits administration policy* unless specified otherwise.

C. Benefits Administration Policy Development

Within PBGC, the ►Policy & Procedures Division (PPD) in the ►Office of Benefits Administration (OBA) is primarily responsible for the policy that is incorporated within the *PBGC Operating Policy Manual*. Under PBGC Directive **GA 05-3 The PBGC Organization**, the responsibilities of PPD include:

- providing analytical support in the development of PBGC's corporate policy, regulations, and legislative change;
 - making policy recommendations and coordinating an ongoing review of operating policies in order to streamline operations and improve operating efficiency;
 - incorporating new and changed policies in the *PBGC Operating Policy Manual*; and
 - providing support to internal and external customers on operating policy.
1. PPD policy staff (i.e., PPD management and PPD management assigned policy subject matter experts) develops, revises, and periodically reviews (see section **F. Periodic Policy Review**) ►policy statements ('policy') and ►policy transmittals ('transmittals'), ►policy bulletins, and ►decision logs comprising the *PBGC Operating Policy Manual* by:
- a. Taking into consideration, as appropriate:
 - federal legislation, regulations, and policies;
 - PBGC's corporate mission, goals, and strategic direction;
 - benefits administration, payments, and customer service issues specific to PBGC's pension plan administration;
 - stakeholder needs;
 - external systems, processes, and environment; and
 - other relevant information.
 - b. Obtaining information, input, and guidance from key stakeholders and other resources, including the Office of the General Counsel (OGC), the Office of the Chief Counsel (OCC), the Office of Policy and External Affairs (OPEA), the Actuarial Services Division (ASD) within OBA, or similar organizations within PBGC as appropriate. Such stakeholders are expected to inform PPD of the potential need to develop, revise, or rescind policy, for example, due to changes in federal legislation or changes in PBGC's corporate mission, goals, or strategic direction.
 - c. Coordinating and overseeing policy development by other departments within PBGC that affects benefits administration.
2. PPD may issue decision logs that provide guidance applicable primarily to specific plans or situations. The decisions documented in these logs usually are based on the facts and circumstances of the plan or situation and may address application of existing policy, document an exception to an existing policy, or address a situation not covered by current policy.
- a. A decision log will not be implemented without written approval (generally located at the bottom of the decision log) of the PPD Division Manager or Policy Supervisor or his/her delegate.

Depending on the facts and circumstances of the case or situation, PPD may request the concurrence of key stakeholders, the endorsement of PBGC's General Counsel and Chief Financial Officer, and/or approval by the Chief of Benefits Administration and Director of the Office of Benefits Administration (see section **D. Operating Policy Governance**)
 - b. The guidance in a decision log generally may not be applied to other plans and situations without approval from PPD policy staff.

For a sample format of a:

- policy statement, see **Addendum A: Policy Template**.
- policy transmittal, see **Addendum B: Transmittal Template**.

- decision log, see [**Addendum C: Decision Log Template**](#).

Notes:

1. Minor editorial updates (e.g., the correction of typographical errors and minor wording changes) that do not affect the substance of policies (purpose, scope, policy rules) are not required to be approved through the formal process otherwise described in this policy. PPD Management has discretion in making these changes.
2. PPD no longer develops and issues policy bulletins. However, current policy bulletins remain in effect.

D. Benefits Administration Policy Governance

This policy, Policy [**1.1-1**](#), describes the concurrence, endorsement, and approval process for benefits administration policy. A new or changed policy will not become effective without the concurrence of key PBGC stakeholders, endorsements of the General Counsel and Chief Financial Officer, and approval of the Chief of Benefits Administration and Director of the Office of Benefits Administration, or other PBGC management official when appropriate.

1. Key PBGC Stakeholder Concurrence

►PPD presents the policy, transmittal, and relevant information to key PBGC stakeholders for consideration and concurrence. A new or changed policy will not be submitted to the General Counsel and Chief Financial Officer for endorsement without the written concurrence of key PBGC stakeholders.

a. The purpose of key stakeholder concurrence is to ensure the new or changed policy:

- is consistent with the strategic direction of PBGC,
- complies with relevant law, statutes, and regulations (e.g., ►ERISA, the ►IRC, PBGC regulations in 29 CFR, etc.).
- is consistent with PBGC's internal controls,
- complies with actuarial policy, and
- meets stakeholder needs and requirements

b. Key stakeholders from whom concurrence is required include PBGC management-designated representatives from the:

- Actuarial Services Division ('ASD') in ►OBA,
- OBA (typically, the Manager of PPD or his or her delegate),
- Office of the Chief Counsel ('OCC'),
- Office of the General Counsel ('OGC'), and
- other key stakeholders identified and appointed by PBGC management as deemed necessary.

c. Key stakeholder concurrence generally is documented by the written initials of the key stakeholder and the date in the *Concurrence, Endorsement, and Approval* section of the policy.

2. General Counsel and Chief Financial Officer Endorsement

Upon concurrence of the key stakeholders, PPD submits the policy, transmittal, and relevant information to the General Counsel and Chief Financial Officer for consideration and endorsement. A new or changed policy will not be submitted to the Chief of Benefits Administration and Director of the Office of Benefits Administration for approval without the written endorsement of the General Counsel and the Chief Financial Officer.

a. The purpose of the General Counsel's and Chief Financial Officer's endorsements is to ensure the new or changed policy:

- is consistent with the strategic direction of PBGC,
- is consistent with PBGC's internal controls, and
- complies with relevant law, statutes, and regulations.

b. The General Counsel's and Chief Financial Officer's endorsements are documented by:

- his or her initials and date in the *Concurrence, Endorsement, and Approval* section of the policy, and

- his or her signature and date in the endorsement section of the transmittal.

3. OBA Director Approval

Upon endorsement by the General Counsel and the Chief Financial Officer, PPD submits the policy, transmittal, and relevant information to the Chief of Benefits Administration and Director of the Office of Benefits Administration for consideration and approval. A new or changed policy will not become effective without the written approval of the Director of OBA. For an exception to this requirement, see **section D.4. Other PBGC Management Official Approval**.

- The purpose of the Chief of Benefits Administration and Director of the Office of Benefits Administration's approval is to ensure the new or changed policy:
 - is consistent with the strategic direction of PBGC,
 - is consistent with PBGC's internal controls, and
 - meets stakeholder needs and requirements.
- The Chief of Benefits Administration and Director of the Office of Benefits Administration's approval is documented by:
 - his or her signature and date in the approval section of the transmittal, and
 - his or her initials and date in the *Concurrence, Endorsement, and Approval* section of the policy.

4. Other PBGC Management Official Approval

Occasionally other departments may develop policies related to benefits administration. In these instances, the Chief of Benefits Administration and Director of the Office of Benefits Administration does not need to approve these policies.

However, these policies will still require PPD review. Approval of the appropriate PBGC management official will be required and will otherwise be documented as described in **section D.3 OBA Director Approval**.

For a sample format of a:

- policy, see **Addendum A: Policy Template**.
- policy transmittal, see **Addendum B: Transmittal Template**.

Note: For additional information on the role and responsibilities of the PBGC organizations identified in section D., see *PBGC Directive GA 05-3 The PBGC Organization*.

E. Publication

Upon approval by the Chief of Benefits Administration and Director of the Policy & Procedures Division, a policy and transmittal or a decision log is published in the online *PBGC Operating Policy Manual* located on the PBGC Intranet in *Standards, Manuals & Guides, Business Process*, at http://intranet/standards_manuals/manuals/policy/.

- PPD staff reviews the policy materials during the publication process to ensure the content and format are properly retained.
- The policy and transmittal are published along with a PDF of the policy with stakeholder concurrences and the transmittal with the signed endorsements of the General Counsel and Chief Financial Officer and the signed approval by the Chief of Benefits Administration and Director of the Policy & Procedures Division or appropriate PBGC management official.

F. Periodic Policy Review

► PPD conducts periodic reviews of existing policies to determine the need for change as described in its documented policy review process.

- Generally, a policy review will be initiated within five years of the issue date of a policy.
- Subsequent reviews generally will be conducted no more than five years after the date of the last review or last revision of the policy.

G. Policy Records Management

► PPD maintains electronic (on line) and hard copies of the approved policy and transmittal, decision log, and other policy records, if any, that document the concurrence, endorsement, and/or approval of the policy or decision log. PPD maintains records of the

periodic policy reviews that are conducted. PPD maintains these policy records in accordance with PBGC's Records Management Program described on the PBGC Intranet at http://intranet/records_management/default.cfm.

Addendum A: Policy Template

► Benefits administration policies generally are formatted in accordance with the following template as completed for this policy. Addendums are optional and usually provide examples and other information related to the policy. The format may be revised depending on the policy content as deemed necessary by the ► PPD manager or his or her delegate.

1.1-1 PBGC Benefits Administration Policy Governance and Review

Edition	1st Edition
Issue Date	06/27/2013
Transmittal	2013-07
Last Review Date	N/A
Signed Policy	1.1-1 PBGC Benefits Administration Policy Governance and Review
Contact	ASK PPD

In this policy

- A. Introduction
- B. Scope and Effective Date
- C. Benefits Administration Policy Development
- D. Benefits Administration Policy Governance
- E. Periodic Policy Review
- F. Records Management
- G. Publication

Addendum A: Policy Template

Addendum B: Policy Transmittal Template

Addendum C: Decision Log Template

Policy 1.1-1 PBGC Benefits Administration Policy Governance and Review

Concurrence, Endorsement, and Approval

Concurrence	Initials	Date
ASD: Representative's name and title (typed)		
PPD: Representative's name and title (typed)		
OCC: Representative's name and title (typed)		
OGC: Representative's name and title (typed)		
Endorsements		
General Counsel: General Counsel's Name (typed)		
Chief Financial Officer: Chief Financial Officer's Name (typed)		
Approval		
Chief of Benefits Administration and Director of the Office of Benefits Administration: Name (typed)		

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration and Director of the Office of Benefits Administration on ***Transmittal YYYY-MM***.

Addendum B: Policy Transmittal Template

► **Transmittals** generally are formatted in accordance with the following template as completed for this policy. The format may be revised depending on the policy content as deemed necessary by the ►PPD Manager or his or her delegate.

Transmittal 2013- 07 PBGC Benefits Administration Policy Governance and Review	
Date Issued	06/27/2013
Effective Date	06/27/2013
To	All PBGC
Subject	Benefits administration policy development, governance and review
Signed PDF	A link to the signed transmittal added upon publication
Material Transmitted:	
Explanation:	
For Further Information, Contact:	
Management Analyst's Name, Management Analyst Policy & Procedures Division Office of Benefits Administration Extension	
Endorsements: I hereby endorse this policy statement:	
Name (typed), General Counsel	Date
Name (typed), Chief Financial Officer	Date
Approval: I hereby approve this policy statement:	
Name (typed), Chief of Benefits Administration and Director of the Office of Benefits Administration	Date

Addendum C: Decision Log Template

► **Decision logs** generally are formatted in accordance with the following template. The format may be revised depending on the content as deemed necessary by the ►PPD Manager or his or her delegate or PPD staff with PPD management approval.

<u>Decision Log Number and Title</u>
Subject:
Plan Name:
Industry:
Date:
Venue:
Attendees:
Contact:
Signed PDF:
Last Review Date:

Disclaimer: Do not apply conclusions in Decision Logs to other cases or situations without first consulting PPD.

In this decision log:

- A. **Background**
- B. **Issue**
- C. **Decision**
- D. **PPD Management Approval**

PPD Management Official's Name and Title

Date

Concurrence, Endorsement, and Approval

Policy 1.1-1 PBGC Benefits Administration Policy Governance and Review, 2nd Edition

Approval	Initials	Date
PPD: Laura M. Stephens, Acting Manager Policy and Procedures Division	L. S.	07/23/2014

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/1_1_1_2nd.htm
(08/28/2014).

Previous Editions

[1.1-1 PBGC Benefits Administration Policy Governance and Review 1st Ed. - Outdated](#)

[Top of Page](#)

Chapter 1: Benefits Administration Policy Governance and Review

1.1-1 PBGC Benefits Administration Policy Governance and Review

Edition	4th Edition
Issue Date	03/10/2022
Transmittal	Transmittal 2022-03
Signed Policy	1-1-1 PBGC Benefits Administration Policy Governance and Review
Contact:	Ask PPD

In this policy

A. Introduction.....	1
B. Scope and Effective Date	2
C. Benefits Administration Policy Development.....	2
D. Benefits Administration Policy Governance	4
E. Publication	5
F. Periodic Policy Review	6
G. Policy Records Management.....	6
Addendum A: Policy Template	6
Addendum B: Policy Transmittal Template	7
Addendum C: Decision Log Template.....	8
Concurrence, Endorsement, and Approval.....	9

A. Introduction

PBGC's policies on benefits administration are in the *PBGC Operating Policy Manual*. The policies in this manual provide the rules that PBGC follows in performing its mission and responsibilities, primarily in its calculation, valuation, determination, and payment of pension benefits. These policies reflect the provisions of ERISA, the IRC, PBGC

regulations in 29 CFR, and other pension-related legislation and regulations, and provide additional detail. The impetus for creating such a policy or revising or rescinding an existing one includes changes in:

- federal legislation, regulations, and policies;
- corporate mission, goals, and strategic direction;
- benefit administration, payment, and customer service issues;
- stakeholder needs; and/or
- external systems, processes, and environment.

B. Scope and Effective Date

Policy 1.1. PBGC Benefits Administration Policy Governance and Review provides the rules that PBGC follows in developing, reviewing and revising or rescinding benefits administration policy.

The 1st edition of this policy became effective 6/27/2013 and applies to all PBGC benefits administration policies issued after this date. This 4th edition of the policy reflects the removal of the concurrence of the Director of the Participant Services Department effective October 1, 2021, the removal of the endorsement of the Chief Financial Officer effective May 4, 2021, in accordance with their requests.

Note: The subsequent use of the term policy within Policy 1.1-1 means *benefits administration policy* unless specified otherwise.

C. Benefits Administration Policy Development

Within PBGC, the Policy and Procedures Division (PPD) in the Office of Benefits Administration (OBA) is primarily responsible for the benefits administration policy that is incorporated within the *PBGC Operating Policy Manual*. Under PBGC Directive **GA 05-3 The PBGC Organization**, the responsibilities of PPD include:

- providing analytical support in the development of PBGC's corporate policy, regulations, and legislative change;
- making policy recommendations and coordinating an ongoing review of operating policies in order to streamline operations and improve operating efficiency;
- incorporating new and changed policies in the *PBGC Operating Policy Manual*; and
- providing support to internal and external customers on operating policy.
 1. PPD policy staff (i.e., PPD management and PPD management assigned policy subject matter experts) develops, revises, and periodically reviews (see section **F. Periodic Policy Review**) policy statements ('policy') and policy transmittals ('transmittals'), policy bulletins, and decision logs comprising the *PBGC Operating Policy Manual* by:
 - a. Taking into consideration, as appropriate:
 - federal legislation, regulations, and policies;
 - PBGC's corporate mission, goals, and strategic direction;
 - benefits administration, payments, and customer service issues specific to PBGC's pension plan administration;

- stakeholder needs;
 - external systems, processes, and environment; and
 - other relevant information.
 - b. Obtaining information, input, and guidance from key stakeholders and other resources, including the Office of the General Counsel (OGC), the Communications Outreach and Legislative Affairs Department (COLAD) and, within OBA, the Actuarial Services Division (ASD) of the Actuarial Services and Technical Department (ASTD), and the Customer Support Division (CSD) of the Participant Services Department (PSD), or similar organizations within PBGC as appropriate.

Such stakeholders are expected to inform PPD of the potential need to develop, revise, or rescind policy, for example, due to changes in federal legislation or changes in PBGC's corporate mission, goals, or strategic direction.
 - c. Coordinating and overseeing policy development by other departments within PBGC that affects benefits administration.
2. PPD may issue decision logs that provide guidance applicable primarily to specific plans or situations. The decisions documented in these logs usually are based on the facts and circumstances of the plan or situation and may address application of existing policy, document an exception to an existing policy, or address a situation not covered by current policy.
- a. A decision log will not be implemented without written approval (generally located at the bottom of the decision log) of the PPD Supervisory Policy Advisor or his/her delegate.
- Depending on the facts and circumstances of the case or situation, PPD may request the concurrence of key stakeholders, the endorsement of PBGC's General Counsel, and/or approval by the Chief of Benefits Administration (see section **D. Operating Policy Governance**)
- b. The guidance in a decision log generally may not be applied to other plans and situations without approval from PPD policy staff.

For a sample format of a:

- policy statement, see **Addendum A: Policy Template**.
- policy transmittal, see **Addendum B: Transmittal Template**.
- decision log, see **Addendum C: Decision Log Template**.

Notes:

1. Minor editorial updates (e.g., the correction of typographical errors and minor wording changes) that do not affect the substance of policies (purpose, scope, policy rules) are not required to be approved through the formal process otherwise described in this policy. PPD Management has discretion in making these changes.
2. PPD no longer develops and issues policy bulletins. However, current policy bulletins remain in effect.

D. Benefits Administration Policy Governance

This policy, Policy **1.1-1**, describes the concurrence, endorsement, and approval process for benefits administration policy. A new or changed policy will not become effective without the concurrence of key PBGC stakeholders, endorsement of the General Counsel, and approval of the Chief of Benefits Administration, or other PBGC management official when appropriate.

1. Key PBGC Stakeholder Concurrence

PPD presents the policy, transmittal, and relevant information to key PBGC stakeholders for consideration and concurrence. A new or changed policy will not be submitted to the General Counsel for endorsement without the written concurrence of key PBGC stakeholders.

- a. The purpose of key stakeholder concurrence is to ensure the new or changed policy:
 - is consistent with the strategic direction of PBGC,
 - complies with relevant law, statutes, and regulations (e.g., ERISA, the IRC, PBGC regulations in 29 CFR, etc.).
 - complies with actuarial policy, and
 - meets stakeholder needs and requirements
- b. Key stakeholders from whom concurrence is required include PBGC management-designated representatives from the:
 - Actuarial Services Division (ASD), OBA,
 - Policy and Procedures Division (PPD) (typically, the PPD Supervisory Policy Advisor or his or her delegate),
 - Customer Support Division (CSD), OBA
 - Office of the General Counsel ('OGC'), and
 - other key stakeholders identified and appointed by PBGC management as deemed necessary.
- c. Key stakeholder concurrence generally is documented by the written initials of the key stakeholder and the date in the *Concurrence, Endorsement, and Approval* section of the policy.

2. General Counsel Endorsement

Upon concurrence of the key stakeholders and the Chief of Benefits Administration, PPD submits the policy, transmittal, and relevant information to the General Counsel for consideration and endorsement.

- a. The purpose of the General Counsel's endorsement is to ensure the new or changed policy:
 - is consistent with the strategic direction of PBGC, and
 - complies with relevant law, statutes, and regulations.
- b. The General Counsel's endorsement is documented by:
 - his or her initials and date in the *Concurrence, Endorsement, and Approval* section of the policy, and

- his or her signature and date in the endorsement section of the transmittal.

3. OBA Chief of Benefits Administration Approval

A new or changed policy will not become effective without the written approval of the OBA Chief of Benefits Administration. For an exception to this requirement, see **section D.4. Other PBGC Management Official Approval**.

- a. The purpose of the Chief of Benefits Administration approval is to ensure the new or changed policy:
 - is consistent with the strategic direction of PBGC,
 - is consistent with PBGC's internal controls, and
 - meets stakeholder needs and requirements.
- b. The Chief of Benefits Administration's approval is documented by:
 - his or her signature and date in the approval section of the transmittal, and
 - his or her initials and date in the *Concurrence, Endorsement, and Approval* section of the policy.

4. Other PBGC Management Official Approval

Occasionally other departments may develop policies related to benefits administration. In these instances, the Chief of Benefits Administration does not need to approve these policies. However, these policies will still require PPD review. Approval of the appropriate PBGC management official will be required and will otherwise be documented as described in **section D.3 OBA Chief of Benefits Administration Approval**.

For a sample format of a:

- policy, see **Addendum A: Policy Template**.
- policy transmittal, see **Addendum B: Transmittal Template**.

E. Publication

Upon approval by the Chief of Benefits Administration or the Supervisory Policy Advisor in the Policy and Procedures Division, as appropriate, a policy and transmittal or a policy decision log is published in the online [PBG Operating Policy Manual](#). Effective December 2018, please find interim updates for policy and procedures located on the [OBA Homepage](#).

- PPD staff reviews the policy materials during the publication process to ensure the content and format are properly retained.
- The policy and transmittal are published along with a PDF of the policy with stakeholder concurrences and the transmittal with the signed endorsement of the General Counsel and the signed approval by the Chief of Benefits Administration and Supervisory Policy Advisor of the Policy and Procedures Division or appropriate PBGC management official.

F. Periodic Policy Review

PPD conducts periodic reviews of existing policies (generally, within an approximate five-year timeframe) to determine the need for change as described in its documented policy review process.

G. Policy Records Management

PPD maintains electronic (online) and hard copies of the approved policy and transmittal, decision log, and other policy records, if any, that document the concurrence, endorsement, and/or approval of the policy or decision log. PPD maintains records of the periodic policy reviews that are conducted. PPD maintains these policy records in accordance with PBGC's Records Management Program described on the PBGC Intranet at http://intranet/records_management/default.cfm.

Addendum A: Policy Template

Benefits administration policies generally are formatted in accordance with the following template as completed for this policy. Addendums are optional and usually provide examples and other information related to the policy. The format may be revised depending on the policy content as deemed necessary by the PPD manager or his or her delegate.

X.X-X Policy Name	
Edition	XX Edition
Issue Date	XX/XX/20XX
Transmittal	20XX-XX
Signed Policy	X.X-X Policy Name
Contact	ASK PPD
In this policy	
<ul style="list-style-type: none">A. IntroductionB. Scope and Effective DateC. Benefits Administration Policy DevelopmentD. Benefits Administration Policy GovernanceE. Periodic Policy ReviewF. Records ManagementG. Publication	
Addendums	
Policy X.X-X Policy Name	
Concurrence, Endorsement, and Approval	

Concurrence	Initials and Date
OBA/ASTD/ASD: Representative's name and title (typed)	
OBA/PSD/PPD: Representative's name and title (typed)	
OBA/PSD/CSD: Representative's name and title (typed)	
OGC: Representative's name and title (typed)	
Endorsements	
General Counsel: Name (typed)	
Approval	
Chief of Benefits Administration: Name (typed)	
This policy may not take effect without the written and dated endorsement of the General Counsel and the written and dated approval of the Chief of Benefits Administration on <i>Transmittal YYYY-MM</i> .	

Addendum B: Policy Transmittal Template

Transmittals generally are formatted in accordance with the following template as completed for this policy. The format may be revised depending on the policy content as deemed necessary by the PPD Manager or his or her delegate.

Transmittal YYYY- MM Policy Name	
Date Issued	XX/XX/20YY
Effective Date	XX/XX/20YY
To	All PBGC
Subject	Revised edition of Policy Name
Signed PDF	A link to the signed transmittal added upon publication

Material Transmitted:

Explanation:

For Further Information, Contact:

Management Analyst's Name, Management Analyst
Policy and Procedures Division
Office of Benefits Administration
Extension

Concurrences and Approvals:

I hereby concur with this policy statement:

FREDRICK DEMPSEY  Digitally signed by FREDRICK
DEMPSEY
Date: 2022.03.08 14:51:12 -05'00'

General Counsel

I hereby approve this policy statement:

Chief of Benefits Administration

Addendum C: Decision Log Template

Decision logs generally are formatted in accordance with the following template. The format may be revised depending on the content as deemed necessary by the Supervisory Policy Advisor or his or her delegate or PPD staff with PPD management approval.

Decision Log Number and Title

Subject:
Plan Name:
Industry:
Date:
Venue:
Attendees:
Contact:
Signed PDF:
Last Review Date:

Disclaimer: Do not apply conclusions in Decision Logs to other cases or situations without first consulting PPD.

In this decision log:

- A. **Background**
- B. **Issue**
- C. **Decision**
- D. **PPD Management Approval**

PPD Management Official's Name and Title

Date

Policy 1.1-1 Benefits Administration Policy Governance and Review, 4th Edition.

Concurrence, Endorsement, and Approval

Concurrence

OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2022.03.08 12:42:10 -05'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	LAURA STEPHENS  Digitally signed by LAURA STEPHENS Date: 2022.03.08 12:02:10 -05'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	MICHELE GRAY  Digitally signed by MICHELE GRAY Date: 2022.03.08 12:19:06 -05'00'

OGC: Joseph Krettek, Assistant General Counsel	JOSEPH KRETTEK Digitally signed by JOSEPH KRETTEK Date: 2022.03.08 13:20:40 -05'00'
Endorsement	
General Counsel: F. Russell Dempsey	FREDRICK DEMPSEY Digitally signed by FREDRICK DEMPSEY Date: 2022.03.08 14:47:57 -05'00'
Approval	
Chief of Benefits Administration: David Foley	DAVID FOLEY Digitally signed by DAVID FOLEY Date: 2022.03.09 07:14:45 -05'00'
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and the Chief of Benefits Administration on Transmittal 2022-03.</i>	

3.2-1 Treatment of Abandoned Sufficient Plans

Edition	2nd Edition
Issue Date	05/28/1996
Transmittal	Transmittal 37
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Policy Statement

A. Background

This policy statement addresses when PBGC will seek appointment as trustee after it decides to initiate involuntary termination proceedings regarding an abandoned plan that is sufficient for guaranteed benefits. For purposes of this policy statement, an "abandoned plan" is one regarding which (i) the contributing sponsor no longer exists or is liquidating and (ii) the administrator of the plan no longer exists, cannot be located, or is not performing its administrative duties.

Before the issuance of this policy statement, PBGC's policy was to seek appointment as trustee only when it was certain that the costs of closing out the abandoned plan in the private sector would make the plan insufficient on the date of distribution. If this certainty could not be established, PBGC sought to have a third-party trustee appointed to close out the abandoned plan.

B. Scope and Effective Date

This policy statement applies to any single-employer, abandoned plan that PBGC estimates to have sufficient assets to pay guaranteed benefits, valued using PBGC factors as of the termination date. Nothing in this policy shall be deemed to impose an obligation on PBGC to terminate any plan, nor shall anything in this policy be deemed to eliminate or alter in any manner the responsibilities of other parties (e.g., the contributing sponsor or the plan administrator) to take appropriate action with respect to a plan.

The policy is effective immediately and supersedes PBGC's May 3, 1985, policy regarding abandoned sufficient plans.

C. Policy Statement

When PBGC determines that an abandoned sufficient plan should be terminated, PBGC generally will seek appointment as trustee of the plan. PBGC may, in its discretion, seek the appointment of a third party as trustee if that party is qualified and willing to perform the trustee's duties at a reasonable cost and if PBGC concludes that, as of the date of distribution, the plan is likely to have assets sufficient, after allowance for reasonable administrative costs, to pay guaranteed benefits.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/3_2_1_2nd.htm
(05/28/1996).

Previous Editions

[3.2-1 Treatment of Abandoned Sufficient Plans 1st Ed. - Outdated](#)

3.3-1 Interim Trusteeship of Plans

Edition	1st Edition
Issue Date	06/13/94
Transmittal	Transmittal 32
Contact	ASK PPD

In this policy

- [A. Scope](#)
- [B. Effective Date](#)
- [C. Introduction](#)
- [D. Policy](#)

A. Scope

This policy statement applies to single-employer pension plans for which PBGC has made a determination that one or more of the conditions in ERISA Section 4042(a) has been met, but is unable to determine whether termination is necessary.

B. Effective Date

Effective upon issuance.

C. Introduction

Under ERISA 4042(b)(1), whenever PBGC has made a determination under section 4042(a) with respect to a plan, PBGC may seek the appointment of a trustee (an "interim trustee") to administer the plan until a decree is issued to terminate the plan pursuant to section 4042(c) or until PBGC determines that termination is unnecessary.

D. Policy

PBGC will seek appointment of an interim trustee (PBGC or another appropriate party) for a plan covered by this policy if it is unable to obtain, or encounters significant difficulty in obtaining, the information (e.g., plan asset information, controlled group information) that it needs to determine whether a termination under section 4042(c) is necessary, and there is an immediate need for someone to administer the plan while it obtains that information. An interim trustee may be appointed, for example, to protect plan participants, plan assets or plan information that is in danger of being lost or of deteriorating.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/3_3_1st.htm
(06/13/1994).

3.4-1 Benefit Payments Prior to Trusteeship

Edition	4th Edition
Issue Date	03/27/2014
Transmittal	Transmittal 2014-05
Last Review Date	N/A
Signed Policy	3.4-1 Benefit Payments Prior to Trusteeship
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. Policy Statement](#)
- [E. Pre-DOTR examples:
Concurrence, Endorsement, and Approval](#)

A. Background

For a variety of reasons, including insufficient assets or abandonment, a terminating pension plan may have participants who are not receiving benefits to which they are entitled. This policy statement establishes guidelines under which PBGC may pay benefits prior to its appointment as trustee, as outlined in ►ERISA § 4005(b)(2)(E). The second edition of the policy expanded and clarified the benefit payment rules in **section C.2**, allowing PBGC to pay estimated termination benefits, rather than estimated guaranteed benefits, where information to do so is available.

In the third edition PBGC clarified that pre-trusteeship benefit payments may include payments owed after the **pre-trusteeship authorization date**, including routine backpayments associated with administrative processing of new retirees and/or net underpayments owed to existing retirees.

This fourth edition is revised only to reflect the change in the position authorized to decide whether and when PBGC will make pre-trusteeship payments from Deputy Director of Operations to Chief of Benefits Administration and Director of the Office of Benefits Administration.

B. Scope and Effective Date

This policy statement applies to any single-employer plan that PBGC anticipates it will trustee in the future and that has participants who are not receiving benefits to which they are entitled under Title IV of ERISA if, as expected, the plan terminates and is trustee by PBGC and is effective upon issuance.

C. Definitions

Pre-Trusteeship Authorization Date – A date established by the Chief of Benefits Administration and Director of the Office of Benefits Administration as of which PBGC may make benefit payments prior to trusteeship.

D. Policy Statement

In certain circumstances, PBGC may decide to pay benefits to ►participants in a plan covered by Title IV of ►ERISA prior to PBGC's appointment as ►trustee. The Chief of Benefits Administration and Director of the Office of Benefits Administration will make each decision, based on the facts and circumstances of the particular case and recommendations from the Corporate Finance & Restructuring Department (CFRD) and will specify the **pre-trusteeship authorization date** as of which payments may be made.

1. General Rule

PBGC may pay benefits prior to its appointment as trustee only if:

- a. PBGC reasonably believes that the plan is covered under ERISA § 4021;
- b. PBGC anticipates becoming plan trustee in the future;

- c. Benefits are out of pay status or are projected to be out of pay status prior to the expected date of trusteeship;
- d. PBGC has the data necessary to make estimates of benefits payable;
- e. The ▶DOPT is expected to be on or before the date the benefit payments are due; and
- f. The plan is insufficient or projected to be insufficient to pay benefits, has been abandoned, or otherwise lacks the administrative ability to make payments to new payees or continue to make payments to existing payees as of the **pre-trusteeship authorization date**.

2. Benefits Paid

After the decision is made to pay benefits as of a **pre-trusteeship authorization date**, PBGC pays benefits as follows until the plan is trustee:

- a. A participant, ▶beneficiary or ▶alternate payee who is in pay status will continue to be paid the form of benefit that he or she was receiving from the plan;
- b. PBGC will pay benefits in plan (annuity) forms based on valid plan applications that are filed before PBGC becomes trustee of the plan;
- c. A plan participant or beneficiary requesting an application for annuity benefits will be provided a PBGC application. PBGC will offer only the PBGC benefit forms, as provided under Policy **5.4-7 Annuity Benefit Forms**;
- d. PBGC will not pay a benefit in a lump sum before PBGC becomes trustee of the plan, even if the benefit is ▶de minimis under the plan or Policy **5.4-9 Lump Sum Benefit Payments**; and
- e. PBGC will limit benefits to its best estimate of ▶termination benefits, which, in most cases, will be estimated guaranteed benefits.

3. Missed Payments

Payments missed prior to PBGC's **pre-trusteeship authorization date** will be reimbursed as soon as practicable **after** PBGC becomes trustee of the plan. Missed payments will be reimbursed after trusteeship as provided under Policy **6.3-1 Underpayment Reimbursement and Interest Payments**.

E. Pre-DOTR examples:

FACTS COMMON TO ALL EXAMPLES: ABC corporation pension plan has not been terminated or trustee as of 1/1/2012. The plan has run out of funds. Therefore, payments to existing retirees have ceased, and participants newly eligible to retire are not able to apply for or receive retirement benefits. PBGC establishes a **pre-trusteeship authorization date** of 1/1/2012. Ultimately the plan is terminated and trustee, with a DOPT of 9/1/2011 and ▶DOTR of 8/1/2012.

Ex 1. Existing Payees – Annuity Starting Date (ASD) before pre-trusteeship authorization date

PBGC determines that John Doe retired in 2010 and was receiving an ▶SLA monthly annuity payment of \$600; however, the last payment to Mr. Doe was for 11/2011. After the **pre-trusteeship authorization date** is established (1/1/2012), PBGC pays Mr. Doe an estimated \$600 monthly benefit beginning 3/2012. He has "missed payments" for 12/2011, 1/2012 and 2/2012.

PBGC also pays Mr. Doe his 1/2012 and 2/2012 payments, as both payments are owed as of the **pre-trusteeship authorization date** (1/1/2012). PBGC pays Mr. Doe his other "missed payment" for 12/2011 after the plan is trustee, because the missed payment date precedes the **pre-trusteeship authorization date**.

Ex 2. New Payee – ASD after pre-trusteeship authorization date

Bill Smith contacts PBGC in March of 2012 about his eligibility for a NRB on 4/1/2012. PBGC supplies Mr. Smith with his estimated retirement benefit information, and application package (including optional forms etc.). Mr. Smith completes and returns the application in early May. His ASD is 4/1/2012, which is after the **pre-trusteeship authorization date**; therefore, when he is put into pay with a first monthly payment on 6/1/2012, he is also paid a backpayment for 4/1/2012 and 5/1/2012. There are no additional "missed payments" for him.

Ex 3. New Payee – ASD before pre-trusteeship authorization date

Jane Murphy contacts PBGC in March of 2012 about her eligibility for a ▶NRB. Ms. Murphy reached her ▶NRD on 10/1/2011. Ms. Murphy advises she was unsuccessful in getting an application package or benefit estimates from the prior ▶PA and was unable to apply for retirement. (PBGC determines Ms. Murphy is eligible for a retroactive ▶ASD, under the ASD policy rules.)

PBGC provides Ms. Murphy with an estimate of her retirement benefit, and an application package (including optional forms etc.) and informs her that she may elect a retroactive ASD of 10/1/2011. She is further informed that if she elects a 10/1/11 ASD, PBGC

will pay her backpayments to 10/1/2011 only **after** the plan has been formally trustee by PBGC, or if she prefers, we can recalculate a slightly increased benefit with a later ASD. Ms. Murphy chooses the retroactive ASD of 10/1/2011.

She returns the completed application in early May. Her ASD is a few months before the **pre-trusteeship authorization date** (1/1/2012). Therefore, when she is put into pay with a first monthly payment on 6/1/2012, PBGC pays her a back payment for the months of January through May 2012 because these payments are owed as of the **pre-trusteeship authorization date**, and advises her that she is owed for "missed payments" for October through December 2011, which will be paid after PBGC becomes trustee of the pension plan. PBGC pays Ms. Murphy her other "missed payments" for October through December 2011 after the plan is trustee, because these missed payment dates preceded the **pre-trusteeship authorization date**.

Concurrence, Endorsement, and Approval

Policy 3.4-1 Benefit Payments Prior to Trusteeship, Endorsement, and Approval		
Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	02/27/2014
PPD: Susan Strassman, Manager	S.S.	02/28/2014
OCC: James Armbruster, Assistant Chief Counsel	J.A.	02/27/2014
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	02/27/2014
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	03/13/2014
Chief Financial Officer: Patricia Kelly	P.K.	03/18/2014
Approval		
Chief of Benefits Administration and Director of the Office of Benefits Administration: Philip R. Langham	P.R.L.	03/18/2014

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on **Transmittal 2014-05**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/3_4_1_4th.htm
(03/27/2014).

Previous Editions

[3.4-1 Benefit Payments Prior to Trusteeship 1st Ed. - Outdated](#)

[3.4-1 Benefit Payments Prior to Trusteeship 2nd Ed. - Outdated](#)

[3.4-1 Benefit Payments Prior to Trusteeship 3rd Ed. - Outdated](#)

4.2-1 Allocation of Assets - Priority Category 3

Edition	2nd Edition
Issue Date	03/27/2014
Transmittal	Transmittal 2013-06
Last Review Date	N/A
Signed Policy	4.2-1 Allocation of Assets - Priority Category 3
Contact	ASK PPD

In this policy

- [A. Introduction](#)
 - [B. Scope and Effective Date](#)
 - [C. Definitions](#)
 - [D. Benefits Assigned to PC3](#)
 - [E. Eligibility for a PC3 Benefit](#)
 - [F. PC3 Benefit Amounts](#)
 - [G. Other Factors Affecting PC3](#)
 - [H. Allocating Assets to PC3 Benefits](#)
 - [I. Funded PC3 Benefits](#)
 - [J. Benefits Payable from PBGC](#)
- Concurrence, Endorsement, and Approval

A. Introduction

This policy statement revises PBGC Policy [4.2-1 Allocation of Assets - Priority Category 3, 1st edition](#) and replaces PBGC [Policy Bulletin 00-8](#) in order to reflect changes that the Pension Protection Act of 2006 (PPA 2006) requires for allocating assets and assigning plan benefits to [Priority Category 3](#) (PC3).

Section 4044(a) of the [Employee Retirement Income Security Act](#) (ERISA) requires that Pension Benefit Guaranty Corporation (PBGC) allocate the assets of a trustee pension plan among six priority categories. Before allocating plan assets, PBGC first assigns plan benefits to these six priority categories. In general, PBGC assigns to PC3 those plan benefits that were in pay, or could have been in pay, three years before the [date of plan termination](#) (DOPT). The plan benefit assigned to PC3, however, is based generally on plan provisions in effect five years before DOPT.

[PPA 2006](#) revised the PC3 rules for those plan terminations that occur during a bankruptcy case (or similar proceeding) of the contributing sponsor. The revised PC3 rules cover those plan terminations for which the bankruptcy petition date (BPD) was on or after 9/16/2006. For such plans (called "PPA 2006 bankruptcy plans"), PBGC uses [BPD](#) (instead of [DOPT](#)) to determine PC3 eligibility and to calculate the PC3 Benefit (as defined below).

To assign plan benefits to PC3, PBGC uses a 2-step process based on ERISA section 4044(a)(3) and PBGC Reg. 4044.10 and 4044.13. First, PBGC identifies individuals who were actually receiving, or who were eligible to receive, plan benefits three years before DOPT/BPD. (The combined term "DOPT/BPD" refers to DOPT if the plan is not a PPA 2006 bankruptcy plan or BPD if the plan is a PPA 2006 bankruptcy plan.) Then, for PC3-eligible individuals, PBGC calculates the PC3 Benefit, which PBGC values as of DOPT regardless of whether the plan is a PPA 2006 bankruptcy plan.

Generally, two types of plan benefits are assigned to PC3. The first type is an annuity that actually commenced three or more years before DOPT/BPD and continued through DOPT. The second type is an annuity that could have (but had not) commenced three or more years before DOPT/BPD and after the Earliest PBGC Retirement Date (EPRD). Both PC3 types also include annuities that commenced, or could have commenced, three or more years before DOPT/BPD and that converted, or could have converted, to a survivor annuity as of DOPT. Plan benefits payable only as lump sums, such as lump sum death benefits, are not assigned to PC3.

To calculate the PC3 Benefit, PBGC considers vesting and individual pension data (credited service, eligibility requirements, pension compensation, etc.) as of the day before the beginning of the 3-year period ending on DOPT/BPD (or earlier if applicable, for example, because plan benefits commenced earlier). As is explained in this Policy, PBGC generally limits the PC3 Benefit to the lowest benefit in pay, or that could have been in pay, under the plan provisions in effect throughout the period beginning on DOPT/BPD-5

(as defined in **section C** below) and ending on DOPT. The benefit payable from PBGC (as described in **section J** below) depends on the extent to which plan assets are available to fund PC3 Benefit Liabilities (as described in **section I** below).

B. Scope and Effective Date

This policy statement applies to the eligibility for, and PBGC's calculation and valuation of, PC3 Benefits (as defined in **section C** below) in PBGC-trusted plans.

This policy statement is effective upon issuance.

C. Definitions

1. **Benefit Increase (or Decrease) in Effect** means a benefit increase (or decrease) whose adoption date and effective date have both occurred. In most cases, the effective date of a benefit increase (or decrease) will be the one specified in the adopting amendment. But in certain cases, the benefit increase (or decrease) may not take effect until a later date. In such a case, the effective date is the later date. For example, in the case of a benefit increase in a plan amendment that was adopted on 1/1/15 with a stated effective date of 3/1/15, but for which no participant could receive the increase until 5/1/15, the date on which the Benefit Increase is in Effect is 5/1/15. See **sections F.3** and **G.2** below.
2. **DOPT/BPD** means DOPT if the plan is not a PPA 2006 bankruptcy plan and BPD if the plan is a PPA 2006 bankruptcy plan. (For a PPA 2006 bankruptcy plan, BPD will always occur on or before DOPT. For the definitions of "PPA 2006 bankruptcy plan" and "BPD", see PBGC Policy **5.14-1 Benefits in PPA 2006 Bankruptcy Plans**.)
3. **DOPT/BPD-3** means **the day before** the beginning of the 3-year period ending on DOPT/BPD. For example, DOPT is 1/1/17, and BPD is 12/15/15. The 3-year period ending on BPD (12/15/15) starts on 12/16/12, so DOPT/BPD-3 is 12/15/12, the day before 12/16/12.
4. **DOPT/BPD-5** means the beginning of the 5-year period ending on DOPT/BPD. For example, DOPT is 1/1/18, and BPD is 12/15/15. The 5-year period ending on BPD (12/15/15) starts on 12/16/10, so DOPT/BPD-5 is 12/16/10.
5. **PC3 Benefit** means the portion of the plan benefit that PBGC assigns to PC3 as required under ERISA section 4044(a)(3), including portions of the plan benefit also assigned to higher priority (lower numbered) categories. **Net PC3 Benefit** means the PC3 Benefit excluding portions of the plan benefit already assigned to higher priority (lower numbered) categories whereas **Gross PC3 Benefit** refers to the entire plan benefit assigned to PC3, including portions of the plan benefit already assigned to higher priority (lower numbered) categories. In this policy statement, **PC3 Benefit** refers to the monthly amount of the **Gross PC3 Benefit** unless otherwise stated.
6. **PC3 Benefit Form** means the benefit form of the PC3 Benefit. See **section F.4** below.
7. **PC3 Benefit Liability** means the present value as of DOPT of the Net PC3 Benefit. See **section I** below.
8. **PC3 Calculation Date** means the date as of which PBGC calculates the PC3 Benefit—generally the earlier of the participant's annuity starting date (ASD) and the first of the month coincident with or following DOPT/BPD-3. See **section F.1** below.

D. Benefits Assigned to PC3

PBGC will assign benefits to PC3 by following a 2-step process –

Step 1 – PBGC will determine whether a participant, beneficiary, or alternate payee with a separate interest benefit under a qualified domestic relations order (**►QDRO**) is eligible for a PC3 Benefit (see **section E** below).

Step 2 – PBGC will calculate the PC3 Benefit (see **section F** below).

PBGC will also consider other factors affecting PC3 eligibility and the PC3 Benefit (see **section G** below) and allocate assets to the PC3 Benefit Liabilities (see **sections H** and **I** below). For determining the benefit payable, see **section J** below.

E. Eligibility for a PC3 Benefit

To determine eligibility for a PC3 Benefit, PBGC will generally determine the **►EPRD** from plan provisions in effect as of DOPT/BPD-3—or earlier provisions if applicable. For example, if a participant left covered service under the plan before DOPT/BPD-3 and, as a result, later plan provisions are inapplicable, PBGC will determine EPRD from plan provisions in effect when the participant left covered service under the plan. See PBGC Policy **6.1-2 Earliest PBGC Retirement Date**.

PBGC will assign plan annuity benefits to PC3 based on whether the plan benefits are payable to:

- A participant (see **section E.1** below)

- The beneficiary of a deceased participant (see [section E.2](#) below)
- An alternate payee with a separate interest benefit under a QDRO (see [section E.3](#) below)

An individual may be eligible for PC3 Benefit even if the first possible payment date under the plan rules is after DOPT/BPD-3 so long as all substantive eligibility requirements to go into pay (that is, those conditions other than going into pay, submitting a formal benefit application, or completing a required waiting period) are met as of DOPT/BPD-3.

1. Participant's Eligibility for PC3

A participant who is alive on DOPT will be eligible for a PC3 Benefit if either:

- **The participant was receiving an annuity on or before DOPT/BPD-3, or**
- **The participant reached his or her EPRD on or before DOPT/BPD-3—that is, the participant was eligible to receive an annuity on or before DOPT/BPD-3.**

Example 1 – EPRD before DOPT/BPD-3.

- DOPT = 01/10/12
- DOPT/BPD-3 = 01/10/09
- Participant's EPRD = 01/05/09
- Participant's PC3 Calculation Date = 02/01/09
- Participant was alive but not in pay on DOPT

The participant is eligible for a PC3 Benefit because the participant reached his EPRD (01/05/09) before DOPT/BPD-3 (01/10/09) even though the participant's PC3 Calculation Date (02/01/09) was after DOPT/BPD-3 (01/10/09). Note that if DOPT were 01/02/12 (instead of 01/10/12), then DOPT/BPD-3 would be 01/02/09, and the participant would be ineligible for a PC3 Benefit.

2. Beneficiary's Eligibility for PC3

A deceased participant's beneficiary who is alive on DOPT will be eligible for a PC3 Benefit if:

- **The beneficiary was receiving the survivor annuity on or before DOPT/BPD-3.**

A deceased participant's beneficiary who is alive on DOPT and eligible for a survivor annuity (but who was **not** receiving a survivor annuity on or before DOPT/BPD-3) will be eligible for a PC3 Benefit if:

- **The participant's EPRD occurred on or before DOPT/BPD-3 (regardless of whether the participant died before reaching EPRD).**

Example 2 – QPSA Benefits (Death after EPRD).

- DOPT = 04/17/12
- DOPT/BPD-3 = 04/17/09
- Participant's EPRD = 04/25/08
- Participant's date of death (not in pay) = 03/20/10
- Beneficiary was in pay on DOPT

The beneficiary of the participant's ► [qualified preretirement survivor annuity](#) (QPSA) is eligible for a PC3 Benefit because the participant, who died on 03/20/10, had reached his EPRD (04/25/08) before DOPT/BPD-3 (04/17/09).

Example 3 – QPSA Benefits (Death before EPRD).

- DOPT = 04/17/12
- DOPT/BPD-3 = 04/17/09
- Participant's date of death (not in pay) = 12/15/08
- Participant's EPRD = 04/15/09
- Earliest QPSA commencement date = 05/01/09
- Beneficiary was alive but not in pay on DOPT

The beneficiary is eligible for a PC3 Benefit for the following reasons:

- The beneficiary was alive on DOPT (04/17/12) and eligible to receive a survivor annuity.
- The participant, had he not died, would have reached his EPRD on 04/15/09—before DOPT/BPD-3 (04/17/09).

3. Separate Interest Alternate Payee's Eligibility for PC3

An alternate payee with a separate interest of a participant's benefit awarded under a QDRO will be eligible for a PC3 Benefit if either:

- **The alternate payee was receiving the separate interest annuity on or before DOPT/BPD-3, or**
- **The participant's EPRD occurred on or before DOPT/BPD-3 (regardless of whether the participant died before reaching EPRD).**

The QDRO does not need to be issued on or before DOPT/BPD-3 for a separate interest alternate payee to be eligible for a PC3 Benefit.

If the QDRO also awards the alternate payee all or a portion of the participant's surviving spouse benefit, PBGC will separately determine the alternate payee's eligibility for a PC3 survivor benefit under [section E.2](#) above.

F. PC3 Benefit Amounts

After determining eligibility for a PC3 Benefit as described in [section E](#) above, PBGC will calculate the PC3 Benefit as described in this [section F](#) below and:

- Take into account other factors as described in [section G](#) below,
- Allocate assets to the PC3 Benefits as described in [section H](#) below,
- Determine the funded PC3 Benefit as described in [section I](#) below, and
- Determine the benefit payable from PBGC as described in [section J](#) below.

For calculating the PC3 Benefit in a statutory hybrid plan, see PBGC Policy [5.12-2 Statutory Hybrid Plans - Valuing and Paying Benefits](#).

For each individual eligible for a PC3 Benefit, PBGC will calculate the PC3 Benefit by:

- Determining the PC3 Calculation Date (see [section F.1](#) below)
- Using relevant data as of DOPT/BPD-3 (see [section F.2](#) below)
- Using plan provisions producing the lowest plan benefit between DOPT/BPD-5 and DOPT (see [section F.3](#) below)
- Determining the PC3 Benefit Form (see [section F.4](#) below)
- Adjusting for form and age as of the PC3 Calculation Date (see [section F.5](#) below)
- Determining the PC3 Benefit to a surviving beneficiary (see [section F.6](#) below)
- Disregarding most Title IV legal limits (see [section F.7](#) below)

PBGC does **not** actuarially increase the PC3 Benefit for instances in which an ASD has been delayed until after the PC3 Calculation Date. See [section F.5](#) below.

1. PC3 Calculation Date

The PC3 Calculation Date is the date as of which the PC3 Benefit is calculated. Unlike DOPT/BPD-3, the PC3 Calculation Date will fall on the first day of a month and will depend on whether the benefit is in pay on DOPT/BPD-3, as described below.

a. Benefits in Pay on DOPT/BPD-3

If a benefit is in pay on DOPT/BPD-3, the PC3 Calculation Date will be the ASD of the annuity benefit that was in pay on DOPT/BPD-3—that is, the participant's ASD (even if a survivor benefit was in pay on DOPT/BPD-3) or the QPSA beneficiary's ASD.

If the participant or beneficiary was entitled to benefit increases after the ASD, the PC3 Calculation Date will be unaffected, but the benefit increases will be subject to the rules in [sections F.3](#) and [G.2](#) below.

Example 4 – PC3 Calculation Date: Participant Alive on DOPT and in Pay on DOPT/BPD-3.

- DOPT = 05/17/11
- DOPT/BPD-3 = 05/17/08
- Participant's ASD = 01/01/03
- Participant was in pay on DOPT

The PC3 Calculation Date is 01/01/03 because 01/01/03 was the ASD of the benefit in pay on DOPT/BPD-3 (05/17/08).

Example 5 – PC3 Calculation Date: Participant's Death after DOPT/BPD-3.

- DOPT = 05/17/11
- DOPT/BPD-3 = 05/17/08
- Participant's ASD = 01/01/03
- Benefit form = qualified joint-and-50% survivor annuity (50% ► QJSA)
- Participant's date of death = 12/26/08
- Beneficiary's ASD = 01/01/09
- Beneficiary was in pay on DOPT

The PC3 Calculation Date is 1/1/03 because 01/01/03 was the ASD of the benefit that was in pay (the participant's 50% QJSA) on DOPT/BPD-3 (05/17/08)—even though the beneficiary's own ASD was 01/01/09. (The date 01/01/03 is the ASD of the benefit payable "with respect to the participant" on DOPT—that is, the benefit that was payable in a benefit form requiring payments first to the participant and, upon the participant's death, to a surviving beneficiary.)

Example 6 – PC3 Calculation Date: Participant's Death before DOPT/BPD-3.

- DOPT = 05/17/11
- DOPT/BPD-3 = 05/17/08
- Participant's ASD = 01/01/03
- Benefit form = 50% QJSA
- Participant's date of death = 12/30/06
- Beneficiary's ASD = 01/01/07
- Beneficiary was in pay on DOPT

The PC3 Calculation Date is 01/01/03 because 01/01/03 was the ASD of the benefit in pay on DOPT/BPD-3 (05/17/08)—even though the beneficiary's ASD was 01/01/07, which was before DOPT/BPD-3. (The date 01/01/03 is the ASD of the benefit payable "with respect to the participant" on DOPT—that is, the benefit that was payable in a benefit form requiring payments first to the participant and, upon the participant's death, to the surviving beneficiary.)

b. Benefits Not in Pay on DOPT/BPD-3

If no benefit was in pay on DOPT/BPD-3, the PC3 Calculation Date will be the first of the month coincident with or following DOPT/BPD-3.

Example 7 – PC3 Calculation Date: Participant Alive But Not in Pay on DOPT.

- DOPT = 05/17/11
- DOPT/BPD-3 = 05/17/08
- Participant's EPRD = 01/01/03
- Participant was alive but not in pay on DOPT

The PC3 Calculation Date is 06/01/08 because 06/01/08 was the first of the month coincident with or following DOPT/BPD-3 (05/17/08).

Example 8 – PC3 Calculation Date: QPSA for Death after DOPT/BPD-3.

- DOPT = 05/17/11
- DOPT/BPD-3 = 05/17/08
- Participant's EPRD = 01/01/03
- Participant's date of death (not in pay) = 12/30/08
- Beneficiary's ASD = 01/01/09
- QPSA benefit form = ► [SLA](#)
- Beneficiary was in pay on DOPT

The PC3 Calculation Date is 06/01/08 for the following reasons:

- No benefit was in pay on DOPT/BPD-3.
- 06/01/08 was the first of the month coincident with or following DOPT/BPD-3.

Example 9 – PC3 Calculation Date: QPSA for Death before DOPT/BPD-3.

- DOPT = 05/17/11
- DOPT/BPD-3 = 05/17/08
- Participant's EPRD = 01/01/03
- Participant's date of death (not in pay) = 12/30/04
- Beneficiary was alive but not in pay on DOPT

The PC3 Calculation Date is 06/01/08 for the following reasons:

- No benefit was in pay on DOPT/BPD-3.
- 06/01/08 was the first of the month coincident with or following DOPT/BPD-3.

2. PC3 Benefit Amount Calculation Data

a. Pension Data

For benefits not in pay at DOPT/BPD-3, PBGC will generally use pension data (vesting and credited service, salary, etc.) as of DOPT/BPD-3 to calculate the PC3 Benefit but ages as of the PC3 Calculation Date to determine early/late retirement factors (ERF/LRF) and benefit form conversion factors (BFCF). (For example, if DOPT/BPD-3 is March 5 and the PC3 Calculation Date is the following April 1, then the participant's age as of April 1 will be used for the ERF/LRF and BFCF whereas credited service will be calculated as of March 5.) For benefits in pay at DOPT/BPD-3, pension data as of the separation date and ages as of the participant's ASD will generally be used.

b. Population Data

PBGC will use participant and beneficiary population data as of DOPT (marital status, disability status, death status, etc.) for purposes of valuing the plan's total PC3 Benefit Liability. See [section H](#) below.

3. Plan Provisions

To calculate the PC3 Benefit , PBGC will generally use the applicable plan provisions in effect during the period beginning on DOPT/BPD-5 and ending on DOPT that produce the lowest benefit payable (or in effect earlier than DOPT/BPD-5 as described below). See also [sections G.1, G.2, and G.5](#) below.

For an individual who entered pay before DOPT/BPD-5 or separated from covered service before DOPT/BPD-5, PBGC will generally use the applicable plan provisions in effect when the individual entered pay or separated from covered service. PBGC generally will not assign larger benefits than those payable (or accrued) as of the retirement date or separation from service date.

However, for individuals whose benefits were subject to post-retirement increases, PBGC will use later plan provisions, when applicable, to those increases, but limited to provisions in effect on or before DOPT/BPD-5 (or earlier if applicable). If an applicable plan provision includes automatic increases to the benefit formula, PBGC will include those increases scheduled to be in effect during the fourth and fifth years before DOPT/BPD in the PC3 Benefit. See [section G.2](#) below.

To determine an individual's eligibility for a PC3 Benefit, PBGC will generally use applicable plan provisions in effect as of DOPT/BPD-3 (or earlier applicable provisions for a participant who separated from covered service before DOPT/BPD-3). See

section E above.

4. PC3 Benefit Form

The PC3 Benefit Form will depend on whether benefits were in pay on DOPT.

a. Benefits in Pay on DOPT

If the benefit was in pay on DOPT, the PC3 Benefit Form will be the benefit form of the annuity in pay on DOPT—even if the benefit was not in pay as of DOPT/BPD-3. (In the case of a benefit paid under a level-income option form, see ▶ PPD.) For adjusting the PC3 Benefit for form, see **section F.5** below.

Example 10 – PC3 Benefit Form: QJSA Beneficiary in Pay on DOPT.

- DOPT = 04/17/09
- DOPT/BPD-3 = 04/17/06
- Participant's ASD = 10/01/02
- Benefit form = 50% QJSA
- Participant's date of death = 05/10/08
- Beneficiary's ASD = 06/01/08
- QJSA benefit form = SLA
- Beneficiary was in pay on DOPT

The PC3 Benefit Form is an SLA because on 04/17/09 (DOPT), the benefit form in pay was an SLA, which was the benefit form of the survivor annuity that the beneficiary was receiving on DOPT—even though the beneficiary started receiving the survivor annuity after DOPT/BPD-3.

Example 11 – PC3 Benefit Form: Participant with Plan Optional Benefit Form in Pay on DOPT.

- DOPT = 04/17/09
- DOPT/BPD-3 = 04/17/06
- Participant's EPRD = 04/17/06
- Participant's ASD = 03/01/09
- Benefit form (plan optional form) = 10-year certain-and-continuous annuity (10C&C)
- Participant was in pay on DOPT

The PC3 Benefit Form is a 10C&C because as of 04/17/09 (DOPT), the participant was receiving a 10C&C—even though the benefit was a plan optional form and the participant started receiving the benefit after DOPT/BPD-3. To calculate the monthly amount of the participant's PC3 Benefit, see **Example 14** below.

b. Benefits Not in Pay on DOPT

If no benefit was in pay on DOPT, the PC3 Benefit Form will be the automatic benefit form under the plan provisions in effect on DOPT or, if the participant separated from covered service before DOPT, under the most recent plan provisions applicable to the participant's benefit.

Example 12 – PC3 Benefit Form: Deferred Participant Not in Pay at DOPT.

- DOPT = 04/17/09
- DOPT/BPD-3 = 04/17/06
- Relevant plan provisions
 - ◆ Effective 05/01/08, the plan changed the automatic unmarried benefit form for some employees but not others
 - ◆ For participants actively employed on 05/01/08, the automatic unmarried benefit form changed from an SLA to a 5-year certain-and-continuous annuity (5C&C) with no actuarial adjustment for the additional 5-year certain component
- Participant's date of termination of employment (DOFE) = 04/01/05

- Participant's EPRD = 04/17/06
- Participant was alive but not in pay on DOPT

The participant's PC3 Benefit Form is an SLA because the participant's DOTE was 04/01/05—before 05/01/08, when the 5C&C automatic unmarried benefit form for participants actively employed became effective.

Example 13 – PC3 Benefit Form: Active Participant Not in Pay at DOPT.

- DOPT = 04/17/09
- DOPT/BPD-3 = 04/17/06
- Relevant plan provisions
 - ◆ Effective 05/01/08, the plan changed the automatic unmarried benefit form for some employees but not others
 - ◆ For participants actively employed on 05/01/08, the automatic unmarried benefit form changed from an SLA to a 5C&C with no actuarial adjustment for the additional 5-year certain component
- Participant's EPRD = 04/17/06
- Participant was an active participant but not in pay on DOPT

The participant's PC3 Benefit Form is a 5C&C because as of 05/01/08 (when the automatic unmarried benefit form changed for participants actively employed), the participant was an active employee. To calculate the monthly amount of the participant's PC3 Benefit, see **Example 15** below.

If a participant, beneficiary, or separate interest alternate payee elects a PBGC-optimal form after PBGC trustees the plan, PBGC will adjust the termination benefit (including the PC3 Benefit) for form in accordance with **section F.5** below.

5. Adjusting the PC3 Benefit for Form and Age

To adjust the PC3 Benefit for form and age, PBGC will use the appropriate plan provisions as described in **section F.3** above to calculate BFCFs and ERFs/LRFs as of the PC3 Calculation Date—regardless of whether the ASD is later than the PC3 Calculation Date, DOPT/BPD-3, or DOPT.

As described under ERISA section 4044(a)(3)(B), the PC3 Benefit is a fixed amount. PBGC will **not** actuarially increase the PC3 Benefit **solely** because the ASD is after the PC3 Calculation Date.

Example 14 – Continuation of Example 11 above.

To calculate the PC3 Benefit in **Example 11** above, PBGC:

- Uses the plan's BFCF under the plan provisions described in **section F.3** above and as of the PC3 Calculation Date (05/01/06).
- Converts the participant's SLA amount (the automatic form in effect on DOPT/BPD-3) to a 10C&C amount payable to the participant starting on the PC3 Calculation Date (05/01/06) with a 10-year certain period ending on 04/01/16.

When the participant went into pay, the 10-year certain period started on the participant's ASD (03/01/09) and ends ten years from the participant's ASD (02/01/19). Starting 03/01/19, benefits will continue to be paid if and for as long as the participant is still alive.

Example 15 – Continuation of Example 13 above.

To calculate the PC3 Benefit in **Example 13** above, PBGC:

Uses the plan's BFCF under the plan provisions described in **section F.3** above and as of the PC3 Calculation Date (05/01/06).

Converts the participant's SLA amount (the automatic form in effect on DOPT/BPD-3) to a 5C&C amount payable to the participant starting on the PC3 Calculation Date (05/01/06) with a 5-year certain period ending on 04/01/11.

When the participant actually goes into pay, the 5-year certain period will start on the participant's ASD (in this example, assumed to be after DOPT) and ends five years later. After the 5-year certain period ends, benefits will continue to be paid if and for as long as the participant is still alive.

6. PC3 Benefit to a Surviving Beneficiary

If a survivor annuity is in pay on DOPT, the PC3 Benefit to the surviving beneficiary will be the survivor annuity that the surviving beneficiary would have been eligible to receive on the PC3 Calculation Date—regardless of whether the participant was alive on the PC3 Calculation Date.

Example 16 – PC3 Benefit to a Surviving Beneficiary.

- DOPT = 05/02/11
- BPD = 12/28/10
- DOPT/BPD-3 = 12/28/07
- Participant's EPRD = 01/01/05
- Participant's ASD = 06/01/08
- Benefit form = 50% QJSA
- Participant's date of death = 02/15/11
- Relevant amounts
 - ◆ 50% QJSA benefit was \$1000.00 per month as of 06/01/08 (ASD)
 - ◆ 50% QJSA benefit was \$900.00 per month as of 01/01/08 based on service and salary earned as of 12/28/07 (DOPT/BPD-3)
- Beneficiary's ASD = 03/01/11
- Beneficiary was in pay at DOPT

The PC3 Benefit to the surviving beneficiary is \$450.00 (50% of \$900.00) per month because, if the QPSA benefit had been payable on 01/01/08 (PC3 Calculation Date) instead of on 03/01/11, the surviving beneficiary would have been eligible for a QPSA benefit equal to 50% of the participant's benefit of \$900.00 per month.

7. Title IV Limitations

PBGC will disregard the following legal limits under [►Title IV](#) of ERISA when determining which plan benefits to assign to PC3:

- The [►accrued-at-normal limit](#) (AAN)
- The [►maximum guaranteeable benefit limit](#) (MGB)
- The phase-in limit, including the special limit applicable to [►unpredictable contingent event benefits](#) (UCEB)
- The majority owner and substantial owner limits
- The aggregate limit on benefits payable from PBGC funds

G. Other Factors Affecting PC3

As part of the 2-step process described in [section D](#) above, after determining eligibility for a PC3 Benefit as described in [section E](#) above, PBGC will consider other factors when calculating the PC3 Benefit under [section F](#) above including:

- Plan decreases in effect on or before DOPT (see [section G.1](#) below)
- Plan increases in effect on or after DOPT/BPD-5 (see [section G.2](#) below)
- Pre-DOPT lump sums and purchased annuities (see [section G.3](#) below)
- Entitlement to plan's disability benefit (see [section G.4](#) below)
- Plan not in effect at DOPT/BPD-5 (see [section G.5](#) below)
- Plan deemed a successor plan (see [section G.6](#) below)

For allocating assets to the PC3 Benefits, see [section H](#) below. For determining the funded PC3 Benefit, see [section I](#) below. For determining the benefit payable from PBGC, see [section J](#) below.

1. Benefit Decreases

For PC3 purposes, PBGC will recognize plan benefit decreases in effect on or before DOPT unless those decreases are prohibited under Code section 411(d)(6) or other applicable law. This means that PBGC will generally follow plan provisions when preserving Code section 411(d)(6)-protected benefits.

Example 17 – Plan Preservation of 411(d)(6)-Protected Benefit Decreases.

- DOPT = 05/12/13
- DOPT/BPD-3 = 05/12/10
- Relevant plan provisions
 - ◆ Accrued monthly benefit = years of service (YOS) x benefit rate
 - ◆ Plan ERF = 5% per year
 - ◆ Early retirement was allowed under the plan after 10 YOS
- Relevant changes to the plan benefit rate
 - ◆ Effective 01/01/10, plan decreased its benefit rate for all service from \$50.00 per month (the old benefit rate) to \$25.00 per month (the new benefit rate)
 - ◆ The plan protected accrued benefits under Code section 411(d)(6) for all service with wear away
- Participant's EPRD = 04/01/06
- Participant's PC3 Calculation Date = 06/01/10
- Participant's normal retirement date (NRD) = 04/01/16
- Relevant calculations of the participant's YOS
 - ◆ 15.0000 as of 05/12/13 (DOPT/BPD)
 - ◆ 12.0000 as of 05/12/10 (DOPT/BPD-3)
 - ◆ 11.6667 as of 12/31/09 (last day of old rate)
- Participant was active but not in pay at DOPT

The accrued monthly plan benefit = \$583.34 per month, the greater of:

- The plan benefit accrued as of 05/12/13 (DOPT/BPD) under the new benefit rate = \$375.00 per month:

$$\begin{array}{rcl} \$25.00 & & \text{(new benefit rate)} \\ \times 15.0000 & & \text{(total YOS)} \\ \hline \$375.00 & & \text{(total accrued benefit under new benefit rate)} \end{array}$$

- The protected benefit accrued as of 12/31/09 (last day of old rate) under the old benefit rate = \$583.34 per month:

$$\begin{array}{rcl} \$50.00 & & \text{(old benefit rate)} \\ \times 11.6667 & & \text{(YOS as of 12/31/09 = last day of old rate)} \\ \hline \$583.34 & & \text{(benefit accrued as of 12/31/09 under old benefit rate)} \end{array}$$

The PC3 Benefit = \$413.18 per month, the greater of:

- The plan benefit accrued as of 05/12/10 (DOPT/BPD-3) under the new rate = \$212.49 per month:

$$\begin{array}{rcl} \$25.00 & & \text{(new benefit rate)} \\ \times 12.0000 & & \text{(YOS as of 05/12/10 = DOPT/BPD-3)} \\ \times 0.7083 & & \text{(ERF as of 06/01/10 = PC3 Calculation Date, 70 months early)} \\ \hline \$212.49 & & \text{(benefit accrued as of 05/12/10 under new benefit rate)} \end{array}$$

- The protected benefit accrued as of 12/31/09 (last day of old rate) under old rate = \$413.18 per month:

$$\begin{array}{rcl} \$50.00 & & \text{(old benefit rate)} \\ \times 11.6667 & & \text{(YOS as of 12/31/09 = last day of old rate)} \\ \times 0.7083 & & \text{(ERF as of 06/01/10 = PC3 Calculation Date, 70 months early)} \\ \hline \$413.18 & & \text{(benefit accrued as of 12/31/09 under old benefit rate)} \end{array}$$

2. Benefit Increases

PBGC will generally include in the PC3 Benefit only those Benefit Increases in Effect on or before DOPT/BPD-5. See [section F.3](#) above.

If the benefit formula under plan provisions in effect on or before DOPT/BPD-5 includes automatic increases either for retirees in pay or for both active plan participants and retirees in pay, PBGC will include in the PC3 Benefit those automatic increases scheduled to take effect in the fourth and fifth years before DOPT/BPD. Such automatic increases include annual cost-of-living adjustments (COLAs) and benefit multiplier increases.

For active participants, PBGC will not include in the PC3 Benefit any portion of automatic increases in the benefit formula that exceeds the automatic increases in the benefit formula for retirees in pay.

Example 18 – PC3 Automatic Benefit Increases before DOPT/BPD-3.

- DOPT = 12/01/09
- DOPT/BPD-3 = 12/01/06
- Relevant plan provisions
 - ◆ For active participants and retirees in pay, the plan automatically increased the benefit rate by \$2.00 per YOS
 - ◆ The automatic increase was effective on January 1 of each calendar year
 - ◆ During the 2004 calendar year, the benefit rate was \$17.00 per YOS
- Participant's EPRD = 10/15/06
- Participant was active but not in pay on DOPT

The benefit rate for the participant's PC3 Benefit is \$21.00 per YOS because in this example the PC3 Benefit includes the automatic increases that took place on 01/01/05 and 01/01/06.

For a one-time benefit increase occurring between DOPT/BPD-5 and DOPT/BPD-3 that results from a change in law (for example, an increase triggered by a change to the base amount of the Code section 415(b)), contact [PPD](#) on whether the one-time benefit increase qualifies for treatment as an automatic increase for PC3 purposes.

3. Pre-DOPT Partial Plan Benefit Distribution

In cases where a participant was **not** in pay with an annuity as of DOPT/BPD-3 (but was eligible to be in pay as of DOPT/BPD-3) and where the participant had received a pre-DOPT distribution from plan assets representing a portion of his or her plan benefit (for example, a distribution made through a purchased annuity or one-time partial lump sum payment), the PC3 Benefit will be the difference of the following two annuity amounts (but not less than \$0):

- The pre-distribution PC3 Benefit —that is, the PC3 Benefit calculated as though no pre-DOPT distribution had occurred, and
- The pre-DOPT distribution amount converted to an annuity commencing on the earlier of (a) the ASD of the residual annuity and (b) the first of the month coincident with or following DOPT.
 - ◆ For a purchased annuity, the pre-DOPT distribution amount is the annuity amount payable under the insurance contract to the participant, beneficiary, or separate interest alternate payee.
 - ◆ For a partial lump sum payment, the pre-DOPT distribution amount is the annuity equivalent of the pre-DOPT distribution.

To annuitize the pre-DOPT partial lump sum distribution, PBGC will follow the plan's conversion rules for converting a lump sum to an annuity (such as the Applicable Interest Rate and Applicable Mortality Table under Code section 417(e)(3), which many pension plans require for converting lump sum distributions to a monthly annuity).

Example 19 – PC3 Pre-DOPT Plan Distribution from Plan Assets.

- DOPT = 10/01/11
- DOPT/BPD-3 = 10/01/08
- Relevant plan provisions
 - ◆ The plan's rules for converting a lump sum to an annuity are based on 417(e)(3) rates
 - ◆ The applicable 417(e)(3) rates are the 11/2009 three segment rates for the 2010 plan year, using the 2010 Applicable Mortality Table
- Participant's EPRD = 05/01/07

- Participant's ASD = 05/01/10
- Pre-distribution PC3 Benefit = \$3000.00 per month
- Partial lump-sum annuity equivalent payable on 05/01/10 = \$1045.30 per month (based on a partial lump-sum distribution of \$175,000 that was paid before DOPT)
- Participant was in pay on DOPT

The PC3 Benefit is \$1954.70 per month:

\$3000.00	(pre-distribution PC3 Benefit Amount)
- \$1045.30	(partial lump-sum annuity equivalent payable on 05/01/10)
<u>\$1954.70</u>	(PC3 Benefit Amount)

4. Disability Benefits

For disability benefits assigned to PC3, see [section F](#) of PBGC Policy [5.9-1 Disability Benefits](#).

5. Plans Not in Effect at DOPT/BPD-5

For a plan in effect for fewer than five years before DOPT/BPD, PBGC will assign no plan benefits to PC3 because the lowest benefit payable as of DOPT/BPD-5 is \$0.00. For plans considered successor plans, see [section G.6](#) below.

6. Successor and Predecessor Plans

If a trustee plan is considered a successor plan as defined under ERISA section 4021(a)(2), PBGC will treat, for PC3 purposes, the date that the predecessor plan was in effect as the date that the successor plan was in effect. This means that if the predecessor plan was in effect at DOPT/BPD-5, PBGC may assign successor plan benefits to PC3 even though the successor plan may be fewer than five years old as of DOPT/BPD.

H. Allocating Assets to PC3 Benefits

After assigning plan benefits to PC3 under the 2-step process described in [section D](#) above (by determining eligibility for a PC3 Benefit under [section E](#) above, calculating the PC3 Benefit under [section F](#) above, and considering other factors under [section G](#) above), PBGC will allocate assets to the PC3 Benefit Liabilities by:

- Using a benefit valuation date of DOPT (see [section H.1](#) below)
- Allocating plan assets first to an individual's basic-type PC3 Benefit Liabilities and any remaining assets to the individual's nonbasic-type PC3 Benefit Liabilities (see [sections H.2](#) and [I](#) below)

For annuity-certain benefits, PBGC will value the PC3 Benefit (see [Examples 14](#) and [15](#) above) based on the certain period remaining as of DOPT.

For determining the funded portion of an individual's Net PC3 Benefit, see [section I](#) below. For determining the benefit payable from PBGC, see [section J](#) below.

1. Benefit Valuation Date

Using age assumptions applicable to the other priority categories, PBGC will value the PC3 Benefit at DOPT for all plans (even for PPA 2006 bankruptcy plans).

For example, PBGC will use the participant's expected retirement age (XRA) as of DOPT. To calculate the PC3 Benefit of a participant in pay at DOPT, PBGC will use an immediate XRA.

2. Basic-Type and Nonbasic-Type Benefits

Using a single AAN limitation—the dollar amount payable as a straight life annuity beginning at normal retirement age under the latest applicable plan provisions as of DOPT (not BPD)—PBGC will separate PC3 Benefits into basic-type and nonbasic-type benefits. See also [section E.3](#) of PBGC Policy [5.14-1 Benefits in PPA 2006 Bankruptcy Plans](#).

I. Funded PC3 Benefits

PBGC will determine the funded portion of the Net PC3 Benefit generally as follows. First, PBGC will determine the plan-wide PC3 funded percentage as of DOPT by dividing available plan assets (that is, assets remaining after funding higher priority (lower numbered) categories) by the plan's PC3 Benefit Liabilities.

PBGC will consider each individual's Net PC3 Benefit to be funded at the plan-wide percentage. This means that if the individual's benefit is level and entirely basic-type, PBGC may determine the funded Net PC3 Benefit simply by multiplying the individual's Net PC3 Benefit by the plan-wide PC3 funded percentage.

Example 20 – Funded Net PC3 Benefit (Entirely Basic-Type).

- Plan-wide PC3 funded percentage = 95%
- Net PC3 Benefit = \$2000.00 per month
- The PC3 Benefit is entirely basic-type

The participant's funded Net PC3 Benefit equals \$1900.00 per month:

$$\begin{array}{rcl} \$2000.00 & \text{(the participant's Net PC3 Benefit)} \\ \times 95\% & & \\ \hline \$1900.00 & \text{(the participant's funded Net PC3 Benefit)} \end{array}$$

In more complicated cases (for example, where an individual's benefit is nonlevel or is both basic-type and nonbasic-type), additional steps are necessary to determine the funded Net PC3 Benefit. An important difference is that PBGC first converts the individual's Net PC3 Benefit to a present value, which is the individual's PC3 Benefit Liability. PBGC will then multiply the individual's total PC3 Benefit Liability by the plan-wide funded percentage to determine the plan assets available for the individual's PC3 Benefit Liability. PBGC will allocate those assets to the basic-type portion of the individual's PC3 Benefit Liability. If assets remain, PBGC will then allocate the remaining available assets to the nonbasic-type portion of the individual's PC3 Benefit Liability.

PBGC will then calculate the individual's funded percentages for basic-type and nonbasic-type portions of the PC3 Benefit. PBGC will multiply the basic-type funded percentage by the individual's basic-type PC3 Benefit to determine the individual's funded basic-type Net PC3 Benefit. Similarly, PBGC will multiply the nonbasic-type funded percentage by the individual's nonbasic-type PC3 Benefit to determine the individual's funded nonbasic-type Net PC3 Benefit. The sum of the funded basic-type and funded nonbasic-type Net PC3 Benefits is the individual's total funded Net PC3 Benefit.

Example 21 – Funded Net PC3 Benefit (Basic-Type and Nonbasic-Type).

- Participant's Net PC3 Benefit = \$2650.00 per month
 - ◆ \$2300.00 per month is basic-type
 - ◆ \$350.00 per month is nonbasic-type
- Participant's PC3 Benefit Liability = \$200,000
 - ◆ \$180,000 is basic-type
 - ◆ \$20,000 is nonbasic-type
- Plan-wide PC3 funded percentage = 95%

Plan assets available for the participant's PC3 Benefit Liability are \$190,000:

$$\begin{array}{rcl} \$200,000 & \text{(participant's PC3 Benefit Liability)} \\ \times 95\% & \text{(plan-wide PC3 funded percentage as of DOPT)} \\ \hline \$190,000 & \text{(plan assets available for the participant's PC3 Benefit Liability)} \end{array}$$

The participant's funded percentage of the basic-type Net PC3 Benefit is 100%:

$$\begin{array}{rcl} \$190,000 & \text{(plan assets available for the participant's Net PC3 Benefit Liability)} \\ \div \$180,000 & \text{(participant's basic-type PC3 Benefit Liability)} \\ \times 100 & \text{(conversion to percentage)} \\ \hline 100\% & \text{(participant's funded percentage of the basic-type Net PC3 Benefit, but not greater than 100\%)} \end{array}$$

All of the participant's basic-type PC3 Benefit Liability is funded. Plan assets remaining for the participant's nonbasic-type PC3 Benefit Liability are \$10,000:

\$190,000	(plan assets available for the participant's PC3 Benefit Liability)
- \$180,000	(plan assets allocated to the participant's basic-type PC3 Benefit Liability)
<hr/>	
\$10,000	(plan assets remaining for the participant's nonbasic-type PC3 Benefit Liability)

The participant's funded percentage of the nonbasic-type Net PC3 Benefit is 50%:

\$10,000	(plan assets remaining for the participant's nonbasic-type PC3 Benefit Liability)
÷ \$20,000	(participant's nonbasic-type PC3 Benefit Liability)
<hr/>	
x 100	(conversion to percentage)
<hr/>	
50%	(participant's funded percentage of the nonbasic-type Net PC3 Benefit)

The participant's funded percentage of the basic-type Net PC3 Benefit (\$2300.00 per month) is 100%; of the nonbasic-type Net PC3 Benefit (\$350.00 per month), 50%. Therefore, the participant's funded Net PC3 Benefit is \$2475.00 per month:

\$2300.00	(funded basic-type Net PC3 Benefit: 100% x \$2300.00 per month)
+ \$175.00	(funded nonbasic-type Net PC3 Benefit: 50% x \$350.00 per month)
<hr/>	
\$2475.00	(funded Net PC3 Benefit)

J. Benefits Payable from PBGC

This **section J** describes, in general terms, the relationship only among funded Net PC3 Benefits, PBGC guaranteed benefits, and 4022(c) benefits (see PBGC Policy **6.7-1 4022(c) Benefits**).

This **section J** does not address funding in other priority categories.

1. Entirely Basic-Type PC3 Benefits

To determine the benefit amount payable to an individual eligible for an entirely basic-type PC3 Benefit, PBGC will compare (on a present-value basis, if necessary) the guaranteed benefit and the funded Net PC3 Benefit and pay the greater of the two. PBGC will also pay 4022(c) benefits.

Example 22 – Continuation of Example 20 above.

In addition to the facts in **Example 20** above, assume:

- Participant's guaranteed benefit = \$2200.00 per month
- Participant's 4022(c) benefit = \$50.00 per month

To calculate the termination benefit (the total monthly PBGC benefit), PBGC compares the guaranteed benefit (\$2200.00 per month) to the funded Net PC3 Benefit (\$1900.00 per month) and pays the greater of the two, which equals the Title IV benefit (\$2200 per month).

In addition, PBGC pays the 4022(c) benefit of \$50.00 per month. Therefore, the termination benefit equals \$2250.00 per month:

\$2200.00	(greater of the guaranteed benefit (\$2200.00 per month) and funded Net PC3 Benefit (\$1900.00 per month))
+ \$50.00	(4022(c) benefit)
<hr/>	
\$2250.00	(termination benefit)

2. Basic-Type and Nonbasic-Type PC3 Benefits

To determine the benefit payable to an individual eligible for a PC3 Benefit that is both basic-type and nonbasic-type, PBGC will:

- Compare (on a present-value basis, if necessary) the guaranteed benefit to the funded basic-type Net PC3 Benefit (see **section I** above) and pay the greater of the two;

- Pay any additional funded nonbasic-type Net PC3 Benefit —regardless of whether the guaranteed benefit is greater than the funded basic-type Net PC3 Benefit; and,
- Pay 4022(c) benefits (see PBGC Policy **6.7-1 4022(c) Benefits**).

Example 23 – Continuation of Example 21 above.

In addition to the facts in **Example 21** above, assume:

- Participant's guaranteed benefit = \$2500.00 per month
- Participant's 4022(c) benefit = \$50.00 per month

To calculate the termination benefit, PBGC compares the guaranteed benefit (\$2500.00 per month) to the funded basic-type Net PC3 Benefit (\$2300.00 per month) and pays the greater of the two (\$2500.00 per month). PBGC also pays the participant's funded nonbasic-type Net PC3 Benefit (\$175.00 per month). The sum of these amounts (\$2500.00 per month and \$175.00 per month) equals the Title IV benefit (\$2675.00 per month):

$$\begin{array}{rcl}
 \$2500.00 & & \text{(greater of the guaranteed benefit (\$2500.00 per month) and funded basic-type} \\
 & & \text{Net PC3 Benefit (\$2300.00 per month))} \\
 + \$175.00 & & \text{(funded nonbasic-type Net PC3 Benefit)} \\
 \hline
 \$2675.00 & & \text{(Title IV benefit)}
 \end{array}$$

In addition, PBGC pays the 4022(c) benefit of \$50.00 per month. Therefore, the termination benefit equals \$2725.00 per month:

$$\begin{array}{rcl}
 \$2675.00 & & \text{(Title IV benefit)} \\
 + \$50.00 & & \text{(section 4022(c) benefit)} \\
 \hline
 \$2725.00 & & \text{(termination benefit)}
 \end{array}$$

Concurrence, Endorsement, and Approval

Policy 4.2-1 Allocation of Assets - Priority Category 3 Concurrence, Endorsement, and Approval

Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	03/05/2014
PPD: Susan Strassman, Manager	S.S.	03/05/2014
OCC: Joseph Krettek, Assistant Chief Counsel	J.K.	03/05/2014
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	03/05/2014
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	03/13/2014
Chief Financial Officer: Patricia Kelly	P.K.	03/18/2014
Approval		
OBA Director: Philip R. Langham	P.R.L.	03/18/2014
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on Transmittal 2014-06.</i>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/4_2_1_2nd.htm
(03/27/2014).

4.2-1 Allocation of Assets - Priority Category 1st Ed. - Outdated

[Top of Page](#)

4.3-2 Treatment of Excess Assets in Trusted Sufficient Plans

Edition	3rd Edition
Issue Date	08/28/2014
Transmittal	Transmittal 2014-09
Last Review Date	N/A
Signed Policy	4.3-2 Treatment of Excess Assets in Trusted Sufficient Plans
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions
- D. Policy Statement
- E. Plan Provides for Returning the Excess Assets to the Employer
- F. Plan Provides for Distributing the Excess Assets to Participants
- G. Plan Has No Provision Concerning the Distribution of Excess Assets or the Provision Does Not Comply with the Provision of § 4044(d) Applicable to the Plan

Concurrence, Endorsement, and Approval

A. Background

In very rare instances, PBGC may become trustee of a terminated plan where the value of plan assets exceeds the value of benefit liabilities at the termination date. For each of these plans, PBGC must determine the amount of excess assets and whether the excess assets revert to the employer or are allocated to increase benefits for participants and beneficiaries.

B. Scope and Effective Date

This policy is effective upon issuance for excess asset plans for which PBGC has not yet made a determination concerning the distribution of excess assets. In determining whether a plan is an excess asset plan and the manner in which such excess should be allocated, plan provisions and the statutory provisions and regulations that govern the plan shall be applied.

This third edition explains that for purposes of determining excess assets PBGC uses Financial Plan Assets reduced by pre-termination plan liabilities (even when making a determination with respect to a SPDRR plan), not Valuation Plan Assets, per the Memorandum from the Office of Chief Counsel (OCC) dated August 8, 2013, attached.

C. Definitions

1. **Excess assets** means the excess, as of the ▶termination date, of (a) the plan's Financial Plan Assets (defined in Policy [6.3-1, Underpayment Reimbursement and Interest Payments](#)) reduced for any pre-termination plan liabilities, over (b) the value of the plan's ▶benefit liabilities, as determined under ▶ERISA section 4044 and 29 CFR part 4044, subpart B.
2. **Excess asset plan** means a terminated plan (a) for which PBGC has made a final determination that there are ▶excess assets (i.e., the values for assets and liabilities are both final, not estimates) and (b) for which PBGC is the statutory ▶trustee.

D. Policy Statement

1. **General Rule.** If an excess asset plan provides rules for distributing excess assets, PBGC will follow plan provisions to revert the excess assets to the employer or allocate the excess assets to participants and beneficiaries (see [section E](#) and [section F](#)), unless the plan has an employer reversion provision that does not comply with ERISA section 4044(d). (ERISA Section 4044(d) generally provides that a provision to revert excess assets to the employer must have been adopted at least five full calendar years prior to the termination date, *or* such lesser period of time that the plan has been in effect.) If an excess asset plan has reversion provisions that do not comply with Section 4044(d) or the plan does not provide rules for distributing excess assets, PBGC will distribute the excess assets to participants (see [section G](#)).
2. **Special Rule for Contributory Plans.** If an excess asset plan required mandatory employee contributions, PBGC will first determine the portion of excess assets attributable to mandatory employee contributions and apportion that amount among

the pool of eligible participants and beneficiaries in an equitable manner, in accordance with section 4044(d)(3). The balance of the excess assets will then revert to the employer (subject to possible offset for amounts owed PBGC) or will be apportioned to the participants and beneficiaries, based on the present value of benefits derived from employer contributions (see **sections E through G.**) If an excess asset plan includes voluntary employee contributions contact PPD for guidance.

E. Plan Provides for Returning the Excess Assets to the Employer

PBGC shall return the excess assets, net of any amount attributable to mandatory employee contributions in accordance with **section D.2** to the entity that the plan provides is entitled to the excess assets as soon as practicable after the amount of the excess assets is determined.

If the entity entitled to the excess assets under the plan owes money to PBGC - e.g., for unfunded benefit liabilities or premiums in another terminated plan - that amount will generally be offset against the excess assets and treated as a recovery in the other plan, pursuant to PBGC Policy **8.2-1 Valuing Recoveries**. OCC should be consulted in all excess assets cases to which **section E** applies, through PPD, to advise whether there is an applicable offset may be restricted in a particular case, such as the entity's pending bankruptcy or prior settlement agreement with PBGC.

If the entity entitled to the excess assets is a debtor in an ongoing bankruptcy or similar proceeding, the excess assets will be paid, in consultation with OCC, to the debtor in possession, bankruptcy trustee, or other appropriate person to the extent the excess assets are not subject to an offset.

If the entity entitled to the excess assets has been liquidated, PBGC will hold the assets for the benefit of potential claimants, such as creditors or owners of the entity. But if the excess assets exceeds \$250,000, contact OCC through PPD. OCC will determine whether to take additional steps such as seeking to reopen a closed bankruptcy.

F. Plan Provides for Distributing the Excess Assets to Participants

PBGC shall apportion the excess assets (net of any amount attributable to mandatory employee contributions in accordance with **section D.2**) to participants and beneficiaries. Benefits attributable to the excess assets will be distributed in the same time and manner as other benefits. PBGC shall follow plan provisions in determining which participants and beneficiaries are entitled to the excess assets and for apportioning the excess assets among those participants and beneficiaries.

G. Plan Has No Provision Concerning the Distribution of Excess Assets or the Provision Does Not Comply with the Provision of § 4044(d) Applicable to the Plan

PBGC shall apportion the excess assets (net of any amount attributable to mandatory employee contributions in accordance with **section D.2**) to the participants and beneficiaries. PBGC will apportion the amount of excess assets to the pool of eligible participants and beneficiaries in an equitable manner.

Concurrence, Endorsement, and Approval

Policy 4.3-2 Treatment of Excess Assets in Sufficient Trusted Plans		
Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	08/12/2014
PPD: Laura Stephens, Acting Manager	L.S.	08/07/2014
OCC: James Armbruster, Assistant Chief Counsel	J.M.K. (for J.A.A.)	08/06/2014
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	08/07/2014
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	08/18/2014
Chief Financial Officer: Patricia Kelly	P.K.	08/18/2014
Approval		
OBA Director: Philip R. Langham	P.R.L.	08/20/2014

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on **Transmittal 2014-09**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/4_3_2_3rd.htm
(08/28/2014).

Previous Editions

[4.3-2 Treatment of Excess Assets in Trusteed Sufficient Plans 1st Ed. - Outdated](#)

[4.3-2 Treatment of Excess Assets in Trusteed Sufficient Plans 2nd Ed. - Outdated](#)

[Top of Page](#)

4.4-1 Asset Re-evaluations

Edition	3rd Edition
Issue Date	02/04/2014
Transmittal	Transmittal 2014-02
Contact	ASK PPD
Signed Policy	4.4-1 Asset Re-evaluations

In this policy

- A. Background
 - B. Scope and Effective Date
 - C. General Policy
 - D. Circumstances under which asset re-evaluations will not be performed
 - E. Circumstances under which PBGC may, at its discretion, perform a plan asset re-evaluation
 - F. Performing asset re-evaluations
 - G. Discretionary Authority
 - H. Determining whether to revise a benefit determination that has become effective
- Concurrence, Endorsement, and Approval

A. Background

Federal law requires PBGC to pay accurate pension benefits to **► participants**. PBGC has a series of procedures and controls in place to ensure that it does so, and continually revises them to meet appropriate standards of accountability and law.

In circumstances where the procedures pertaining to plan asset evaluations were not followed satisfactorily, PBGC will make a determination whether or not to redo an asset evaluation. In cases where asset re-evaluations are done, PBGC may or may not revise **► benefit determinations** that have already become effective. This policy establishes the criteria that must be met before PBGC will undertake a re-evaluation of a completed asset evaluation. It also reiterates the circumstances under which an already effective benefit determination can be revised based on an asset re-evaluation.

This 3rd edition of the policy provides additional guidance for performing asset re-evaluations and establishes the Asset Re-evaluation Working Group, which is responsible for resolving questions about unusual situations that do not clearly represent errors in the original asset evaluation, but that could impact the results of the asset re-evaluation.

B. Scope and Effective Date

This **► policy statement** is effective upon issuance.

C. General Policy

PBGC can and will, based on certain circumstances and the facts known to it, undertake at its discretion to review prior asset valuations. PBGC will also, under certain circumstances, revise **► benefit determinations** that have already become effective based on an asset re-evaluation.

D. Circumstances under which asset re-evaluations will not be performed

1. Date of Plan Termination (DOPT) is 6 or more years in the past

In most cases, the records and other information required in order to conduct a plan asset re-evaluation will have been destroyed by 6 years after **► DOPT** by plan **► trustees** (including banks and insurance companies acting as plan trustees), asset managers, and banks merely holding plan assets in a non-trustee capacity. This practice is in accordance with the Securities and Exchange Commission's (SEC) record retention requirements for investment advisers and with the records retention requirements for plan trustees under §107 of **► ERISA**.

- a) The SEC requires that investment advisors make and keep books and records necessary to support the calculation of the performance or rate of return of any or all managed accounts. It further requires that advisors maintain and preserve these records for a period of not less than five years from the end of the fiscal year during which

the last entry was made on such records. Thereafter the records may be destroyed. (See Investment Advisors Act of 1940, Rule 204-2 / 17CFR 275.204-2(e).)

- b) §107 of ERISA requires that a plan maintain sufficient records to support all information included in the 5500 or other plan report for at least six years from the filing date of the report. Thereafter, the records may be destroyed.

Contact [ASK PPD](#) in cases where a plan has a retroactive DOPT.

2. Unfunded Non-guaranteed Benefit (UNGB) is equal to \$0

In cases where the ▶UNGB is equal to \$0, no change in assets would affect the benefits payable and therefore, no asset re-evaluation will be conducted.

E. Circumstances under which PBGC may, at its discretion, perform a plan asset re-evaluation

If the performance of a plan asset re-evaluation is not precluded by the provisions of **section D** of this policy, PBGC may re-evaluate plan assets in cases where any increase in plan assets would increase participant benefits such as:

1. The plan is a non-▶SPARR plan and has an actual recovery that is greater than \$0.
2. At least one ▶participant is affected by the Aggregate Limit.
3. At least one participant has a 4044 benefit that exceeds the Guaranteed Monthly Benefit (GMB) in a priority category where ▶UNGPs remain (e.g., a plan in which at least one participant has UNGB in ▶PC3, and it appears likely that the assets will increase enough to affect these benefits).

F. Performing asset re-evaluations

Once PBGC has determined that a plan asset re-evaluation will be performed, PBGC generally will correct any errors discovered.

However, when unusual situations are encountered in the process of performing an asset re-evaluation that do not clearly represent errors in the original asset evaluation, but that could impact the results of the asset re-evaluation – such as ▶pre-termination liabilities discovered after the original plan asset evaluation was complete and that were not accounted for in the assets allocated to benefits – the issue should be presented to the Asset Re-evaluation Working Group (ARWG) for resolution.

The ARWG will consist of the Deputy Director of ▶OBA, the managers of the Asset Evaluation Division, Policy and Procedures Division, Actuarial Services Division, and Management Coordination Division in OBA, a representative from the Benefits Division of the Office of the Chief Counsel, and a representative from the Office of the General Counsel. The manager of the Management Coordination Division will serve as the chairperson of the working group.

Any issues unresolved by the ARWG shall be referred to the Director of OBA for resolution.

G. Discretionary Authority

PBGC reserves the right to investigate and pursue the receipt of any additional assets that may be recoverable notwithstanding the provisions of **sections D** and **E** of this policy.

H. Determining whether to revise a benefit determination that has become effective

The passage of time and other acts beyond PBGC's present control (e.g., documents lost or otherwise not available or lack of knowledgeable witnesses) reduce the confidence in any later asset re-evaluation. PBGC must take this into account, and will employ the resulting asset re-evaluations as follows:

1. Benefit Increases due to an asset re-evaluation

Where an asset re-evaluation has the effect of increasing benefits by more than a de minimis amount, PBGC will revise the ▶benefit determination and take other actions to correct the underpayment.

2. Potential benefit decreases due to an asset re-evaluation

Where an asset re-evaluation would have the effect of decreasing benefits, PBGC will change the benefit determination only if, in PBGC's judgment, the re-evaluation meets current standards of validity (that is, if standards have been raised since the original valuation, the later valuation will be judged against the current, higher standard).

Congress has not given PBGC authority to continue to overpay participants simply because the error is long-standing and is the fault of PBGC. However, this legal obligation presupposes that PBGC knows that it is overpaying participants and can demonstrate the amount of overpayment with a reasonable degree of certainty. Without a reasonable degree of certainty,

PBGC risks acting in an arbitrary manner that unfairly prejudices participant rights, in circumstances where appeal and review of individual benefit determinations would be both difficult and costly.

Accordingly, with regard solely to asset re-evaluations, where circumstances prevent PBGC from attaining a reasonable degree of certainty regarding the amount of ongoing pension payments that should be reduced, PBGC will refrain from reducing them.

Concurrence, Endorsement, and Approval

Policy 4.4-1 PBGC Asset Re-evaluations Endorsement, and Approval		
Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	01/13/2014
PPD: Susan Strassman, Manager	S.S.	01/16/2014
OCC: James Armbruster, Assistant Chief Counsel	J.A.	01/13/2014
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	01/14/2014
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	01/28/2014
Chief Financial Officer: Patricia Kelly	P.K.	01/28/2014
Approval		
OBA Director: Philip R. Langham	P.R.L.	01/30/2014

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on **Transmittal 2014-02**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/4_4_1_3rd.htm
(02/04/2014)

Previous Editions

[4.4-1 Benefit Changes Arising from Asset Revaluations 1st Ed. - Outdated](#)

[4.4-1 Asset Re-evaluations 2nd Ed. - Outdated](#)

[Top of Page](#)

4.5-1 Treatment of Plan Liability for Premiums

Edition	1st Edition
Issue Date	09/26/2013
Transmittal	Transmittal 2013-11
Signed policy	4.5-1 Treatment of Plan Liability for Premiums
Contact	ASK PPD

In this policy

- A. Introduction
 - B. Scope and Effective Date
 - C. Definitions
 - D. PBGC Policy
- Concurrence, Endorsement, and Approval

A. Introduction

► Title IV of ►ERISA requires all ►single-employer defined benefit pension plans that are covered by PBGC's guarantee to pay premiums to the PBGC. ERISA and PBGC regulations provide in general that these premiums, including any interest and penalties, are a liability of both the ►plan administrator and the ►contributing sponsor of the plan (including any members of its ►controlled group).

Section 4007.12(b) of PBGC's regulations provides that if the plan administrator files a ►Notice of Intent to Terminate in a ►distress termination under section 4041(c) of ERISA or the PBGC initiates termination proceedings under section 4042 of ERISA, the premiums due for that plan year and each plan year thereafter are no longer an obligation of the plan, but are an obligation solely of the contributing sponsor (including any members of its controlled group). This regulatory provision does not, however, prohibit the use of plan assets to pay premiums. As the preamble to the regulation explains, PBGC has discretion regarding whether to treat such premium payments as legally ineffective and to seek payment of the amount from the ►plan sponsor, in which case PBGC would credit the plan assets with an amount equal to that recovered from the sponsor.

With this policy, PBGC establishes its treatment of plan liability for premiums and of premiums paid from plan assets, and their effect on the assets available for the section 4044 allocation.

B. Scope and Effective Date

This policy statement applies to all plans with ►termination initiation dates on or after June 30, 1988 (the effective date of the rule in 29 CFR §4007.12(b)). It is effective upon issuance. Any determinations that occurred before this policy's effective date that are contrary to the guidance herein will not be reversed.

C. Definitions

1. **Premium** means any amount required to be paid to the PBGC pursuant to ►ERISA §4006 and 4007 and the regulations thereunder.
2. "►PBGC initiates termination proceedings" means PBGC issues a notice of determination under section 4042 of ERISA.

D. PBGC Policy

1. General rule, applicable to plan years before termination initiation

►ERISA section 4007 sets forth the basic rules regarding responsibility for payment of premiums. Under subsection 4007(e), both the ►plan administrator and the ►contributing sponsor of a ►single-employer plan are liable for flat-rate and ►variable-rate premium payments, and, if the contributing sponsor is a member of a ►controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

2. Special rule for plan year in which termination initiation occurs and plan years thereafter

For any plan year in which the plan administrator issues a ► [Notice of Intent to Terminate](#) in a ► [distress termination](#) under section 4041(c) of ERISA or the PBGC initiates termination proceedings under section 4042 of ERISA, and for each plan year thereafter, the premiums (and associated penalties and interest) are an obligation solely of the contributing sponsor (including any members of its controlled group).

- a. In general, in cases in which premiums (and associated penalties and interest) are paid from plan assets even though they are not an obligation of the plan, the payment will be treated as legally effective. The assets used to pay such premiums will not be returned to the plan and will not be considered plan assets for purposes of the section 4044 allocation.
- b. In rare instances, PBGC may treat any payment of premiums from plan assets that are not an obligation of the plan as legally ineffective. PBGC reserves the right to seek payment of such premiums from the plan sponsor (including any members of its controlled group). In such a case, PBGC will return to the plan the assets used to pay the premiums, but only to the extent of PBGC's recovery of the premium from the plan sponsor. Any assets returned to the plan will be considered plan assets for purposes of the section 4044 allocation.

3. Unpaid premiums

Any unpaid premiums as of the date of PBGC trusteeship will not be considered liabilities of the plan for purposes of determining the amount of assets available for the section 4044 allocation, regardless of whether they are obligations of the plan.

Concurrence, Endorsement, and Approval

Policy 4.5-1 PBGC Benefits Administration Policy Governance and Review Concurrence, Endorsement, and Approval		
Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	08/13/2013
PPD: Susan Strassman, Manager	S.S.	08/13/2013
OCC: Joseph Krettek, Assistant Chief Counsel	J.A.	08/07/2013
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	08/07/2013
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	09/23/2013
Chief Financial Officer: Patricia Kelly	P.K.	09/20/2013
Approval		
OBA Director: Philip R. Langham	P.R.L.	09/23/2013

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on [Transmittal 2013-11](#).

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/4_5_1_1st.htm
(09/26/2013).

5.2-2 Working Retirement

Edition	5th Edition
Issue Date	01/30/2018
Transmittal	Transmittal 2018-05
Last Review Date	N/A
Signed Policy	5.2-2 Working Retirement
Contact	ASK PPD

In this policy

[A. Background](#)

[B. Scope and Effective Date](#)

[C. Definitions](#)

[D. Policy](#)

[Appendix A](#)

[Concurrence, Endorsement, and Approval](#)

A. Background

Participants in PBGC-trusted pension plans sometimes want to receive pension benefits while working for the employer that sponsored the pension plan ("the DOPT employer"). Internal Revenue Service and Department of Labor regulations prescribe the rules under which a pension plan may pay in-service distributions or working retirement benefits. In addition to these regulations, PBGC's policy on payment of working retirement benefits is based on the definitions of *pension benefit* and *covered employment* provided in 29 CFR §4022.2 *Definitions*.

This policy statement provides guidelines for payment of benefits to "working retirees" – participants who continue to work for, or are re-employed by the employer that maintained a plan at the time it was terminated (the "DOPT employer") or, in some circumstances, the entity that purchased the assets of the DOPT employer.

With this edition, to conform to changes in Policy [6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#), PBGC removes the reference to a 25% temporary benefit reduction for working retirees who receive early retirement benefits while payment of such benefits is prohibited under this policy.

B. Scope and Effective Date

This policy applies to PBGC-trusted plans and is effective upon issuance.

C. Definitions

1. The **DOPT employer** is the employer that sponsored the pension plan as of DOPT. The DOPT employer includes any member of the plan sponsor's controlled group, as determined by PBGC, even if plan provisions do not include the controlled group in its definitions of the employer.
2. The **working retirement suspension date** is the first date on or after a participant's annuity starting date (or the plan's Overpayment Accrual Commencement Date (OACD) as defined in [Section C](#) of Policy [6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments](#), if later) for which payment of early retirement benefits to the participant is prohibited under this policy.
3. The **working retirement resumption date** is the first date after the working retirement suspension date for which payment is due to a participant once payment of benefits is no longer prohibited under this policy.

D. Policy

1. Normal Retirement Benefits

Regardless of plan provisions, PBGC will pay normal retirement benefits to a participant who continues to work for the DOPT employer. Benefits will become payable beginning on or after the participant's normal retirement date as defined by plan provisions and in accordance with Policy [5.2-4 Annuity Starting Dates](#). In addition PBGC will not suspend benefit payments to a retiree who is reemployed by the DOPT employer on or after his or her normal retirement date.

2. Early Retirement Benefits

PBGC will pay early retirement benefits to a participant only if the participant permanently leaves the employment of the DOPT employer before his or her annuity starting date, except as otherwise provided in this policy.

- a. **DOPT Employer – Effect of Certain Transactions.** Certain business transactions may affect whether an entity employing plan participants is considered the DOPT employer for purposes of working retirement restrictions:

i. **Asset Sale.** If an unrelated entity (i.e., not member of the DOPT employer's controlled group) purchases all or part of the DOPT employer's assets, PBGC generally will pay early retirement benefits to a participant who is employed by the purchasing entity unless the plan provides otherwise, as described in **D.2.a.ii.** below.

ii. **Plan Prohibition.** PBGC will not pay early retirement benefits to a participant who is employed by the purchasing entity if the plan provides that participants who work for a purchasing entity 1) must terminate employment in order to receive retirement benefits, or 2) are treated as if they were working for the DOPT employer, such as if the plan provides that service for the pension plan continues to accrue while working for the purchasing entity.

Example: A plan for union employees may provide for continued accrual of service while an employee works for a purchasing entity, and benefits based on that service are not payable until the participant terminates employment with the purchasing employer.

iii. **Stock Sale.** A sale of the DOPT employer's stock generally does not result in a change in the employer for purposes of this policy. PBGC generally will not pay early retirement benefits to participants who continue working for the DOPT employer after such a stock sale.

iv. **Other Transactions.** PBGC will make a facts and circumstances determination regarding payment of early retirement benefits as a result of the above and other transactions (e.g. mergers, formation of joint ventures or limited partnerships, etc.) in which it may not be obvious whether the entity for which participants work continues to be the DOPT employer.

- b. **Age 62 Exception.** For plans that terminated on and after January 01, 2007, if plan provisions allow for in-service distributions beginning at age 62 or later, as provided under IRC §401(a)(36) *Distributions during working retirement*, PBGC will pay a working participant early retirement benefits beginning the month after he or she attains age 62 or later, as provided under the plan.

c. **Employment by DOPT Employer After Retirement.**

i. **Suspension of Benefits.** PBGC suspends payment of early retirement benefits:

- to a retiree who left employment with the DOPT employer and returns to work with the employer before reaching normal retirement age unless the plan specifically provides for continued payment of early retirement benefits during a period of re-employment or as provided in **D.2.b. Age 62 Exception.**
- to a participant who is put into pay while prohibited from receiving early retirement benefits under this policy.

PBGC suspends payments on the working retirement suspension date, or as soon as practicable thereafter.

ii. **Resumption of Benefits.** PBGC resumes making payments to a retiree whose benefit has been suspended and who notifies PBGC that he or she is no longer employed with the DOPT employer.

In two situations, PBGC resumes making payments to a retiree whose benefit has been suspended even though he or she has not separated from service:

- If the exception in **D.2.b. Age 62 Exception** applies, payments resume on the first day of the month on or after the date provided under the plan.
- Payments resume on a retiree's normal retirement date (regardless of plan provisions to the contrary).

PBGC resumes making payments on the working retirement resumption date, or as soon as practicable thereafter. If payments resume on a date after the working retirement resumption date, payments will be made retroactive to the working retirement resumption date.

If the participant dies before the working retirement resumption date (e.g., before his or her normal retirement date and while still employed with the DOPT employer), and the elected form of benefit

includes survivor benefits, PBGC will begin paying the survivor benefits as of the first of the month following the participant's death. The benefit payable to the beneficiary will be the survivor benefit payable under the benefit determined in accordance with **D.2.c.iii.** below.

iii. **Benefit Payable upon Resumption of Benefits.** Upon resumption of benefits, PBGC will resume paying the participant the benefit amount payable as of the working retirement resumption date based on the original election and annuity starting date unless an adjustment to the benefit is needed to preserve the actuarially equivalent value of the participant's normal retirement benefit, taking into account payments made before the working retirement suspension date, based on 29 CFR §2530.203-3 *Suspension of pension benefits upon employment*.

1) PBGC will calculate the actuarial equivalent of the participant's normal retirement benefit as of the working retirement resumption date in the elected form of benefit. This benefit will be reduced by an annuity amount that is actuarially equivalent to benefits paid before the working retirement suspension date.¹ If the resulting benefit is larger than the benefit payable in accordance with the original election, PBGC will pay the resulting benefit as of the working retirement resumption date.² If not, PBGC will resume payments in accordance with the original election. Actuarial equivalents will be calculated using the plan's definition of actuarial equivalence. See **Appendix A** for an example determination of the benefit payable upon resumption of benefits.

Note 1: If the plan paid early retirement benefits that should have been suspended under the provisions of the plan due to the participant's employment, contact **ASK PPD** for guidance in determining how PBGC will treat the payments that were made before the plan's overpayment accrual commencement date but that should have been suspended.

Note 2: In some cases, a direct comparison of the monthly benefit amounts payable as of the working retirement resumption date may be sufficient to determine whether the actuarial equivalent of the normal retirement benefit (offset for benefits paid before the working retirement date) is larger than the benefit payable under the original election. But with more complex forms of benefit, such as non-level benefits, it may be necessary to compare the present values of 1) the benefits payable on and after the working retirement resumption date in the form of benefit elected calculated as of the original annuity starting date, and 2) the actuarial equivalent of the normal retirement benefit as of the working retirement resumption date in the form of benefit elected and offset by the actuarial equivalent of the benefits paid before the working retirement suspension date, in order to determine which benefit is larger.

- 2) The participant will not be entitled to a new annuity starting date or form of benefit election. If the elected form of benefit includes a certain period (e.g. a 10-Year Certain and Continuous annuity), the end of the certain period (for both the benefit based on the original election and ASD and the recalculated benefit based on the actuarial equivalent of the NRB as of the working retirement resumption date) is based on the original annuity starting date and is not extended to account for the period of suspension.
- 3) Any payments made on or after the working retirement suspension date and before the working retirement resumption date are subject to recoupment in accordance with Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**. In accordance with **section I.2.c** of that policy, if a participant fails to provide PBGC with timely notice of his or her employment (or re-employment) with the DOPT employer, PBGC may apply unlimited recoupment (i.e., an actuarial reduction not capped at 10%) for any benefit overpayment resulting from a delayed suspension (i.e., payments made on or after the working retirement suspension date and before the resumption date), but only if PBGC has inquired about such employment or notified the participant that the early retirement benefit is subject to suspension during periods of employment with the DOPT employer.

d. **Other Exceptions**

- i. **Lump-sum Payments.** If a participant applies for a de minimis lump-sum or residual lump-sum distribution for which he or she is otherwise eligible, PBGC will pay the lump sum regardless of continued work with the

DOPT employer. However, this exception does not apply if the participant chooses to receive annuity payments in lieu of the lump sum as provided under Policy **5.4-9 Lump-Sum Benefit Payments**.

- ii. **Return of Employee Contributions.** PBGC will return employee contributions to a participant who continues working for the DOPT employer and elects such a return as provided under Policy **5.11-2 Payment of Priority Category 2 Benefits**.

Appendix A

Example: Determination of the Benefit Payable upon Resumption of Benefits

Three post-DOPT retirees, Casey, Leslie, and Robin, are receiving early retirement benefits from the same plan. They are triplets and retired on the same date, 03/01/2012, having attained age 55. Each was entitled to a normal retirement benefit (NRB) of \$1,000 per month starting at age 65.

A year later Casey, Leslie, and Robin returned to work for the DOPT employer. When the retirees reported that they had returned to work, their benefits were suspended. They worked for two years and again separated from service before their normal retirement date.

Early Retirement Benefits as of 03/01/2012:

- Casey worked for 30 years and was eligible for an unreduced early retirement benefit of \$1,000 per month.
- Leslie worked for 25 years and was eligible for an early retirement benefit, reduced by 3% per year from age 65, of \$700 per month.
- Robin worked for 20 years and was eligible for an early retirement benefit, reduced by 5% per year from age 65, of \$500 per month.

Benefits paid: 03/01/2012 – 02/01/2013

Reemployment date: 02/28/2013

Working retirement suspension date: 03/01/2013

Working retirement resumption date: 03/01/2015

Benefit Adjustment Methodology

Line	To determine if a benefit adjustment is needed, and if so, the amount of the adjusted benefit, PBGC will:
1	Begin with the benefit payable as of the working retirement resumption date based on the original annuity starting date.
2	Determine the equivalent of the NRB as of the working retirement resumption date in the elected form of benefit using <i>plan factors</i> and the participant's age as of the working retirement resumption date.
3	Accumulate the benefits paid before the working retirement suspension date with interest through the working retirement resumption date.
4	Determine the annuity equivalent of the amount determined in line 3 in the elected form of benefit.
5	Reduce the NRB equivalent from line 2 by the annuity equivalent of the accumulated amount of the benefits paid before the suspension from line 4 (line 2 – line 4).
6	Pay the greater of the resulting amount (line 5) and the monthly benefit that was in pay status before the suspension (line 1).

Benefit Adjustments for Casey, Leslie and Robin

Line	Description	Benefit amount (\$)		
		Casey*	Leslie	Robin
1	Benefit in pay status at suspension (based on age 55 as of 03/01/2012)	1,000	700	500

2	Benefit at working retirement resumption date of 03/01/2015 (based on age 58)	1,000	790	650
3	Accumulated payments 02/01/2012 – 02/01/2013 with interest through working retirement resumption date of 03/01/2015	13,917	9,742	6,959
4	Annuity equivalent of amount in line 3 calculated with <i>plan factors</i>	96	67	48
5	Benefit at working retirement resumption date reduced by annuity equivalent of payments received (line 2 – line 4)	904	723	602
6	Monthly benefit due beginning on the working retirement resumption date (greater of lines 1 and 5)	1,000	723	602

*In Casey's situation a calculation is not actually needed as the benefit in pay prior to suspension is an unreduced (i.e., fully subsidized) benefit. The value of the early retirement benefit is clearly greater than the value of the normal retirement benefit. Casey's benefit of \$1,000 resumes on 03/01/2015.

Recoupment Reminder

If Casey, Leslie, and Robin were paid benefits after the working retirement suspension date, for example, if payment suspension was delayed until 04/01/2013 and payment was made on 03/01/2013, PBGC will recoup the overpayment as provided in Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**.

Concurrence, Endorsement, and Approval

Policy 5.2-2 Working Retirement, 5th Ed.		
Concurrence	Initials	Date
OBA/ASTD/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	01/17/2018
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	01/17/2018
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	01/18/2018
OBA/PSD: Jennifer Messina, Director	J.M.	01/23/2018
OGC: Joseph Krettek, Assistant General Counsel	J.K.	01/18/2018
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	01/24/2018
Chief Financial Officer: Patricia Kelly	P.K.	01/29/2018
Approval		
Chief of Benefits Administration: Cathleen Kronopolus	C.K.	01/24/2018

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of the Office of Benefits Administration on Transmittal 2018-05.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_2_2_5th.htm
(01/30/2018).

[5.2-2 Payment of Benefits to Working Retirees 1st Ed. - Outdated](#)

[5.2-2 Working Retirement 2nd Ed. - Outdated](#)

[5.2-2 Working Retirement 3rd Ed. - Outdated](#)

[5.2-2 Working Retirement 4th Ed. - Outdated](#)

[Top of Page](#)

5.2-3 Benefits Requiring Employer Consent

Edition	2nd Edition
Issue Date	05/28/1998
Transmittal	Transmittal 53
Contact	ASK PPD

In this policy

- A. Background
- B. Scope
- C. Definitions
- D. Employer Consent
- E. Policy Statement
- F. Consultation

A. Background

In 1988, the Treasury Department issued regulations, generally effective for plan years beginning on or after January 1, 1989, that prohibited plans from making the availability of a benefit, such as an early retirement benefit, conditional on the employer's consent (Treas. Reg. § 1.411(d)-4 Q-4 through Q-9).

Under the regulations, a plan sponsor had three choices:

- 1) eliminate the consent requirement
- 2) eliminate the benefit conditioned on the consent,¹

Note 1: The regulations provided that elimination of the benefit would not violate the anti-cutback rules of Internal Revenue Code section 411(d)(6) if the benefit was eliminated within the time period permitted by the regulations.

– or –

- 3) condition the availability of the benefit on objective criteria set forth in the plan. A plan amendment to do one of these three things was not necessary by the effective date of the regulations if: the plan sponsor selected (as reflected by plan operation) one of the options, the plan consistently operated according to the selection, and the plan was amended consistent with the selection retroactively to the effective date of the regulations. The amendment must have been adopted by the earlier of plan termination or the end of the time period for making Tax Reform Act of 1986 amendments.²

Note 2: The TRA '86 amendment period did not end until the mid-1990s.

B. Scope

This policy statement applies to PBGC-trusted plans that condition entitlement to a benefit on the employer's consent.

C. Definitions

1. "**Benefits**" include benefits and optional benefit forms that are protected by the anti-cutback rules of section 411(d)(6) of the Internal Revenue Code. In addition, ancillary benefits such as social security supplements and certain disability benefits are included in this definition.
2. "**Effective date of Treasury regulations restricting employer consent**" (Treas. Reg. § 1.411(d)-4 Q-4 through Q-9) is generally the first day of the first plan year beginning on or after January 1, 1989. However, a plan that was either adopted or made effective on or after August 1, 1986 — i.e., a "new plan" — is prohibited from having an employer consent provision, unless the plan applied for an IRS determination letter prior to July 11, 1988. The new plan rule also applies to amendments of existing plans to add benefits with employer consent. In addition, a plan could not be amended on or after January 30, 1986, to add a consent requirement to a benefit that was in the plan prior to January 30, 1986.

The new rules applied on a delayed basis to collectively bargained plans that were operating pursuant to collective bargaining agreements ratified before March 1, 1986, and not due to expire until after the first day of the first plan year beginning on or after January 1, 1989. Such plans received an extension on compliance to the earlier of expiration of the agreement or the first day of the first plan year beginning on or after January 1, 1991.

3. "Employer" means an employer, plan administrator, fiduciary, trustee, actuary, or other person or entity whose consent is a condition to receiving the benefit.

D. Employer Consent

Employer consent provisions permit an employer, either directly or indirectly, through the exercise of discretion or the use of subjective conditions, to deny or limit the availability of a benefit for which the employee is otherwise eligible. Under the Treasury regulations, a plan may not provide, for example, that only employees who are designated by the employer, plan administrator, fiduciary, or other person, are eligible to receive a subsidized early retirement benefit.

Limited discretion with respect to the ministerial or mechanical administration of the plan, including the application of objective criteria specifically set forth in the plan, is not impermissible employer consent.³ For example, a plan may leave it to the employer, plan administrator, fiduciary, or other person to determine whether age, service, disability, or other objective criteria for a benefit have been met.

Note 3: See Treas. Reg. section 1.411(d)-4, Q&A-4 (b).

E. Policy Statement

1. Terminating Before Becoming Subject to the Restrictions on Employer Consent

If a plan's termination date precedes the effective date of the Treasury regulations, the previous policy applies.

2. Plans Terminating After Becoming Subject to the Restrictions on Employer Consent

a. Plan Provisions that Require Employer Consent

If a plan's termination date is on or after the effective date of the Treasury regulations (see section C.2 above), and if the plan provision conditions entitlement to a benefit (e.g., a subsidized early retirement benefit) on employer consent or the mutual consent of both the employer and employee, PBGC will treat a participant as entitled to the benefit under the plan if the conditions for the benefit other than employer consent were satisfied before the plan termination date.

Example 1 - Subsidized early retirement benefit with employer consent

The plan reads as follows:

"A participant shall be eligible for subsidized early retirement benefits if the participant has attained the age of 55 but not the age of 62, has at least 15 years of continuous service, and, upon application, the participant receives the consent of the employer."

In this example, PBGC will deem the consent requirement to have been eliminated and will treat as entitled to the subsidized early retirement benefit any participant who, at the plan termination date, had attained the age of 55 but not 62, and had worked at least 15 years for the employer.

Example 2 - Subsidized early retirement benefit with mutual consent

The plan reads as follows:

"Any participant who has at least 15 years of credited service and (i) attained the age of 55 years and whose combined age and years of credited service equals 70 or more, or (ii) whose combined age and years of credited service equals 80 or more, and who meets one of the following requirements:

- a) the participant's continuous service is broken by reason of a layoff;
or
- b) the participant's continuous service is broken by reason of permanent shutdown of a plant;
or

- c) the participant cannot work by reason of physical disability;
- or
- d) the participant considers that it would be in his interest to retire and the Company considers that such retirement would likewise be in its interest and it approves an application for retirement under mutually satisfactory conditions shall be eligible to retire and receive subsidized early retirement benefits."

In this example, PBGC will deem the consent granted in subsection (d) above and will treat as entitled to the subsidized early retirement benefit any participant who, as of the plan termination date, had at least 15 years of credited service and (i) had attained the age of 55 years and had combined age and years of credited service equaling 70 or more, or (ii) had combined age and years of credited service equaling 80 or more.

b. Amendments Eliminating Plan Benefits that Had Been Subject to Employer Consent

Generally, if a plan previously had provided a benefit conditioned on employer consent or the mutual consent of employer and employee, PBGC presumes that the amendment eliminating the benefit was proper and timely and that the plan does not provide the benefit on plan termination. However, if PBGC finds evidence that the plan paid the discretionary benefit after becoming subject to the Treasury regulations, the amendment eliminating the benefit may have been improper. In addition, if PBGC finds evidence that the amendment eliminating the benefit was adopted after the end of the permissible amendment period under the Treasury regulations, the amendment is untimely. In the case of a possibly improper or untimely amendment, the participant may be entitled to the benefit under the plan if the conditions for the benefit other than employer consent were satisfied before the plan termination date. Consult PPD before making an entitlement determination in these situations.

F. Consultation

Applying the rules regarding employer consent can be complicated. If questions arise about whether the Treasury regulations apply, whether a plan operationally provided the benefit after becoming subject to the Treasury regulations, how a plan applied a consent provision, or other technical matters, OBA staff should refer the matter to PPD.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_2_3_2nd.htm
(05/28/1998).

Previous Editions

[5.2-3 Early Retirement Benefits Requiring Consent 1st Ed. - Outdated](#)

[Top of Page](#)

5.2-4 Annuity Starting Dates

Edition	8th Edition
Issue Date	07/28/2016
Transmittal	Transmittal 2016-05
Last Review Date	N/A
Signed Policy	5.2-4 Annuity Starting Dates
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. General Rule](#)
- [D. Retroactive Annuity Starting Dates](#)
- [E. Exceptions for Certain Late Retirement Benefits](#)
- [F. Alternate Payees Under QDROs](#)
- [G. Changes in Annuity Starting Dates](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

PBGC is revising its policy on [▶ annuity starting dates](#) to remove restrictions on retroactive annuity starting dates for benefits that do not increase with deferral, such as [▶ early unreduced retirement benefits](#) and funded [▶ PC3](#) benefits. Under the previous edition of this policy, the [▶ benefit determination](#) provided a final opportunity for payees to elect such retroactive benefits. Under this eighth edition of the policy, eligible payees may elect the retroactive annuity starting date at any time, regardless of any previous notifications of eligibility for the benefits. With this eighth edition, PBGC is also making clarifications, including:

- Clarifying that a request for a benefit estimate for an annuity starting date within 180 days from the date the request is made is considered documented contact requesting an annuity starting date whether or not the payee specifically requests an application for that date ([section C](#));
- Combining the retroactive annuity starting date exceptions for unreduced early retirement benefits and benefits level due to [▶ Title IV](#) (in sections [D.4](#) and [D.5](#) of the previous edition) into one exception for benefits that do not increase with deferral ([section D.4](#)); and
- Explicitly allowing retroactive annuity starting dates for surviving spouses of participants who were eligible for retroactive annuity starting dates under [section D.4](#), but who died before applying for benefits ([section D.4](#)).

PBGC will continue to impose timeframe restrictions for electing retroactive annuity starting dates in cases where the benefit increases with deferral (e.g., in the case of a plan-wide determination that there was an inability to apply for benefits or a voluntarily deferred [▶ QPSA](#).)

B. Scope and Effective Date

This policy applies to all payees in [▶ PBGC-trusted plans](#) and is effective upon issuance.

C. General Rule

The [▶ annuity starting date](#) is the date on which the first benefit payment is due. It is a prospective date requested by the payee in a documented contact with PBGC, if the payee is eligible for a PBGC benefit on that date. Except as provided in sections [D](#), [E](#), and [F](#), below, the annuity starting date cannot be earlier than the first of the month following such contact. Examples of a documented contact are:

- PBGC's receipt of a completed application for benefits;
- PBGC's receipt (by letter, e-mail, telephone call, or [MyPBA](#)) of a request for a benefit [▶ estimate](#) for an annuity starting date within 180 days of the date the request is made;
- The initiation of an electronic benefit application that is subsequently completed and mailed to PBGC.

In order for the payee to retain the requested annuity starting date, PBGC must receive the completed application, including all required documentation, within 180 days of the date of the letter sending the application to the payee (or, if applicable, the date of the initiation of the electronic benefit application).

Annuity starting date rules for alternate payees with separate interest ►QDROs are contained in **section F** of this policy.

D. Retroactive Annuity Starting Dates

A retroactive annuity starting date (i.e., an ►annuity starting date before the date of a documented contact with PBGC) will be permitted only if one of the situations described below exists. Except as noted below, retroactive annuity starting dates can be before DOPT. If PBGC permits a retroactive annuity starting date, the participant's marital status for ►QJSA payment purposes will be determined as of (a) the application date for participants not yet in pay, or (b) the original application date for participants already in pay.

►Working retirement rules will apply in determining the earliest eligibility date for a participant. See Policy **5.2-2 Working Retirement** for the rules applicable to participants.

1. Required beginning dates

For any payee who applies for a benefit after the required beginning date as defined in Policy **5.2-5 Required Beginning Dates**, the annuity starting date is the required beginning date, unless the payee is eligible for an earlier retroactive annuity starting date under one of the other exceptions below.

2. Plan retroactivity

If a payee's plan specifically allows for or requires retroactive annuity starting dates and the payee meets the conditions in the plan document, PBGC gives the payee the choice of retroactive payments or prospective payments of an increased benefit. A plan provision requiring that a participant apply for a benefit at a particular age (e.g., normal retirement age) will not be considered a provision requiring retroactive payments.

3. Inability to apply

If PBGC makes a plan-wide determination that participants and beneficiaries were without sufficient information or opportunity to apply for a benefit (e.g., an abandoned plan), PBGC allows a payee to elect an annuity starting date that is retroactive to the later of the payee's earliest eligibility date or the date that PBGC determines payees became unable to apply for benefits from the plan. A retroactive annuity starting date will be granted only if (1) the payee contacts PBGC to begin benefits as of the retroactive annuity starting date within 90 days of the date PBGC advises payees of the opportunity to apply for retroactive payments, and (2) PBGC receives the completed application, including all required documentation, within 180 days of the date of the letter sending the application to the payee. Contact PPD if it appears that payees were without sufficient information or opportunity to apply for benefits.

4. Benefits that do not increase with deferral

Plan provisions, ►Title IV limitations, and/or the plan asset and ►4022(c) allocations may result in a PBGC termination benefit that does not increase – or does not increase substantially – with deferral. For example, a fully guaranteed early ►unreduced retirement benefit payable as a ►straight life annuity does not increase with deferral during the period from the early unreduced retirement date through the normal retirement date; the monthly benefit remains the same for any annuity starting date during that period. And for a participant whose funded ►PC3 benefit exceeds the guaranteed benefit at DOPT, the termination benefit may increase with deferral – but not substantially – due to the 4022(c) allocation, until the guaranteed benefit eventually exceeds the PC3 benefit.

If a payee (including, in some cases, an alternate payee under a separate interest QDRO) applies for benefits after the first date at which his or her benefit stops increasing with deferral, PBGC will allow the payee to elect an annuity starting date retroactive to his or her earliest eligibility date on or after DOPT for which the benefit does not increase with deferral. This date will be determined using the normal single form of benefit for participants not yet in pay, and the elected form of benefit for participants already in pay.

The surviving spouse of a participant who was eligible for a retroactive annuity starting date under this **section D.4** but died before applying for benefits may elect the retroactive annuity starting date as described above for the participant's benefit. If the surviving spouse elects the retroactive annuity starting date, the benefit will be paid in the plan's normal form of benefit for married participants. The surviving spouse will receive a back payment for benefits owed to the participant from the retroactive annuity starting date until the participant's date of death, and benefits owed to the surviving spouse from the participant's date of death until the date the monthly survivor benefit payments begin.

A payee may elect to receive a retroactive annuity starting date under this **section D.4** at any time, regardless of whether he or she has been previously notified of eligibility for unreduced benefits or denied a retroactive annuity starting date under a previous edition of this policy.

Exceptions:

If the benefit does not increase with deferral for reasons other than a plan-provided early unreduced retirement date, this exception to the general rule in **section C** applies only if the benefit does not increase with deferral for a period of at least 12 months beginning on or after DOPT.

Payees will not be eligible for retroactive payment of benefits for any month for which the working retirement rules in Policy **5.2-2 Working Retirement** prohibit the payee from receiving benefits.

If a payee is entitled to a benefit that increases with deferral, but the increase does not appear to be substantial, or is entitled to a benefit that, for reasons other than a plan-provided early unreduced retirement date, does not increase with deferral over a period of fewer than 12 months, refer the situation to PPD for a determination.

5. Disability benefits

The annuity starting date for a participant who becomes disabled prior to DOPT will be determined under the terms of the plan document. If, after DOPT, a participant is determined to be entitled to a disability benefit from PBGC in accordance with Policy **5.9-1 Disability Benefits**, the annuity starting date will be determined under the terms of the plan document as if the participant had applied at the time of disability. Participants already in pay under another type of retirement who meet the conditions above may be eligible to elect a retroactive annuity starting date under this exception. See **section G.3** for details.

6. Qualified Preretirement Survivor Annuity (QPSA)

A ►QPSA benefit may be paid retroactively to the first of the month following a participant's death, if the completed application, including all required documentation, is received within 180 days from the date of the letter sending the application to the surviving spouse. However, the QPSA may not be paid prior to the earliest QPSA commencement date, as defined in Policy **5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984**.

Note: If PBGC determines that the surviving spouse was previously offered the opportunity to commence QPSA benefits and deferred, the surviving spouse will not be eligible for a retroactive annuity starting date under this **section D.6**.

E. Exceptions for Certain Late Retirement Benefits

With the issuance of the first edition of this policy on 04/25/2003, PBGC changed its policy on ►annuity starting dates for late retirees to provide generally for prospective annuity starting dates. Before the policy change, late retirees were generally put into pay status with retroactive annuity starting dates that were their normal retirement dates. This section contains transition rules that apply to late retirees to whom the pre-04/25/2003 retroactivity rules had been (or may have been) communicated and an exception for participants who are unlocatable until after their normal retirement dates. In no event may the annuity starting date for such a participant be later than the required beginning date under Policy **5.2-5 Required Beginning Dates**.

The surviving spouse of a deceased participant will be offered the choices described below for the annuity starting date of the deceased participant's benefit. If the surviving spouse elects a retroactive ►ASD for the participant's benefit, the benefit will be paid in the plan's automatic form of benefit for married participants.

1. Benefit determinations issued before 04/25/2003

A late retiree whose ►benefit determination was issued before 04/25/2003 will be given the choice of (a) a benefit retroactive to the normal retirement date stated in the benefit determination or (b) an actuarially adjusted late retirement benefit with a prospective annuity starting date determined under **section C**, above.

2. Benefit determination not issued as of 04/25/2003

If a late retiree applies for a benefit on or after 04/25/2003 but before receipt of a benefit determination, the annuity starting date will be determined under **section C**, above, unless the participant was notified that PBGC would pay benefits retroactive to normal retirement date, and the participant requests retroactive payments.

3. "Unlocatable" participants

Participants and beneficiaries whom PBGC first contacts after the participant's normal retirement date, e.g. participants who were unlocatable when ►trusteeship notices or benefit determinations were issued, will be given the choice of (a) a benefit

retroactive to the participant's normal retirement date or, if later, the first of month following ▶DOPT or (b) an actuarially adjusted late retirement benefit with a prospective annuity starting date determined under **section C**, above.

F. Alternate Payees Under QDROs

▶ Annuity starting dates for ▶alternate payees will be determined under this section and will be based on the type of ▶QDRO. An alternate payee with a shared payment QDRO, or an alternate payee with a ▶separate interest QDRO whose annuity starting date is restricted under **section 2.(a)(2)**, below, or otherwise tied to the participant's annuity starting date will also be restricted by the ▶working retirement rules applicable to the participant's benefit. See Policy **5.2-2 Working Retirement** for the rules applicable to participants.

1. Shared payment QDRO

The annuity starting date for an alternate payee under a shared payment QDRO is determined as follows:

- (a) if the participant is in pay status on the date PBGC receives the QDRO that is ultimately qualified, the annuity starting date is the first day of the month after the date the QDRO was received, unless the order requires a later annuity starting date; and
- (b) if the participant is not in pay status on the date PBGC receives the QDRO that is ultimately qualified, the annuity starting date is the participant's annuity starting date, unless the order requires a later annuity starting date.

2. Separate interest QDRO

The annuity starting date for an alternate payee under a separate interest QDRO is determined under the following rules.

- (a) **General rule.** The annuity starting date for an alternate payee named in a separate interest QDRO is a date chosen by the alternate payee. The annuity starting date generally may be only a prospective date that cannot be any of the following:
 - (1) **Earlier than participant's EPRD.** See Policy **6.1-2 Earliest PBGC Retirement Date** for complete rules.
 - (2) **Earlier than receipt of the domestic relations order.** An alternate payee's annuity starting date cannot be earlier than the first of the month following receipt of the order that is ultimately qualified. Submission of draft orders does not affect an alternate payee's annuity starting date.
 - (3) **Earlier than documented contact by the alternate payee,** as described in **section C** of this policy.
 - (4) **Contrary to the terms of the QDRO,** except as provided in **section (b)**, below. A separate interest QDRO may contain rules on when the alternate payee can or must begin receiving his or her benefit. For example, a QDRO may state that payments to the alternate payee will begin when payments to the participant start, or that payments to the alternate payee may not start before the participant's annuity starting date. PBGC will enforce any such restrictions for orders that are qualified by PBGC on or after 09/21/2009, the date the fourth edition of this policy was issued. (For orders qualified by the plan administrator and for orders qualified by PBGC before 09/21/2009, PBGC will enforce such provisions based on the facts and circumstances of the case. [Contact PPD](#) for further guidance.)

- (b) **Exception:** Participant entitled to retroactive payments. If the participant whose benefits are assigned by a QDRO is permitted a retroactive annuity starting date under **section D** or **section E** of this policy and the retroactive payment has not yet been made, the alternate payee will also be entitled to retroactive payments unless the QDRO specifically provides otherwise. This is true even if the annuity starting date is earlier than the date of PBGC receipt of the order. The alternate payee's annuity starting date may not be earlier than the later of DOPT or the payee's earliest eligibility age for an unreduced or level benefit.

3. Application requirement and retroactive payments

An application for benefits is required for an alternate payee's benefits to start. If an alternate payee is permitted a retroactive annuity date or has a required annuity starting date under this section, PBGC will pay benefits retroactively to the required annuity starting date upon receipt of a valid application.

4. Non-disclosure or administrative error

If a participant does not disclose the existence of a QDRO on a General Information Form or Payee Information Form or when applying for benefits, or if either PBGC or a prior plan administrator fails to administer a QDRO, the alternate payee will be entitled to a retroactive annuity starting date no earlier than the date which would have been permitted had the QDRO been properly disclosed and administered. See **section E.4** of Policy **6.6-3 Qualified Domestic Relations Orders**.

G. Changes in Annuity Starting Dates

Generally, PBGC will not allow a payee to change the ▶ annuity starting date after he or she has filed a valid benefit application. However, PBGC will allow such changes in the following circumstances.

Recoupment of overpayments. An overpayment that results from a change made under the rules in this section is subject to recoupment under Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery** unless payments are returned pursuant to a PBGC request.

1. Withdrawal of application

- a. **For a change in annuity starting date.** PBGC will allow an applicant to withdraw the benefit application and defer receipt of the annuity benefits if he or she contacts PBGC before the first payment date. PBGC will confirm such a request in writing at the time the request is implemented and request the return of any payments made to the payee.

When PBGC honors such a request, PBGC will:

not require a new application if the new annuity starting date is within 180 days of the date of the original application and there is no change in benefit form or beneficiary of a joint-life benefit; or
require a new application if the new annuity starting date is more than 180 days after the date of the original application. The new annuity starting date will be determined under this policy.

- b. **For a change in annuity benefit form.** Under **section H.1.a.** of Policy **5.4-7 Annuity Benefit Forms**, an applicant may also withdraw an application before first payment date in order to change the benefit form. The applicant may retain the original annuity starting date and be paid in the new benefit form elected if a valid new application is filed within 180 days of the date of the original application and the payee requests there be no change in the annuity starting date. If the new application is filed more than 180 days after the date of the original application, the applicant will be paid in the new benefit form elected, but with a new annuity starting date based on the date of the new application.

Note: If a married ▶ participant dies after submitting a valid plan application but before first payment date, see the rules in **section H.3** of Policy **5.4-7 Annuity Benefit Forms**.

2. Change for incorrect early retirement estimates

If PBGC erred by 10% or more in the early retirement factor used to provide a benefit estimate to a participant (or a surviving spouse being paid a ▶ QPSA benefit), and solely as a result of the error, the actual early retirement reduction for the annuity starting date chosen is a greater reduction than the estimate indicated, PBGC will allow the payee to come out of pay and reapply for benefits later with a new prospective annuity starting date. The magnitude of the error is determined by subtracting the correct early retirement factor from the incorrect early retirement factor originally applied. A difference of 0.10 or greater indicates an error of 10% or more.

Example: PBGC's benefit estimate quotes a participant an early retirement benefit of \$85 based on the application of an early retirement factor of 0.8500 to an estimated normal retirement benefit of \$100 per month. The payee applies and begins receiving this benefit. Later, PBGC advises the payee in a ▶ benefit determination that the correct early retirement factor at his chosen annuity starting date is 0.7000, and that his monthly benefit will be reduced to \$70. The benefit determination will give the payee an option to come out of pay status and elect a later annuity starting date.

When an annuity starting date may be changed under this section, PBGC will notify the participant, who will be allowed 30 days from the date of the notice with the correct benefit information (typically in the benefit determination) to contact PBGC to request a change in the annuity starting date. If the participant had a spouse at the time the original application was filed, and the spouse is still alive, that spouse must consent in writing to the annuity starting date change.

PBGC will respond in writing to the request. If the request is approved, the payee will be taken out of pay status and must submit a complete new application (including required consent) for the new annuity starting date. Any benefits paid before the payee comes out of pay will be treated as overpayments in accordance with Policy **6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**.

3. Retroactive annuity starting dates for participants already in pay status

If a participant already in pay status is eligible for a retroactive annuity starting date under section **D.4** or **5** of this policy, PBGC will allow the participant to change his or her annuity starting date to the retroactive annuity starting date determined under **section D**.

Concurrence, Endorsement, and Approval

Policy 5.2-4 Annuity Starting Dates (8th Ed.)		
Concurrence	Initials	Date
OBA/ASD: Scott Young, Manager	S.Y.	06/30/2016
OBA/PPD: Laura Stephens, Manager	L.S.	06/29/2016
OBA/CSD: Michelle Gray, Manager	M.G.	06/30/2016
OBA/OPCMD: Jennifer Messina, Director	J.M.	07/06/2016
OCC: Joseph Krettek, Assistant Chief Counsel	J.K.	06/30/2016
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	06/30/2016
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	07/12/2016
Chief Financial Officer: Patricia Kelly	P.K.	07/18/2016
Approval		
Chief of Benefits Administration: Cathleen Kronopolus	C.K.	07/06/2016

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2016-05.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_2_4_8th.htm
(07/28/2016).

Previous Editions

- 5.2-4 Annuity Starting Dates 1st Ed. - Outdated
- 5.2-4 Annuity Starting Dates 2nd Ed. - Outdated
- 5.2-4 Annuity Starting Dates 3rd Ed. - Outdated
- 5.2-4 Annuity Starting Dates 4th Ed. - Outdated
- 5.2-4 Annuity Starting Dates 5th Ed. - Outdated
- 5.2-4 Annuity Starting Dates 6th Ed. - Outdated
- 5.2-4 Annuity Starting Dates 7th Ed. - Outdated

[Top of Page](#)

5.2-4 Annuity Starting Dates

Edition	10th Edition
Issue Date	06/21/2021
Transmittal	Transmittal 2021-07
Last Review Date	N/A
Signed Policy	5.2-4 Annuity Starting Dates
Contact	ASK PPD

In this policy

- [**A. Background**](#)
- [**B. Scope and Effective Date**](#)
- [**C. General Rule**](#)
- [**D. Retroactive Annuity Starting Dates**](#)
- [**E. Exceptions for Certain Late Retirement Benefits**](#)
- [**F. Alternate Payees Under QDROs**](#)
- [**G. Changes in Annuity Starting Dates**](#)
- [**Concurrence, Endorsement, and Approval**](#)

A. Background

PBGC is revising its policy on ▶ [annuity starting dates](#) to reflect the end of working retirement restrictions in trusteeed plans. Under Outdated Policy 5.2-2 Working Retirement, participants were generally prohibited from receiving early retirement benefits while still employed by the company that sponsored the pension plan before it terminated (the “DOPT employer”). Transmittal 2021-05, effective June 1, 2021, rescinded Policy 5.2-2 Working Retirement. Beginning June 1, 2021, PBGC will no longer restrict early retirement benefits based on continued employment with the DOPT employer.

This tenth edition of Policy 5.2-4 Annuity Starting Dates incorporates conforming changes to reflect the rescission of the working retirement policy and provides retroactive annuity starting dates for participants for whom working retirement restrictions would have continued if the working retirement policy had not been rescinded.

B. Scope and Effective Date

This policy applies to all payees in ▶ [PBGC-trusteед plans](#), and it is effective June 1, 2021.

C. General Rule

The ▶ [annuity starting date](#) is the date on which the first benefit payment is due. It is a prospective date requested by the payee in a documented contact with PBGC, if the payee is eligible for a PBGC benefit on that date. (During the period of up to 180 days immediately following PBGC trusteeship, as part of a coordinated transition to PBGC assumption of plan administration, PBGC may treat documented contact with the prior plan administrator as documented contact with PBGC for purposes of establishing a payee's annuity starting date.)

Annuity starting date rules for alternate payees with separate interest ▶ [QDROs](#) are contained in [section F](#) of this policy. Annuity starting dates for all other payees are determined according to the rules in section 1 or 2 below.

1. Documented contact before April 1, 2021

Until April 1, 2021, PBGC will continue to apply the general rule in Section C of the previous edition of this policy (5.2-4 Annuity Starting Dates, 8th Ed.). For purposes of this section, any references to sections D, E, and F in Section C of the previous edition of this policy will refer to those sections in this edition of the policy.

2. Documented contact on or after April 1, 2021

On and after April 1, 2021, PBGC will apply the general rule below for establishing annuity starting dates.

a. General rule

Except as provided in sections [D](#), [E](#), and [F](#), below, the annuity starting date cannot be earlier than the first day of the third month following such contact. For example, if a participant contacts PBGC in April, their earliest annuity starting date would be July 1 (if they are eligible for a PBGC benefit on that date). If they contact PBGC in October, their earliest annuity starting date would be January 1 of the following year. Examples of a documented contact are:

- PBGC's receipt of a completed application for benefits;
- PBGC's receipt (by letter, e-mail, telephone call, or [MyPBA](#)) of a request for a benefit ▶ [estimate](#) for an annuity starting date within 180 days of the date the request is made;
- The initiation of an electronic benefit application that is subsequently completed and mailed to PBGC.

In order for the payee to retain the requested annuity starting date, PBGC must receive the completed application, including all required documentation, within 180 days of the date of the letter sending the application to the payee (or, if applicable, the date of the initiation of the electronic benefit application).

b. Exception for administrative delay

If after 180 days, an application is incomplete primarily due to administrative delay for which PBGC is responsible, PBGC may allow the payee to retain the original requested annuity starting date in accordance with the following rules:

- **Married participants:** If a married participant elects the plan's automatic form of benefit for married participants, PBGC will not require the participant to complete a new application. PBGC will continue to process the original application.

If a married participant elects any form of benefit other than the plan's automatic form of benefit for married participants, PBGC will require the participant to complete a new application (including new spousal consent).

- **All other payees:** For all other payees (e.g. single participants, QPSA beneficiaries, and alternate payees under QDROs), PBGC will not require the payee to complete a new application. PBGC will continue to process the original application.

If PBGC allows a payee to complete an application after the 180-day period has expired, the additional period allowed to complete the application will not exceed 180 days.

c. Exception for applications processed by plan administrator shortly after PBGC trusteeship

If, in the period of up to 180 days immediately following PBGC trusteeship (as part of a coordinated transition to PBGC's assumption of plan administration), the prior plan administrator continues to process benefit applications, PBGC may accept the annuity starting date established by the prior plan administrator (assuming it comports with the plan's provisions

and established practice), even if it is earlier than the earliest date allowed under the rule in section a. above.

d. Exception for economic harm

If a payee requests an earlier annuity starting date and asserts that any delay would cause economic harm, based on the facts and circumstances of the particular case, PBGC may allow the payee to choose an annuity starting date as early as the first day of the month immediately following contact with PBGC requesting to start receiving benefits (if the payee is otherwise eligible to begin receiving benefits on that date).

D. Retroactive Annuity Starting Dates

PBGC will allow a payee (i.e. a participant, beneficiary, or alternate payee) to elect a retroactive annuity starting date (i.e., an ▶ [annuity starting date](#) before the date of a documented contact with PBGC) only if one of the situations described in section D.2 below exists, and subject to the spousal consent rules in section D.1 below. Except as noted below, retroactive annuity starting dates can be before DOPT.

When providing a payee the option to elect a retroactive annuity starting date, PBGC will provide benefit calculations for both the retroactive annuity starting date and the earliest allowable prospective annuity starting date (or the original annuity starting date if the payee is already receiving benefits).

If PBGC permits a retroactive annuity starting date, the payee generally must affirmatively elect the retroactive annuity starting date; however, if the monthly benefits payable to the payee (and to the surviving beneficiary if applicable) under the retroactive annuity starting date are no less than those payable under the earliest allowable prospective annuity starting date (or the original annuity starting date if the customer is already receiving benefits), PBGC may change the annuity starting date without the customer's election.

▶ [Working retirement](#) restrictions may apply to retroactive early retirement dates before June 1, 2021. See Outdated Policy [5.2-2 Working Retirement](#) for the rules applicable to retroactive annuity starting dates prior to June 1, 2021, and Transmittal 2021-05, which ended working retirement restrictions for annuity starting dates on and after June 1, 2021.

1. Spousal Consent

PBGC generally will require spousal consent to a participant's election of a retroactive annuity starting date according to the rules below; however, these

rules do not take effect until the forms necessary to implement them have been approved by the Office of Management and Budget (OMB) and implemented by PBGC.

If PBGC permits a retroactive annuity starting date, participants must obtain spousal consent as described below to elect the retroactive annuity starting date. If they fail to obtain consent required under either a. or b. below (or both), they will not be permitted to change their annuity starting date.

However, any applications or election forms for retroactive annuity starting dates that are provided to participants before PBGC implements these rules and that do not accommodate these spousal consent requirements will be processed according to standard procedures without requiring spousal consent to the retroactive annuity starting date.

- a. If the participant is married when they elect the retroactive annuity starting date, and the survivor benefits payable under the normal married form of benefit as of a prospective annuity starting date are greater than those payable as of the retroactive annuity starting date by more than a *de minimis* amount (as described below), the participant must obtain that spouse's consent to both the retroactive annuity starting date and the form of annuity (even if the participant elects the plan's normal married form of annuity). If the participant is already receiving benefits and was married to a different spouse when they started receiving benefits, contact Ask PPD for guidance.
- b. If the participant is already receiving benefits and was married when they started receiving benefits, and the survivor benefits payable to that spouse under the retroactive annuity starting date would be less than those under the current annuity starting date by more than a *de minimis* amount, the participant must obtain that spouse's consent to change the annuity starting date.

A change in the monthly survivor benefit is considered *de minimis* for these purposes if it is less than twenty-five dollars and less than ten percent of the survivor benefit payable under the prospective or original annuity starting date.

2. Eligibility for Retroactive Annuity Starting Dates

a. Required beginning dates

For any payee who applies for a benefit after the required beginning date as defined in Policy [**5.2-5 Required Beginning Dates**](#), the annuity starting date is the required beginning date, unless the payee is eligible for an earlier retroactive annuity starting date under one of the other exceptions below.

b. Plan retroactivity

If a payee's plan specifically allows for or requires retroactive annuity starting dates and the payee meets the conditions in the plan document, PBGC gives the payee the choice of retroactive payments or prospective payments (with a higher benefit, generally). A plan provision requiring that a participant apply for a benefit at a particular age (e.g., normal retirement age) will not be considered a provision requiring retroactive payments.

c. Inability to apply

If PBGC determines that a participant or beneficiary was without sufficient information or opportunity to apply for a benefit, PBGC allows the payee to elect an annuity starting date that is retroactive to the later of the payee's earliest eligibility date or the date that PBGC determines payees became unable to apply for benefits from the plan.

Examples of situations in which payees are without sufficient opportunity or information to apply for benefits include:

- An abandoned plan – i.e. the plan administrator is not responding to participants' requests for information or applications before DOPT.
- A revised Working Retirement Determination.
 - PBGC initially determines incorrectly that working retirement restrictions apply and informs participants they are not eligible to begin receiving benefits before their normal retirement date while working for the DOPT employer, but PBGC subsequently determines that working retirement restrictions do not apply; or
 - PBGC initially determines correctly that working retirement restrictions apply and informs participants they are not eligible to retire before NRD while working for the DOPT employer. The company is later liquidated in an asset sale, and PBGC subsequently determines that working retirement restrictions no longer apply as of the date of the asset sale.

Note: PBGC rescinded its working retirement policy effective June 1, 2021, but restrictions under the prior policy continue to apply to retroactive annuity starting dates before June 1, 2021. The examples above continue to be relevant with respect to participants in plans trusteeed before June 1, 2021, if the participant is ultimately determined to be eligible to receive early retirement benefits before June 1, 2021.

Working retirement restrictions do not apply to annuity starting dates on and after June 1, 2021. See section D.2.g. below for retroactive annuity starting dates for participants to whom working retirement restrictions continued to apply through May 2021 (for whom the restrictions end June 1, 2021).

- PBGC incorrectly advises a payee that they have not met the plan's requirements for early retirement.

A retroactive annuity starting date under this section (Inability to apply) will be granted only if (1) the payee contacts PBGC to begin benefits as of the retroactive annuity starting date within 90 days of the date PBGC advises payees of the opportunity to apply for retroactive payments (or if later, within 90 days of the date the conditions preventing the payee from applying for benefits end), and (2) PBGC receives the completed application, including all required documentation, within 180 days of the date of the letter sending the application to the payee. Contact [PPD](#) if it appears that payees were without sufficient information or opportunity to apply for benefits.

Note: In cases of natural disasters or other events that may prevent payees in multiple plans from applying for benefits, PBGC may determine that this exception applies to affected participants in all plans (or some subset of plans), and may loosen the requirements for payees to affirmatively accept PBGC's offer within 90 days of notification.

d. **Benefits that do not increase with deferral**

Plan provisions, ▶ [Title IV](#) limitations, and/or the plan asset and ▶ [4022\(c\)](#) allocations may result in a PBGC termination benefit that does not increase – or does not increase substantially – with deferral. For example, a fully guaranteed early ▶ [unreduced retirement benefit](#) payable as a ▶ [straight life annuity](#) does not increase with deferral during the period from

the early unreduced retirement date through the normal retirement date; the monthly benefit remains the same for any annuity starting date during that period. And for a participant whose funded ►PC3 benefit exceeds the guaranteed benefit at DOPT, the termination benefit may increase with deferral – but not substantially – due to the 4022(c) allocation, until the guaranteed benefit eventually exceeds the PC3 benefit. These considerations take time to analyze, and PBGC often cannot timely provide reliable information regarding a payee's eligibility for benefits that do not increase with deferral.

If a payee (including, in some cases, an alternate payee under a separate interest QDRO) applies for benefits after the first date at which their benefit stops increasing with deferral, PBGC will allow the payee to elect an annuity starting date retroactive to their earliest eligibility date on or after DOPT for which the benefit does not increase with deferral. This date will be determined using the normal single form of benefit for participants not yet in pay, and the elected form of benefit for participants already in pay.

If a participant who was eligible for a retroactive annuity starting date under this [section D.2.d](#) and who was married on their date of death (or required beginning date if earlier) dies before applying for benefits, the participant's surviving spouse may elect the retroactive annuity starting date as described above for the participant's benefit. If the surviving spouse elects the retroactive annuity starting date, the benefit will be paid in the plan's normal form of benefit for married participants. The surviving spouse will receive a back payment for benefits owed to the participant from the retroactive annuity starting date until the participant's date of death, and benefits owed to the surviving spouse from the participant's date of death until the date the monthly survivor benefit payments begin. If a participant is unmarried on their date of death and dies without applying for benefits, no benefit is payable under this exception.

A payee may elect to receive a retroactive annuity starting date under this [section D.2.d](#) at any time, regardless of whether they have been previously notified of eligibility for unreduced benefits or denied a retroactive annuity starting date under a previous edition of this policy.

Exceptions:

If the benefit does not increase with deferral for reasons other than a plan-provided early unreduced retirement date, this exception to the general rule in [**section C**](#) applies only if the benefit does not increase with deferral for a period of at least 12 months beginning on or after DOPT.

Working Retirement restrictions may apply to retroactive annuity starting dates before June 1, 2021. Payees will not be eligible for retroactive payment of benefits for any month before June 1, 2021, for which the working retirement rules in Outdated Policy [**5.2-2 Working Retirement**](#) prohibited the payee from receiving benefits.

If a payee is entitled to a benefit:

- That increases with deferral, but the increase does not appear to be substantial;
- That for reasons other than a plan-provided early unreduced retirement date, does not increase with deferral over a period of fewer than 12 months; or
- Part of which increases with deferral, and part does not increase with deferral,

refer the situation to PPD for a determination.

e. Disability benefits

Sometimes, for a variety of reasons, a participant who was eligible to begin receiving disability benefits from the plan may not have begun receiving disability benefits before the plan terminated. If, after DOPT, a participant is determined to be entitled to a disability benefit from PBGC in accordance with Policy [**5.9-1 Disability Benefits**](#), the annuity starting date will be determined under the terms of the plan document as if the participant had applied at the time of disability. Participants already in pay under another type of retirement who meet the conditions above may be eligible to elect a retroactive annuity starting date under this exception. See [**section G.3**](#) for details.

f. Qualified Preretirement Survivor Annuity (QPSA)

A ▶ [**QPSA**](#) benefit may be paid retroactively to the first of the month following a participant's death, if the completed application, including all required documentation, is received within 180 days from the date of the letter sending the application to the surviving spouse. However, the QPSA

may not be paid prior to the earliest QPSA commencement date, as defined in Policy [**5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984.**](#)

Note: If PBGC determines that the surviving spouse was previously offered the opportunity to commence QPSA benefits and deferred, the surviving spouse will not be eligible for a retroactive annuity starting date under this [**section D.2.f.**](#).

g. Working Retirement restrictions rescinded as of June 1, 2021

Transmittal 2021-05 ended working retirement restrictions in trusteeed plans for annuity starting dates on and after June 1, 2021. For prospective annuity starting dates, this means working retirement restrictions are no longer a concern; but working retirement restrictions continue to apply to retroactive annuity starting dates before June 1, 2021, in accordance with the prior policy.

When we communicated these restrictions to participants before the working retirement policy was rescinded, we gave them the expectation that these restrictions would remain in place until they terminated employment with the DOPT employer or reached their normal retirement age (or age 62 if applicable). Because we cannot timely inform all affected participants that these restrictions end as of June 1, 2021, PBGC will allow those participants to whom working retirement restrictions continued to apply until the policy was rescinded – including those who had not yet reached their earliest retirement date under the plan – to elect a retroactive annuity starting date in accordance with the rules below.

If a participant continued to work for the DOPT employer and was restricted from retiring early through May 2021 under Outdated Policy 5.2-2 Working Retirement (rescinded June 1, 2021) and would have continued to be restricted thereafter if the policy had not been rescinded (i.e. if they continued to work for the DOPT employer and had not yet reached their normal retirement age (or age 62 if applicable)), PBGC will allow the participant to elect an annuity starting date retroactive to the later of June 1, 2021 and their earliest annuity starting date under the plan.

If a participant was restricted from retiring early under Outdated Policy 5.2-2 Working Retirement, and those restrictions ended before June 1,

2021, they are not eligible for a retroactive annuity starting date under this exception. However, the participant could be eligible for a retroactive annuity starting date under another exception in section D.2.

E. Exceptions for Certain Late Retirement Benefits

With the issuance of the first edition of this policy on April 25, 2003, PBGC changed its policy on ► [annuity starting dates](#) for late retirees to provide generally for prospective annuity starting dates. Before the policy change, late retirees were generally put into pay status with retroactive annuity starting dates that were their normal retirement dates (or early unreduced retirement dates if applicable). This section contains transition rules that apply to late retirees to whom the retroactivity rules in effect before April 25, 2003, had been (or may have been) communicated and an exception for participants who are unlocatable until after their normal retirement dates. In no event may the annuity starting date for such a participant be later than the required beginning date under Policy [**5.2-5 Required Beginning Dates**](#).

The surviving spouse of a deceased participant will be offered the choices described below for the annuity starting date of the deceased participant's benefit. If the surviving spouse elects a retroactive ► [ASD](#) for the participant's benefit, the benefit will be paid in the plan's automatic form of benefit for married participants.

1. Benefit determinations issued before April 25, 2003

A late retiree whose ► [benefit determination](#) was issued before April 25, 2003, will be given the choice of (a) a benefit retroactive to the normal retirement date stated in the benefit determination or (b) an actuarially adjusted late retirement benefit with a prospective annuity starting date determined under [section C](#), above.

2. Benefit determination not issued as of April 25, 2003

If a late retiree applies for a benefit on or after April 25, 2003, but before receipt of a benefit determination, the annuity starting date will be determined under [section C](#), above, unless the participant was notified that PBGC would pay benefits retroactive to normal retirement date, and the participant requests retroactive payments.

3. "Unlocatable" participants

Participants and beneficiaries whom PBGC first contacts after the participant's normal retirement date, e.g. participants who were unlocatable when trusteeship notices or benefit determinations were issued, will be given the choice of (a) a benefit retroactive to the participant's normal retirement date or, if later, the first of month following DOPT or (b) an actuarially adjusted late retirement benefit with a prospective annuity starting date determined under section C, above.

F. Alternate Payees Under QDROs

► Annuity starting dates for ► alternate payees will be determined under this section and will be based on the type of ► QDRO.

1. Shared payment QDRO

The annuity starting date for an alternate payee under a shared payment QDRO is determined as follows:

- (a) if the participant's first payment date has already occurred as of the date PBGC receives the QDRO that is ultimately qualified, the annuity starting date is the first day of the month after the date the QDRO was received, unless the order requires (or the alternate payee requests) a later annuity starting date; and
- (b) if the participant's first payment date has not yet occurred as of the date PBGC receives the QDRO that is ultimately qualified, the annuity starting date is the participant's annuity starting date, unless the order requires a later annuity starting date. In rare circumstances, an alternate payee may request a later annuity starting date. If this occurs, contact PPD.

2. Separate interest QDRO

The annuity starting date for an alternate payee under a separate interest QDRO is determined under the following rules.

- a) **General rule.** The annuity starting date for an alternate payee named in a separate interest QDRO is a date chosen by the alternate payee. The annuity starting date generally may be only a prospective date that cannot be any of the following:

1. Earlier than participant's EPRD. See Policy [6.1-2 Earliest PBGC Retirement Date](#) for complete rules.

- 2. Earlier than receipt of the domestic relations order.** An alternate payee's annuity starting date cannot be earlier than the first of the month following receipt of the order that is ultimately qualified. Submission of draft orders does not affect an alternate payee's annuity starting date.
- 3. Earlier than documented contact by the alternate payee,** as described in [section C](#) of this policy.
- 4. Contrary to the terms of the QDRO,** except as provided in [section \(b\)](#), below. A separate interest QDRO may contain rules on when the alternate payee can or must begin receiving their benefit. For example, a QDRO may state that payments to the alternate payee will begin when payments to the participant start, or that payments to the alternate payee may not start before the participant's annuity starting date. PBGC will generally enforce any such restrictions for orders qualified either by the prior plan administrator or by PBGC. If the alternate payee did not commence benefits as required by the QDRO, and the oversight is discovered at a later date, the alternate payee's annuity starting date will be retroactive to the date mandated by the QDRO.

- b) **Limited availability of retroactive annuity starting dates:** Participant entitled to retroactive payments. If the participant whose benefits are assigned by a QDRO is permitted a retroactive annuity starting date under [section D](#) or [section E](#) of this policy and the retroactive payment has not yet been made, the alternate payee will also be entitled to retroactive payments unless the QDRO specifically provides otherwise (see exception, below). This is true if the annuity starting date is earlier than the date of PBGC receipt of the order, the PC3 date, or even the date of divorce. The alternate payee's annuity starting date may not be earlier than the date the alternate payee's turns age 50 and the earliest eligibility age for an unreduced or level benefit.

Exception: If under section D.2.g above the participant is entitled to a retroactive annuity starting date and the separate interest alternate payee is not yet in pay, the alternate payee will not generally also be entitled to a retroactive annuity starting date. However, if the participant is entitled to a retroactive annuity starting date and the QDRO applicable to the participant's benefit restricts the alternate payee's annuity start date so that the alternate payee is either (1) prohibited from going into pay before the participant or (2) required to have the same annuity starting date as the

participant, PBGC will generally abide by the terms of the QDRO with respect to the alternate payee's annuity starting state. This means that the ability of an alternate payee under either of these types of QDROs to elect a retroactive annuity starting date will depend on whether the participant actually elects a retroactive annuity starting date under section D.2.g.

3. Application requirement and retroactive payments

An application for benefits is required for an alternate payee's benefits to start. If an alternate payee is permitted a retroactive annuity date or has a required annuity starting date under this section, PBGC will pay benefits retroactively to the required annuity starting date upon receipt of a valid application.

4. Non-disclosure or administrative error

If a participant does not disclose the existence of a QDRO on a General Information Form or Payee Information Form or when applying for benefits, or if either PBGC or a prior plan administrator fails to administer a QDRO, the alternate payee will be entitled to a retroactive annuity starting date no earlier than the date which would have been permitted had the QDRO been properly disclosed and administered. See [section E.4 of Policy 6.6-3 Qualified Domestic Relations Orders.](#)

G. Changes in Annuity Starting Dates

Generally, PBGC will not allow a payee to change the [annuity starting date](#) after they have filed a valid benefit application. However, PBGC will allow such changes in the following circumstances.

Recoupment of overpayments. An overpayment that results from a change made under the rules in this section is subject to recoupment under Policy [6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#) unless payments are returned pursuant to a PBGC request.

1. Withdrawal of application

- a. **For a change in annuity starting date.** PBGC will allow an applicant to withdraw the benefit application and defer receipt of the annuity benefits if they contact PBGC before the first payment date. PBGC will confirm such a request in writing at the time the request is implemented and request the return of any payments made to the payee.

When PBGC honors such a request:

- i. PBGC will not require a new application if the new annuity starting date is within 180 days of the date of the original application and there is no change in benefit form or beneficiary of a joint-life benefit.
 - ii. PBGC will require a new application if the new annuity starting date is more than 180 days after the date of the original application. The new annuity starting date will be determined under this policy.
- b. **For a change in annuity benefit form.** Under [section H.1.a.](#) of Policy [5.4-7 Annuity Benefit Forms](#), an applicant may also withdraw an application before first payment date in order to change the benefit form. The applicant may retain the original annuity starting date and be paid in the new benefit form elected if a valid new application is filed within 180 days of the date of the original application and the payee requests there be no change in the annuity starting date. If the new application is filed more than 180 days after the date of the original application, the applicant will be paid in the new benefit form elected, but with a new annuity starting date based on the date of the new application.

Note: If a married \triangleright [participant](#) dies after submitting a valid plan application but before first payment date, see the rules in [section H.3](#) of Policy [5.4-7 Annuity Benefit Forms](#).

2. Error of 10% or more in early retirement estimates

If PBGC puts a payee into pay based on a calculation that uses an incorrect early retirement factor that is 10 percentage points or more too small, PBGC will allow the payee to come out of pay and reapply for benefits later with a new annuity starting date.

- a. The magnitude of the error is determined by subtracting the correct early retirement factor from the incorrect early retirement factor originally applied. A difference of 0.10 or greater indicates an error of 10 percentage points or more. If PBGC erred by 10 percent or more in a calculation used to put a payee into pay, but the early retirement factor applied in the benefit calculation is within 10 percentage points of the correct early retirement factor, contact Ask PPD for guidance.

- b. The new annuity starting date will be determined in accordance with this policy – that is, it generally must be a prospective date; however, the new annuity starting date chosen cannot be later than normal retirement date.

Example 1: PBGC's benefit estimate quotes a participant an early retirement benefit of \$85 based on the application of an early retirement factor of 0.8500 to an estimated normal retirement benefit of \$100 per month. The payee applies and begins receiving this benefit. Later, PBGC advises the payee in a ▶ [benefit determination](#) that the correct early retirement factor at their chosen annuity starting date is 0.7000, and that their monthly benefit will be reduced to \$70. Because the early retirement factor used in the estimated benefit is more than 10 percentage points higher than the correct early retirement factor, the benefit determination will give the payee an option to come out of pay status and elect a later annuity starting date.

Example 2: PBGC's benefit estimate quotes a participant an early retirement benefit of \$900 based on the application of an early retirement factor of 0.9000 to an estimated normal retirement benefit of \$1000 per month. The payee applies and begins receiving this benefit. Later, after the participant's normal retirement date has passed, PBGC advises the payee in a ▶ [benefit determination](#) that the correct early retirement factor at their chosen annuity starting date is 0.7500, and that their monthly benefit will be reduced to \$750. Because the early retirement factor used in the estimated benefit is more than 10 percentage points higher than the correct early retirement factor, the benefit determination will give the payee an option to come out of pay status and reapply for benefits commencing as of their normal retirement date.

When an annuity starting date may be changed under this section, PBGC will notify the participant, who will be allowed 30 days from the date of the notice with the correct benefit information (typically in the benefit determination) to contact PBGC to request to withdraw their previous application for benefits and come out of pay. If the participant had a spouse at the time the original application was filed, and the spouse is still alive, that spouse must consent in writing to the withdrawal of the application.

PBGC will respond in writing to the request. If the request is approved, the payee will be taken out of pay status and must submit a new complete application (including required consent) for the new annuity starting date. Any benefits paid before will be included in the computation of overpayments and underpayments based on the participant's new benefit amount and annuity

starting date in accordance with Policy [6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments.](#)

3. Retroactive annuity starting dates for participants already in pay status

Under certain circumstances, generally limited to situations in which PBGC (or the prior plan administrator) failed or was unable to provide timely and accurate retirement information necessary for a participant to make an informed decision about when to start receiving benefits, PBGC may allow a participant who is already receiving benefits to change their annuity starting date to an earlier retroactive annuity starting date. If a participant who is already receiving benefits is eligible for a retroactive annuity starting date under section [D.2.c](#), [D.2.d](#), or [D.2.e](#) of this policy, PBGC will allow the participant to change their annuity starting date to the retroactive annuity starting date determined under [section D.2](#), subject to the spousal consent requirements of [section D.1](#). The participant will not be permitted to change the nominal form of benefit (including the designated beneficiary of a joint-and-survivor annuity).

Policy 5.2-4 Annuity Starting Dates, 10th Ed.	
Concurrence	
OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2021.06.21 14:07:57 -04'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	 Digitally signed by LAURA STEPHENS Date: 2021.06.21 14:03:27 -04'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	 MICHELE GRAY Digitally signed by MICHELE GRAY Date: 2021.06.21 14:30:10 -04'00'
OBA/PSD: Jennifer Messina, Director	 Digitally signed by JENNIFER MESSINA Date: 2021.06.21 16:08:55 -04'00'
OGC: Joseph Krettek, Assistant General Counsel	 JOSEPH KRETTEK Digitally signed by JOSEPH KRETTEK Date: 2021.06.21 17:12:30 -04'00'
Endorsement	
General Counsel: F. Russell Dempsey	 FREDRICK DEMPSEY Digitally signed by FREDRICK DEMPSEY Date: 2021.06.21 19:39:59 -05'00'
Approval	
Chief of Benefits Administration: David Foley	 DAVID FOLEY Digitally signed by DAVID FOLEY Date: 2021.06.21 16:46:12 -04'00'
<i>This policy may not take effect without the written and dated endorsement of the General Counsel and the written and dated approval of the Chief of Benefits Administration on Transmittal 2021-07.</i>	

5.2-5 Required Beginning Dates

Edition	3rd Edition
Issue Date	02/26/2016
Transmittal	Transmittal 2016-01
Last Review Date	N/A
Signed Policy	5.2-5 Required Beginning Dates
Contact	ASK PPD

In this policy

- [A. Background](#)
 - [B. Scope and Effective Date](#)
 - [C. Definitions](#)
 - [D. Policy](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

This **► policy statement** contains rules for determining the latest permissible **► annuity starting date** (the required beginning date) under Policy **5.2-4, Annuity Starting Dates**. This determination is significant because PBGC will pay retroactive benefits to **► payees** who apply for benefits after the **► required beginning date**. The policy statement is based on the Internal Revenue Code provisions and IRS regulations on required minimum distributions from defined benefit pension plans.

The Code and regulations generally require that a plan distribute a **► participant's** benefit beginning no later than the "required beginning date." Most plans provide that the required beginning date for participants (other than 5% owners) is April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70 ½, and (2) the calendar year in which the participant separates from service. For 5% owners, the required beginning date is April 1 of the calendar year following the calendar year in which the participant attains age 70 ½, even if the participant has not retired. (Different definitions apply in the case of participants who attained age 70 ½ before 1997.)

The IRS regulations allow a pension plan to adopt for all participants a single rule that the required beginning date is April 1 of the calendar year following the calendar year in which the participant attains age 70 ½, regardless of whether the participant continues to work for the employer.

The first edition of this policy statement provided different definitions of required beginning date for participants older than age 70 ½ at **► DOPT** depending on whether or not they had separated from service before DOPT. The second edition adopted a single rule for all participants older than age 70 ½ at DOPT: PBGC will follow the plan's definition of required beginning date, but will treat DOPT as the date of separation from service for participants actively employed at DOPT. This third edition of the policy includes an exception for participants who separate from service after DOPT, and whom the plan puts into pay on or before their **► RBD** as determined under the plan but after their RBD determined under this policy (treating DOPT as the date of separation from service).

PBGC may find that a non-spouse beneficiary of a deceased participant is due annuity benefits – for example, if a plan provided a non-spouse death benefit and the participant died before DOPT. With this third edition of the policy, PBGC provides a rule for determining a non-spouse beneficiary's required beginning date.

B. Scope and Effective Date

This **► policy** applies to all PBGC annuity benefits in plans for which valuations are completed on or after November 2, 2009.

C. Definitions

April 70 ½ date means April 1 of the calendar year following the calendar year in which the **► participant** attains age 70 ½. A participant attains age 70 ½ as of the date 6 months after the participant's 70th birthday.

D. Policy

1. General Rule

- a. For a **participant** whose April 70 ½ date occurs after DOPT, the ► required beginning date is his or her April 70 ½ date.
- b. For a **participant** whose April 70 ½ date occurs before DOPT, the required beginning date is determined under plan provisions. If the ► participant has not separated from service as of ► DOPT, PBGC will treat DOPT as the date of separation from service for determining the required beginning date under the plan.
 - Different rules apply if a participant attained age 70 ½ before 1997; contact PPD if this situation arises.
 - If a participant separates from service after DOPT and before PBGC assumes the payment of benefits for the plan, and the plan puts the participant into pay on or before his or her ► RBD in accordance with the terms of the plan but after his or her RBD as determined under (b) above, PBGC may treat the RBD determined in accordance with the plan as his or her RBD for purposes of this policy. Contact PPD if this situation arises.
- c. For an **alternate payee under a separate interest QDRO**, the required beginning date is the participant's required beginning date.
- d. If a participant dies before his or her required beginning date and before going into pay status, the required beginning date for his or her **QPSA beneficiary**, including an ► **alternate payee** treated as a participant's spouse under a ► **QDRO**, is the later of December 1 of the calendar year immediately following the calendar year in which the participant died and December 1 of the calendar year in which the participant would have attained age 70 ½.
- e. If a participant dies before his or her required beginning date and before going into pay status, and benefits are payable to a non-spouse beneficiary, the required beginning date for the **non-spouse beneficiary** is December 1 of the calendar year immediately following the calendar year in which the participant died.

2. Deaths on or after required beginning date and before going into pay status

- a. If a **married participant** dies on or after his or her required beginning date and before going into pay status, back payments for a ► **QJSA** are owed to the deceased participant from the annuity starting date to the date of death. A continuing annuity is payable to the surviving spouse. Unless the participant is entitled to an earlier retroactive annuity starting date under Policy **5.2-4**, the annuity starting date for the QJSA is the participant's required beginning date.
- b. If an **unmarried participant** dies on or after his or her required beginning date and before going into pay status, back payments in the plan's automatic form of benefit for unmarried participants are owed to the participant from the participant's annuity starting date to the date of death. If that form provides for payments to a beneficiary, then additional payments may be due to the participant's beneficiary. Unless the participant is entitled to an earlier retroactive annuity starting date under Policy **5.2-4**, the annuity starting date is the participant's required beginning date.
- c. If a **QPSA beneficiary** (including an alternate payee who, under a QDRO, is treated as the participant's surviving spouse) defers receipt of ► **QPSA** benefits beyond his or her required beginning date and dies before going into pay status, back payments are owed to his or her beneficiary from the QPSA beneficiary's annuity starting date to the date of death. Unless the QPSA beneficiary is entitled to an earlier retroactive annuity starting date under Policy **5.2-4**, the annuity starting date is the QPSA beneficiary's required beginning date.
- d. If an **alternate payee under a QDRO** dies on or after the participant's required beginning date and before going into pay status, contact PPD. Whether or not a benefit is payable depends on the terms of the QDRO.

Concurrence, Endorsement, and Approval

Policy 5.2-5 Required Beginning Dates (3rd Edition)		
Concurrence	Initials	Date
OBA/ASD: Scott Young, Supervisory Actuary	S.Y.	02/06/2016
OBA/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	01/06/2016
OBA/OPCMD: Jennifer Messina, Director	J.M.	01/08/2016
OCC: Joseph Krettek, Assistant Chief Counsel	J.M.K.	01/06/2016
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	01/06/2016

Endorsements		
General Counsel: Judith Starr	J.S.	01/20/2016
Chief Financial Officer: Patricia Kelly	P.K.	01/21/2016
Approval		
OBA: Cathleen Kronopolus, Chief of Benefits Administration	C.K.	01/11/2016

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2016-01.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_2_5_3rd.htm
(02/26/2016).

Previous Editions

[5.2-5 Required Beginning Dates 1st Ed. - Outdated](#)

[5.2-5 Required Beginning Dates 2nd Ed. - Outdated](#)

[Top of Page](#)

5.2-5 Required Beginning Dates

Edition	4th Edition
Issue Date	03/05/2020
Transmittal	2020-04
Last Review Date	N/A
Contact	<u>Ask PPD</u>

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions
- D. Policy
- E. Concurrence, Endorsement, and Approval

A. BACKGROUND

This policy statement contains rules for determining the latest permissible annuity starting date (the required beginning date) under Policy 5.2-4, Annuity Starting Dates. This determination is significant because PBGC will pay retroactive benefits to payees who apply for benefits after the required beginning date. The policy statement is based on the Internal Revenue Code provisions and IRS regulations on required minimum distributions from defined benefit pension plans. PBGC is revising this policy to reflect the changes to the required beginning date rules prescribed by the Setting Every Community Up for Retirement Act of 2019 (SECURE Act).

The Code and regulations generally require that a plan distribute a participant's benefit beginning no later than the "required beginning date." Before the SECURE Act was passed, the required beginning date for participants (other than 5% owners) was generally April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70 ½, and (2) the calendar year in which the participant separates from service. For 5% owners, the required beginning date was April 1 of the calendar year following the calendar year in which the participant attains age 70 ½, even if the participant has not retired. (Different rules apply in the case of participants who attained age 70 ½ before 1997.)

The SECURE Act changed the age in the above requirements from 70 ½ to 72 for participants who had not reached age 70 ½ as of December 31, 2019.

The IRS regulations allow a pension plan to adopt for all participants a single rule that the required beginning date is April 1 of the calendar year following the calendar

year in which the participant attains age 70 ½ (or 72 if applicable), regardless of whether the participant continues to work for the employer.

As in the previous edition of this policy, PBGC will continue to follow the plan's definition of the required beginning date but will treat DOPT as the date of separation from service for participants actively employed at DOPT.

With this edition, PBGC is also clarifying how we will determine the spouse for QJSA purposes for participants who apply for benefits (or die without having applied for benefits) after their required beginning date.

B. SCOPE AND EFFECTIVE DATE

This policy applies to all annuity benefits in PBGC-trusted plans and is effective upon issuance.

C. DEFINITIONS

Mandatory Retirement Age means age 70 ½ for participants born on or before June 30, 1949, and age 72 for participants born after June 30, 1949.

D. POLICY

1. General Rule

- a. For a **participant who reaches their mandatory retirement age on or after DOPT**, the required beginning date is April 1 of the calendar year following the calendar year in which they reached their mandatory retirement age.
- b. For a **participant who reaches their mandatory retirement age before DOPT**, the required beginning date is determined under plan provisions. If the participant has not separated from service as of DOPT, PBGC will treat DOPT as the date of separation from service for determining the required beginning date under the plan.
 - Different rules apply if a participant attained age 70 ½ before 1997; contact PPD if this situation arises.
 - If a participant separates from service after DOPT and before PBGC assumes the payment of benefits for the plan, and the plan puts the participant into pay on or before their RBD in accordance with the terms of the plan but after their RBD as determined under (b) above, PBGC may treat the RBD determined in accordance with the plan as their RBD for purposes of this policy. Contact PPD if this situation arises.
- c. For an **alternate payee under a separate interest QDRO**, the required beginning date is the participant's required beginning date.
- d. If a participant dies before their required beginning date and before applying for benefits, the required beginning date for their **QPSA beneficiary**, including an alternate payee treated as a participant's spouse under a QDRO,

is the later of December 1 of the calendar year immediately following the calendar year in which the participant died and December 1 of the calendar year in which the participant would have reached their mandatory retirement age.

- e. If a participant dies before their required beginning date and before applying for benefits, and benefits are payable to a non-spouse beneficiary, the required beginning date for the **non-spouse beneficiary** is December 1 of the calendar year immediately following the calendar year in which the participant died.

2. Deaths on or after required beginning date and before applying for benefits

- a. If a **participant** is **married** on their required beginning date and dies on or after their required beginning date and before applying for benefits, back payments for a QJSA are owed to the deceased participant from the annuity starting date to the date of death. A continuing annuity is payable to the participant's spouse as of the required beginning date (or, if the benefit is subject to a QDRO assigning the QJSA rights to a former spouse, the alternate payee designated under that QDRO) if the spouse outlives the participant. Unless the participant is entitled to an earlier retroactive annuity starting date under Policy 5.2-4, the annuity starting date for the QJSA is the participant's required beginning date.
- b. If a **participant** is **unmarried** on their required beginning date and dies on or after their required beginning date and before applying for benefits, back payments in the plan's automatic form of benefit for unmarried participants are owed to the participant from the participant's annuity starting date to the date of death. (However, if the benefit is subject to a QDRO assigning the QJSA rights to a former spouse, the participant should be treated as married with the alternate payee under that QDRO treated as the spouse.) If the plan's automatic form of benefit for unmarried participants provides for payments to a beneficiary, then additional payments may be due to the participant's beneficiary. Unless the participant is entitled to an earlier retroactive annuity starting date under Policy 5.2-4, the annuity starting date is the participant's required beginning date.
- c. If a **QPSA beneficiary** (including an alternate payee who, under a QDRO, is treated as the participant's surviving spouse) defers receipt of QPSA benefits beyond their required beginning date and dies before applying for benefits, back payments are owed to their beneficiary from the QPSA beneficiary's annuity starting date to the date of death. Unless the QPSA beneficiary is entitled to an earlier retroactive annuity starting date under Policy 5.2-4, the annuity starting date is the QPSA beneficiary's required beginning date.
- d. If an **alternate payee under a QDRO** dies on or after the participant's required beginning date and before applying for benefits, contact PPD. Whether or not a benefit is payable depends on the terms of the QDRO.

Policy 5.2-5 Required Beginning Dates, 4th Ed.

Concurrence	Initials	Date
OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer		2/19/20
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor		2/19/20
OBA/PSD/CSD: Michelle Gray, Division Manager		2/19/20
OBA/PSD: Jennifer Messina, Director		2/26/20
OGC: Joseph Krettek, Assistant General Counsel		2/19/20
Endorsements		
General Counsel: Paul Chalmers		3/2/2020
Chief Financial Officer: Patricia Kelly		3/4/2020
Approval		
Chief of Benefits Administration: David Foley		2/27/20

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on Transmittal 2020-04.

5.2-6 Erroneous Commencement

Edition	3rd Edition
Issue Date	09/24/2009
Transmittal	Transmittal 2009-07
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. General Rules
- D. Calculation of Actuarially Reduced Benefits
- E. Calculation of Net Overpayments and Recoupment
- F. Discretion

A. Background

PBGC may discover that a payee is erroneously receiving a retirement benefit for which the payee was not eligible at the time payments began, although the payee is entitled to a benefit at a later date.

Before the issuance of Policy Bulletin **00-5 Participants Receiving Early Retirement Benefits to Which They Are Not Entitled**, PBGC would stop paying the benefit to the payee if at the time of discovery the payee still was not eligible for the benefit and the payee would later apply for benefits when eligible.

Under Policy Bulletin **00-5 Participants Receiving Early Retirement Benefits to Which They Are Not Entitled**, if PBGC determined that a payee was erroneously receiving early retirement benefits and was entitled to a benefit at a future date, the payee was offered the option of continuing to receive an actuarially reduced benefit in lieu of stopping payments at the time the benefit determination was issued.

The first edition of PBGC Policy **5.2-6 Payees Receiving Benefits for Which They Are Not Yet Eligible**, issued May 1, 2007, extended the option to receive an actuarially reduced benefit in lieu of stopping benefits to payees receiving other types of retirement benefits and specified that PBGC would stop payments unless payees made the election to continue payments within 45 days of notification. PBGC Policy 5.2-6 also provided that PBGC would correct these situations and offer the option to an affected payee upon discovery of the error even if prior to the issuance of the benefit determination.

In the second edition (**5.2-6 Benefits Erroneously Paid Before Eligibility**) PBGC clarified the rules to address a payee who was not eligible for a benefit at the time payments began, but has become eligible for payment by the time the error is discovered and to exclude situations when a payee is later determined ineligible because of a “retroactive” DOPT. The policy was also revised to specify that PBGC would implement the actuarially reduced benefit unless a payee made the election to stop payments within 45 days of notification.

In this 3rd edition (renamed 5.2-6, Erroneous Commencement), PBGC is:

- deleting the exclusion for retroactive DOPTs (**section B**);
- clarifying the exclusion of working retirement cases (**section B**);
- adding a reference to PPA 2006 changes (**section B**); and
- adding guidance to contact PPD if an affected payee requests a retroactive annuity starting date (**section C**).

B. Scope and Effective Date

This policy applies to a payee who is erroneously receiving a retirement benefit for which he or she was not eligible at the time payments began but who is eligible for a benefit at a later date, including situations where the payee was eligible for the benefit under the plan but later deemed ineligible due to the setting of a retroactive DOPT.

Benefits covered under this policy include:

- Early Retirement Benefits,
- Normal Retirement Benefits,

- Disability Retirement Benefits,
- Qualified Preretirement Survivor Annuities ('QPSA'); and
- Payments under a Qualified Domestic Relations Order ('QDRO').

This policy does not cover:

- A payee who was erroneously receiving a benefit for which he or she was not eligible at the Annuity Starting Date (ASD) but who was eligible for another benefit at that date; for example: a payee who was receiving a "30 and out" benefit that he or she was not entitled to at the ASD but who was eligible for a reduced early retirement benefit at that date;
- A payee erroneously receiving a benefit who is not eligible for *any* benefit from the plan;
- A payee erroneously put into pay with an annuity form prohibited under IRC § 436(d);
- A payee erroneously receiving an early retirement benefit who should be prohibited from receiving retirement benefits because he or she is still working for the DOPT employer, as per PBGC Policy ***5.2-2 Working Retirement***; and
- A payee receiving a benefit for which he or she was eligible at DOPT but which is later determined to be nonguaranteed (for example: in a PPA 2006 Bankruptcy Plan, a 30-and-out benefit where the payee reached the 30-year mark after the Bankruptcy Petition Date; in such a case, the payee will remain in pay status but with an adjusted benefit).

This edition applies to PBGC-trusteed plans and replaces PBGC Policy ***5.2-6 Benefits Erroneously Paid before Eligibility (2nd Ed.)***. It is effective upon issuance.

C. General Rules

1. **Payment options.** If PBGC discovers that a payee is erroneously receiving a retirement benefit for which the payee was not eligible at the time payments began, but the payee is entitled to a benefit at a future date or has since become eligible, PBGC will offer the payee the options below as soon as practicable after the date of discovery. If PBGC does not receive a response within 45 days, PBGC will Continue Payments (Option 1) as described below.
 - a. **Option 1 - Continue Payment.** PBGC will give the payee the option to continue receiving benefits, actuarially adjusted for the original annuity starting date, as necessary.
 - b. **Option 2 - Stop Payment.** PBGC will give the payee the option to stop receiving benefits and to apply later for payments starting on a future date. The future annuity starting date must be a prospective date (as provided in PBGC Policy ***5.2-4 Annuity Starting Dates***) that is on or after the date the payee becomes eligible for payment. (In rare cases, PBGC might allow a payee to elect a retroactive annuity starting date. Contact PPD if a payee so requests.)

Example:

Early retirement benefits under the plan are payable beginning at age 55. The payee begins to receive an early retirement benefit erroneously starting at age 52. PBGC discovers the error 5 years later when the payee is age 57. PBGC will give the payee the option to: (1) continue receiving a benefit actuarially reduced to reflect receipt of the benefit starting at age 52 or (2) stop receiving benefits and apply later for payments to start at a future date.

Note: If a participant who was erroneously receiving an auxiliary disability benefit elects to continue receiving benefits, he or she must elect a form of benefit, with spousal consent as necessary.

2. **PBGC notification of payment options.** PBGC will issue a written notice to the payee that:

- Describes the payment options in ***section C.1***,
- Provides details on the payee's entitlement including specific annuity starting dates and amounts,
- Provides details about overpayment amounts and recoupment; and
- Informs the payee that PBGC will Continue Payments, actuarially adjusted for the original annuity starting date (as described in ***section C.1.a***), if a response is not received within 45 days of the date of the notice.

D. Calculation of Actuarially Reduced Benefits

1. **Reduced retirement benefit.** If the payee was receiving a reduced retirement benefit using actuarially equivalent plan factors, PBGC will continue the payments at the same amount.
2. **Subsidized retirement benefit.** If the payee was receiving a subsidized retirement benefit (e.g., a shutdown benefit, an unreduced disability or early retirement benefit, or a reduced benefit calculated with reduction factors that are more

generous than actuarial equivalence), PBGC will adjust the benefit using actuarially equivalent plan factors, if available, for the age at which benefits began.

If the plan has actuarially equivalent factors but they do not extend to the age at which benefits began, PBGC will extend the plan factors, using PBGC factors.

If the plan does not have actuarially equivalent factors, PBGC will actuarially reduce the benefit for the age at which benefits began, using PBGC factors.

3. Actuarially equivalent factors.

For these purposes, PBGC will consider plan factors actuarially equivalent if they reduce benefits payable at age 55 or later by at least as much as one of the following factor sets:

- 5% per year before normal retirement age; or
- 1/15 for each year between normal retirement age and age 60 and 1/30 for each year between age 60 and age 55.

E. Calculation of Net Overpayments and Recoupment

Payments in excess of any amounts due are treated as overpayments in accordance with PBGC Policy [**6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**](#) and will be subject to recoupment as described in PBGC Policy [**6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**](#).

For payees who Continue Payment (see [**section C.1.a**](#)), the overpayment is the difference between the amount they were receiving and the reduced benefit to which they are being adjusted. For payees who choose to Stop Payment (see [**section C.1.b**](#)), the overpayment equals the benefit that they were receiving before payments were stopped.

F. Discretion

PBGC reserves the discretion to not offer a payee choices under this policy, for example, if PBGC believes there is evidence of abuse by a prior plan administrator.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_2_6_3rd.htm
(09/24/2009).

Previous Editions

[5.2-6 Payees Receiving Benefits for Which They are Not Yet Eligible 1st Ed. - Outdated](#)

[5.2-6 Benefits Erroneously Paid Before Eligibility 2nd Ed. - Outdated](#)

[Top of Page](#)

5.2-7 Late Retirement Benefits

Edition	1st Edition
Issue Date	09/24/2009
Transmittal	Transmittal 2009-08
Contact	ASK PPD
Related Links	Attachment: Minimum Requirements for Late Retirement

In this policy

- A. Background
- B. Scope and Effective Date
- C. Calculation of Late Retirement Benefits

[Attachment 1](#)

A. Background

► ERISA and the Internal Revenue Code (IRC) provide rules for the calculation of a benefit to a ► participant who retires with an ► annuity starting date after his or her ► normal retirement date. These rules vary based on, among other things, whether the participant separates from service before his or her normal retirement date and, if the participant continues to work after his or her normal retirement date, whether the plan provides for suspension of a benefit upon attainment of ► normal retirement age.

This policy provides rules for calculation of a benefit for a participant who applies to PBGC for a benefit with an annuity starting date after his or her normal retirement date. Rules for calculation of such “late retirement benefits” were previously contained in PBGC Policy [5.2-4 Annuity Starting Dates](#). This policy describes the minimum requirements for ERISAfied plans and extends the rules to any remaining late retirees in the few terminated plans containing provisions in effect prior to the applicable effective date under ERISA.

B. Scope and Effective Date

This ► policy is effective upon issuance. It applies to all ► PBGC-trusted plans and to ► participants in those plans whose ► annuity starting dates are after their ► normal retirement dates.

C. Calculation of Late Retirement Benefits

PBGC will follow plan terms in calculating the benefit of a ► participant whose ► annuity starting date is after his or her ► normal retirement date, whether the annuity starting date is before or after ► DOPT, provided the plan provides at least the minimum required adjustment of the benefit for late retirement. If the plan does not meet the minimum requirements, PBGC will use the minimum requirements to calculate the benefit. The minimum requirements are described in [Attachment 1](#).

1. Factors used for late retirement adjustments.

To calculate a late retirement benefit under this section, PBGC will use the following factors in the order indicated:

- a. the late retirement factor specified in the plan;
- b. the plan’s default actuarial equivalence factors, or
- c. PBGC Late Retirement Factors.

2. Application of Title IV limitations. ► Title IV limitations will be applied, as appropriate, to the late retirement benefit.

3. Determination of annuity starting dates. See PBGC Policy [5.2-4, Annuity Starting Dates](#) and [5.2-5, Required Beginning Dates](#) to determine the annuity starting date.

Attachment 1

Minimum Requirements for Late Retirement Benefits

Line #	Minimum Requirements for Late Retirement Benefits
--------	---

1	Participant not in pay status (at date of application or request for benefit estimate)		
2	NRD before DOPT	DOTE ≤ NRD	Actuarial increase from NRD to ASD
3		DOTE > NRD	NRD to earlier of DOPT/DOTE:
3A			Plan suspends benefits (optional for plans): Additional accruals
3B	After earlier of DOPT/DOTE: actuarial increase to ASD		
4	NRD on or after DOPT	DOTE ≤ NRD	Actuarial increase from NRD to ASD
5		DOTE > NRD	Actuarial increase from NRD to ASD (ASD may be retro to NRD under ASD policy)
6	Participant put into pay status (before DOPT) at NRD, but working		
7	Pre-DOPT	Annual review of benefit; benefit is increased by the amount the accrual exceeds the actuarial equivalent of the year's benefit payment	
8	Post-DOPT	No adjustment	

Key to abbreviations and symbols in this chart:

ASD ▶ annuity starting date

DOPT ▶ date of plan termination

DOTE ▶ date of termination of employment

NRD ▶ normal retirement date

≤ on or before

> after

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
 Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_2_7_1st.htm
 (09/24/2009).

[Top of Page](#)

5.4-3 Frequency of Benefits Payments

Edition	8th Edition
Issue Date	09/28/2017
Transmittal	Transmittal 2017-07
Signed policy	5.4-3 Frequency of Benefits Payments
Contact	ASK PPD

In this policy

- [A. Background](#)
 - [B. Scope and Effective Date](#)
 - [C. Definitions and Conditions](#)
 - [D. Policy](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

PBGC pays in annuity form benefits that are not de minimis and de minimis benefits for which a participant or beneficiary has elected an annuity in lieu of a lump-sum distribution.

Some pension plans allow payees to receive their annuity benefits on a monthly, quarterly, semiannual, yearly, or other basis, as long as payment is made at least once a year. PBGC generally pays annuity benefits as monthly payments. However, PBGC historically has paid certain "small" annuity benefits as annual payments to reduce the time and cost associated with making those payments on a monthly basis. Over time, PBGC has moved towards predominantly paying benefits through electronic direct deposit, which is done at a lower cost than payments by paper check.

In this edition of the policy, PBGC is lowering the threshold amount to annualize benefits from \$50.00 to \$1.00, and eliminating examples that provide explanations of how to handle frequency for contingent annuitant benefits that are greater than the participant's monthly benefits. This is due to the unlikelihood of that situation occurring with the decreased annual payment threshold of \$1.00 a month.

B. Scope and Effective Date

This policy applies to pension benefits paid as annuities in PBGC administered plans. It is effective upon issuance for all new payees with a first payment date on or after December 1, 2017 and existing PBGC payments assumed or changed as of a payment date on or after December 1, 2017, including reinstatement of suspended benefits.

C. Definitions and Conditions

For purposes of this policy, the following definitions apply:

1. **Annual payment.** An annual payment is a single payment which constitutes payments due for the following twelve months. If payments are not due for all of the following twelve months, the annual payment should only include payment for the months for which payments are due. For example, if a beneficiary is receiving a period certain annuity and there are only five months remaining in the certain period, the annual payment will only include payments for those five months.
2. **Annual payment date.** The annual payment date is the first of the month on which an annual payment is made, or should be made, for a prospective 12-month period.
3. **Annuity benefit.** An annuity benefit is the monthly amount of the benefit after form conversion, early retirement, or other factors are applied, but before withholding or other deductions are applied, such as those for recoupment, federal income tax, earnings offsets, etc.

D. Policy

1. General Rule: Frequency of Payments

PBGC generally pays annuity benefits as follows:

- a. **Monthly Payments**

PBGC will pay on a monthly basis an annuity benefit that is more than \$1.00 a month.

b. Annual Payments

PBGC will pay on an annual basis an annuity benefit that is \$1.00 or less a month.

c. Exceptions

PBGC may make exceptions to the general payment frequency rules based on the facts and circumstances of a **particular plan**. Scenarios where exceptions may apply include when payment frequency is an integral part of a plan's provisions for a benefit or a permitted optional form in the plan. Consult with PPD for a case-specific determination if needed.

2. Changes to Frequency of Payments

a. PBGC-Initiated Changes

- i. PBGC will change payment frequency of existing annuity payments as soon as practicable following trusteeship (i.e., plan assumption), which may be annualizing small monthly payments from a newly trusteeed plan, or changing a newly trusteeed plan's annuity payments from annual (or quarterly, or semiannual) payments to monthly payments if the plan paid in a different frequency for monthly amounts greater than \$1.00.
- ii. PBGC will also change payment frequency of existing annuity benefits when making changes to the annuity payment, e.g. when a final benefit is more than or less than the estimated benefit, or when reinstating an annuity benefit that was suspended.
- iii. PBGC will not change payment frequency of existing annual payments that were annualized under a prior annual threshold amount simply because the threshold has been lowered to \$1.00.

b. Payee-Initiated Changes

- i. PBGC **will change** an annual payment to a monthly payment at the payee's request, only if the payment is more than \$1.00 a month (i.e. the annual payment was annualized under an earlier higher annual threshold).
- ii. PBGC **will not change** a monthly payment to an annual payment at the payee's request, if the monthly benefit payment is more than \$1.00 a month, regardless of the circumstances or when the payment began (i.e. under an earlier higher annual threshold).

3. Overpayments between Annual Payment Dates

When a payee receiving an annual payment dies, PBGC will not treat the amount attributable to the period between the date of death (DOD) and the next annual payment date as an overpayment solely because of the death of the payee. However, other overpayments are includable overpayments for computation and netting (see **6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**) and therefore may be subject to PBGC's recoupment and recovery rules under **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**.

Participants who began to receive annual payments prior to the effective date of this 8th edition will continue to receive annual payments unless the benefit amount is adjusted (for example, from estimated to final payments).

Example 1: (\$50 threshold) Steve is receiving an estimated benefit of \$40.00 per month in the form of a joint-and-50%-survivor annuity, in 1999. At the time there was a \$50 annual threshold. His annual payment is \$480.00 (\$40.00 x 12). His annual payment date is March 1. In November 2018, PBGC determines that Steve's final benefit is \$34.00 per month. Steve is overpaid by \$6.00 per month, or \$72.00 per year. PBGC will adjust Steve's benefit and payment frequency on March 1, 2018 (his next annual payment date) and recoup from his future monthly payments.

Example 2: (\$50 threshold) John was receiving a joint-and-50%-survivor annuity benefit of \$40.00 per month. At the time there was a \$50 annual threshold. His annual payment date is June 1. John died on January 24, 2018. PBGC will not treat the portion of the annual payment representing the 4 months between his death (\$160.00) and the next annual payment date (February through May) as an overpayment solely because of his death.

Example 3: (\$50 threshold) However, if John's payment was an estimated payment of \$40.00 per month and PBGC subsequently determined that his final benefit should have been \$34.00 per month, PBGC will treat \$72.00 (\$6.00 x 12 months) as an overpayment in computation and netting as described above, and seek repayment from his surviving spouse's benefit.

4. Benefit Adjustments after annual threshold reduced to \$1.00

Participants who began to receive annual payments prior to the effective date of this 8th edition will continue to receive annual payments, unless the benefit amount is adjusted (ex. estimated to final payment). At the time of the adjustment, the \$1.00 annual threshold is applied, and if the monthly benefit amount is greater than \$1.00, the frequency is changed to monthly, effective as of the next annual payment date.

Example 4: (\$50 and \$1 threshold) Maria began receiving an estimated benefit of \$20.00 per month in the form of a joint-and-100%-survivor annuity, in 2001. At the time there was a \$50 annual threshold. Her annual payment is \$240.00, which is paid on her annual payment date of December 1. In February of 2018, PBGC determines that Maria's final benefit is \$12.00 per month. PBGC will adjust Maria's benefit amount and payment frequency on December 1, 2018, her next annual payment date, and begin to pay her \$12.00 per month.

Example 5: (\$50 and \$1 threshold) Robert began receiving an estimated benefit of \$16.00 per month in the form of a single life annuity, in 2012. At the time there was a \$50 annual threshold. He received annual payments until 2016 when he requested to change his frequency to monthly payments, which was permissible under policy at the time. In 2018, PBGC determines his final benefit is \$18.00 a month, and adjusts his benefit amount. Robert continues to be paid monthly, and his frequency cannot be changed to annual because his monthly payments are above the current annual threshold of \$1.00 a month.

5. Survivor Benefits frequency

a. Payee receiving annual payments - survivor's monthly benefit due is same as payee's or less, however, the survivors benefit is payable under the lower \$1 threshold amount.

When the recipient of an annual payment dies and the survivor is due the same monthly amount or less (always will be \$50 or less), PBGC will begin paying the survivor benefit to the beneficiary as a monthly payment beginning on the deceased participant's next annual payment date, unless the survivor's benefit is \$1.00 or less a month.

Example 6: (\$50 and \$1 threshold) Michael began receiving a receiving a joint-and-50%-survivor annuity benefit in 2003. At the time there was a \$50 annual threshold. His monthly payment is \$8 per month. His annual payment is \$96 (\$8 x 12). His annual payment date was March 1st. Michael died January 15, 2018. As of his DOD, there is a \$1.00 a month annual threshold.

When Michael died, his beneficiary, James, was entitled to a survivor benefit of \$4.00 a month. The survivor benefit is payable to James as a monthly benefit. His first monthly payment date is the date which would have been Michael's next annual payment date, or March 1, 2018. James receives his first monthly payment of \$4.00 on March 1, 2018. James' benefit may not be paid annually because it exceeds the \$1.00 a month threshold.

b. Payee receiving monthly payments/ Survivor receives annual payments

When the recipient of a monthly payment dies and a monthly survivor benefit of \$1.00 a month or less is payable, PBGC will begin paying the survivor benefit to the survivor beginning as of the first of the month after the death of the recipient. The annual payment date will be the date that the first payment is made to the survivor.

Example 7: (\$50 and \$1 threshold) James was receiving a joint-and-50%-survivor annuity benefit of \$1.50 a month. James died on November 15, 2017. Rebecca, his beneficiary, was due a survivor benefit of \$.75 per month, beginning as of December 1, 2017, the first of the month after James's death. Because the monthly amount of the survivor benefit is \$1.00 or less, Rebecca is paid an annual payment of \$8 (\$.75 x 12). Rebecca does not have the option of changing to a monthly benefit.

Concurrence, Endorsement, and Approval

5.4-3 Frequency of Benefits Payments, 8th Edition

Concurrence	Initials	Date
OBA/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	09/06/2017
OBA/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	09/06/2017
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	09/07/2017
OBA/OPCMD: Jennifer Messina, Director	J.M.	09/07/2017

OGC: Joseph Krettek, Assistant General Counsel	J.K.	09/06/2017
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	09/07/2017
Chief Financial Officer: Patricia Kelly	P.K.	09/08/2017
Approval		
Chief of Benefits Administration: Cathy Kronopolus	C.K.	09/07/2017
<p><i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on Transmittal 2017-07.</i></p>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
 Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_4_3_8th.htm
 (09/28/2017).

Previous Editions

- [5.4-3 Frequency of Benefit Payments 1st Ed. - Outdated](#)
- [5.4-3 Frequency of Benefit Payments 2nd Ed. - Outdated](#)
- [5.4-3 Frequency of Benefit Payments 3rd Ed. - Outdated](#)
- [5.4-3 Frequency of Benefit Payments 4th Ed. - Outdated](#)
- [5.4-3 Frequency of Benefits Payments 5th Ed. - Outdated](#)
- [5.4-3 Frequency of Benefits Payments 6th Ed. - Outdated](#)
- [5.4-3 Frequency of Benefits Payments 7th Ed. - Outdated](#)

[Top of Page](#)

5.4-7 Annuity Benefit Forms

Edition	3rd Edition
Issue Date	06/11/2009
Transmittal	Transmittal 2009-02
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions
- D. Form of Benefit Payable
- E. PBGC Optional Benefit Forms
- F. Permitted Beneficiary Designations for PBGC Optional Benefit Forms
- G. Calculation of PBGC Optional Form Amounts
- H. Requests For Changes After Filing Of Application
- I. Transition Rules for PBGC Optional Forms in 2002

A. Background

Earlier editions of this policy implemented the PBGC optional benefit forms described in the April 8, 2002, Benefit Payments regulation (29 CFR § 4022.8(c) *Optional PBGC Forms*). PBGC optional benefit forms are available to post-trusteeship retirees in all trusteee plans, and they are independent of plan provisions.

This edition:

- specifies that a benefit form in which a portion of the benefit may be paid in a single sum and the remainder is paid as an annuity is considered a life annuity form, and payable only if the lump-sum payment is \$5,000 or less ([section D.1](#));
- clarifies and expands the benefit form rules for pre-DoTR benefit payments ([section D.1](#));
- specifies that PBGC will not pay a benefit form elected before DoTR in certain underfunded plans if the plan would not have been allowed to pay that form under PPA 2006 rules ([section D.1.a](#));
- updates the spousal consent rule policy reference ([section D.3](#)) and adds a beneficiary designation policy reference ([section F](#));
- when an application has been withdrawn before first payment date, expands and clarifies how and when a new benefit form may be elected ([section H.1.a](#));
- clarifies and expands the rules for revocation of spousal consent ([section H.1.b](#));
- adds new rules on permissible changes in the forms of benefits chosen when there are material errors in PBGC form conversion factors ([section H.2](#));
- allows a surviving spouse to elect an annuity starting date for a QPSA payable when a married participant dies before his or her annuity starting date ([section H.3.a](#)); and
- simplifies the material relating to payment adjustments for changes made after an application is filed ([section H.4](#)).

It also contains editorial changes to clarify content.

B. Scope and Effective Date

This policy applies to payees in PBGC-trusteed plans who enter or entered pay status after the date of PBGC trusteeship, and whose first payment date is on or after May 1, 2002, regardless of the DOPT of the payees plan or the date of the participants separation from service.

The revisions contained in this edition are effective upon issuance.

C. Definitions

In this policy, the following definitions apply:

1. **Annuity starting date.** A payee's annuity starting date (ASD) is generally the prospective retirement date he or she requests for the benefit to start when he/she applies for benefits. This date is determined under PBGC Policy [5.2-4 Annuity Starting Dates](#). See [section D.4.a](#), below, for a special rule defining ASD for disability benefits.
2. **First payment date.** A payee's first payment date is the date on which PBGC actually makes the first payment to the payee. This is the date of the first check, or for payees receiving electronic direct deposits, the first of the month for which the payment is made to his/her account. This date will be later than the payee's ASD if the payee is entitled to retroactive payments.
3. **Plans automatic benefit form.** Generally, the form of benefit payable under the plan in the absence of an election of an optional benefit form. However, if a married participants plan was not ERISAfied, that participant will have a joint-and-survivor annuity calculated in accordance with [section G.2.](#), below, as his or her plans automatic form of benefit.
4. **ERISAfied plan.** A pension plan that, at termination, provides a joint-and-survivor annuity as the automatic form of benefit for a married participant, whether by its own terms or under PBGCs ERISAfication rules.

D. Form of Benefit Payable

1. Pre-trusteeship elections of plan forms

If a payee filed a valid plan application on or before the date of trusteeship (DoTR) and elected a form of benefit that is a life annuity form, PBGC will accept the application and pay the elected form of benefit. PBGC will not accept any plan application filed after DoTR.

If a benefit form is one in which a portion of the benefit is paid in an actuarially derived single sum and the remainder is paid as an annuity, it will be considered a life annuity form and that form will be paid only if it provides a single lump-sum payment of \$5,000 or less. For any other hybrid form of benefit, or any other annuity form, contact PPD for a determination regarding whether the form is payable.

- a. **Prohibited benefit forms under PPA.** Starting with the first day of the 2008 plan year, PPA 2006 provides restrictions on the benefit forms that a plan may pay if the plan is in a period of underfunding. Specifically, if a benefit form provides monthly payments that are more than the monthly amount of a single-life annuity, (including any social security supplement), and the ASD is during a period in which the plan was subject to these IRC § 436(d) limitations, then the payment may be limited or prohibited. If a participant elects a form with payments that would have been prohibited under these rules on an otherwise valid plan application, PBGC will not accept the application. For example, PBGC will not accept an application for a period certain annuity (e.g., a five-year period certain) that is derived from a life annuity, even if elected before DOPT, if the ASD for the benefit was during a period in which a § 436(d) limitations applied. De minimis lump sums are not prohibited under IRC § 436(d).

In addition to these IRC § 436(d) form limitations, PPA provides other limits on the benefits that a plan can pay in a period of underfunding (for example, during a period of underfunding, shutdown benefits may not be payable.)

If you have questions on these limitations, contact PPD.

- b. **Payments before trusteeship.** In a plan in which PBGC is paying benefits before trusteeship (see PBGC Policy [3.4-1 Benefit Payments Prior to Trusteeship](#)), PBGC will accept valid plan applications filed on and before DoTR. However, PBGC will provide new applicants with PBGC applications.

- c. **Plan form cannot be paid.** If the form of benefit elected on a plan application will not be paid because PBGC will not accept the application under the rules in this section, the payee must elect a benefit form on a PBGC application in accordance with the rules that follow. PBGC will preserve the ASD requested by the applicant if the application was otherwise valid and the PBGC application is returned within 90 days of the date it was sent to the applicant.

2. Post-trusteeship elections of benefit forms

a. PBGC first payment date before May 1, 2002

A payee whose first payment date is before May 1, 2002, will be paid benefits in accordance with prior PBGC policies on benefit forms. Generally, PBGC paid a participant who was married on his or her ASD a benefit in the plans Qualified Joint-and-Survivor Annuity form (QJSA), unless the participant waived the joint-and-survivor annuity with spousal consent. PBGC paid a participant who was not married at his or her ASD, or a married participant who waived the joint-and-survivor annuity with spousal consent, a benefit in the automatic form for unmarried participants under the participant's plan. Special rules applied to plans that were not ERISAfied. See Policies [5.4-1](#)

b. PBGC first payment date on or after May 1, 2002

A payee whose first payment date is on or after May 1, 2002, will be paid benefits as follows:

- 1) Married Participants.** A participant who is married on the date of his or her application will receive the plans automatic form for a married participant (the QJSA), unless he or she waives the QJSA, with spousal consent. If the participant waives the QJSA, he or she may elect the plans automatic form for unmarried participants or any PBGC optional joint-life annuity form or PBGC optional single-life annuity form.
- 2) Unmarried Participants.** A participant who is not married on the date of his or her application will receive the plans automatic form for an unmarried participant unless he or she elects one of the PBGC optional joint-life annuity forms or one of the PBGC optional single-life annuity forms.
- 3) Alternate payees** entitled to separate interest benefits under a QDRO, regardless of marital status, will receive the plans automatic form for an unmarried participant, but may elect any PBGC optional single-life annuity form. In the unlikely event that the plan provides that it will automatically pay an alternate payee a form that is different from the plans automatic form for unmarried participants, contact PPD.
- 4) QPSA beneficiaries** will receive the QPSA benefit payable under the plan, but may elect any PBGC optional single-life annuity form.

3. Spousal consent. Spousal consent to waive a QJSA benefit is required even if the participant is electing a PBGC optional joint-life form with the spouse as the beneficiary. Spousal consent must be obtained at the time the participant applies for a PBGC benefit, and may be revoked by the spouse only until the first payment date, see **section H.1.b**. For detailed rules on spousal consent, see PBGC Policy **5.7-5, Spousal Consent**.

4. Disability benefits. The benefit forms for participants receiving disability benefits depend on whether the disability benefits are auxiliary or non-auxiliary.

a. **Auxiliary disability benefits** - A disability benefit is an auxiliary benefit if, when the participant attains early or normal retirement age, the disability benefit converts to an early or normal retirement benefit that is not reduced for any disability benefit payments made prior to the conversion. The conversion date is the ASD for the form paid after conversion. If a disability benefit converts on or after May 1, 2002, in a PBGC-trusted plan, PBGC will offer optional benefit forms to the participant.

1) Married Participant Dies Before the Conversion Date - If a married participant dies before the conversion date specified in the plan, the surviving spouse will be entitled to a QPSA. PBGC will compute the QPSA benefit as if no disability benefit had been paid and will offer the QPSA beneficiary optional forms under **section E.1.** of this policy. (Exception: PBGC will not pay a QPSA benefit in a plan that terminated before August 23, 1984.)

2) Married Participant Dies On or After the Conversion Date - If a married participant dies on or after the benefit conversion date, the benefit form elected at the conversion date governs whether (and what) survivor benefits are payable upon the participants death.

Failure to convert. If a married participant dies while receiving an auxiliary disability benefit that should have been converted to a retirement benefit but was not, PBGC will pay the surviving spouse a survivor annuity. The survivor annuity will be determined as though the participant had elected the plans automatic form of benefit for a married participant.

b. **Non-auxiliary disability benefits.** If the disability benefit is **not** an auxiliary benefit, the plan should have given the participant an opportunity to elect a benefit form (subject to spousal consent) at the time the disability benefit went into pay status. If the plan gave the participant a proper election, the benefit form elected by the participant governs whether (and what) survivor benefits are payable upon the participants death. If the plan did not give the participant the proper election, contact PPD.

E. PBGC Optional Benefit Forms

PBGC offers two types of optional benefit forms: single-life forms and joint-life forms.

1. Single-life annuity forms are available to all payees:

- a. **Straight-life annuity.** Provides a fixed monthly benefit for the payees lifetime only. No survivor benefit will be paid upon the payees death.
- b. **5-, 10-, or 15-year certain-and-continuous annuity.** Provides a fixed monthly benefit for the payees lifetime. If the payee dies within the 5-, 10-, or 15-year period (depending on the payees election) after his or her ASD, his or her designated beneficiary will receive the benefit for the remainder of the certain period. If the payee dies after the end of the certain period, no survivor benefit is payable.

2. Joint-life annuity forms are available only to participants:

- a. **Joint and 50%, 75% or 100% survivor annuity.** Provides a fixed monthly benefit for the participants lifetime at a reduced level, and 50%, 75%, or 100% of that amount (depending on the participants election) to the beneficiary if the participant dies before the beneficiary.
- b. **Joint-and-survivor 50% pop-up annuity.** Provides a benefit for participants lifetime at a reduced level, and 50% of that amount to the beneficiary if the participant dies first. The pop-up annuity is different from the other joint-and-survivor forms because, if the beneficiary dies before the participant, the participants benefit pops up to the straight-life annuity amount as of the first of the month following the death of the beneficiary.

F. Permitted Beneficiary Designations for PBGC Optional Benefit Forms

1. **Joint-life Forms.** A participant may designate any living person as the beneficiary of an optional joint-life annuity form. The beneficiary may not be changed after the first payment date.
2. **Certain-and-continuous annuities.** A payee may designate one or more living persons, an estate, a trust, a church, or other organization as the beneficiary of a certain-and-continuous annuity. A payee who is receiving a certain-and-continuous annuity may change his/her beneficiary at any time.
3. **Alternative designations.** A payee may wish to designate his or her beneficiary in a format other than a PBGC form, or to establish rules for who is entitled to what benefit that cannot be described easily on PBGCs designation of beneficiary form. In that case, beneficiary designations need not be made on a PBGC form. However, any alternative designation must be provided to PBGC before the death of the payee, and it must be in writing, signed by the payee (or authorized representative), and contain clear instructions and identifying information for all beneficiaries.

See also PBGC Policy [8.6-1 Payments to Beneficiaries](#), for additional rules on beneficiary designations.

G. Calculation of PBGC Optional Form Amounts

1. **General rule.** If a payee elects a PBGC optional benefit form, PBGC will convert the payees benefit amount under the plans automatic form to the optional benefit form amount using PBGC factors. The PBGC factors are based on an interest rate of six percent and unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95-6, 1995-1 C.B. 80. Single-life forms are converted from the plans automatic form for unmarried participants, with the amount of the benefit calculated as of the payee's ASD. Joint-life forms are converted from the plans automatic form for married participants, with the amount of the benefit calculated as of the participants ASD, using the age at nearest birthday of the participants named beneficiary.
2. **Rule for joint-life forms in non-ERISAfied plans.** To calculate joint-life forms for a participant in a plan that is not ERISAfied, PBGC will convert the plans automatic form to a joint-and-50% survivor annuity using the factors described above. Other joint-life forms will be converted from this form, with the amount of the benefit calculated as of the participants ASD, using the age at nearest birthday of the participants named beneficiary.

3. Limitations

- a. PBGC will limit all PBGC optional benefit form amounts to the amount of the plans automatic form for an unmarried participant converted to a straight-life annuity with the factors described above.
- b. PBGC will not pay a PBGC optional benefit form if the amount of the participants benefit under that form is equal to or less than one-half of the amount that the participant would receive in the straight-life annuity form (e.g., if the SLA would be \$1,000, the participants benefit under the elected form must be more than \$500). If the elected form does not satisfy this requirement, PBGC may instead offer an actuarially equivalent version of the optional form e.g., a joint-and-90% survivor annuity rather than a joint-and-100% survivor annuity.

H. Requests For Changes After Filing Of Application

Generally, PBGC will not allow a payee to change the benefit form after he or she has filed a benefit application. However, PBGC will allow such changes in the following circumstances. A change made under the rules in this section is an elective benefit change under PBGC Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**.

1. Requests received before first payment date

a. Withdrawal of application

PBGC will allow an applicant to withdraw a plan or a PBGC benefit application in order to change the form of benefit if the applicant contacts PBGC before the first payment date. PBGC will confirm the decision in writing at the time the request is implemented and will request the return of any payments made to the payee if the ASD changes as a result. See **section G.1** of PBGC Policy **5.2-4 Annuity Starting Dates** for rules relating to annuity starting dates and withdrawn applications.

b. Revocation of spousal consent.

If the spouse of a married participant contacts PBGC before the first payment date and advises that he or she wishes to revoke spousal consent, PBGC will request the spouse to confirm the revocation in writing within 30 days of the date of the request. If written confirmation is not received from the spouse within 30 days, PBGC will not change the form of benefit initially elected.

If written confirmation is received from the spouse, PBGC will confirm the request in writing to the payee and allow the payee 90 days to return a valid new application changing the benefit form. PBGC will, however, pay the benefit in the form originally elected in the interim. If a valid new application is received within 90 days of the date of the letter sending the application, the change in benefit form will be retroactive to the participants ASD. If the new application is not received within the 90 days, PBGC will convert the benefit to the plans automatic form for married participants, retroactive to the participants ASD.

2. Requests received on and after first payment date

a. Change in form of benefit for incorrect form conversion factors

If PBGC erred by 10% or more in the relative costs of optional forms when providing a benefit estimate (i.e., used incorrect form conversion factors), the payee (or surviving spouse of a participant who died on or after the first payment date) will be allowed to change the benefit form if, solely as a result of the error, either:

- 1) the annuity benefit form *elected* actually costs more than the estimate indicated, or
- 2) the type of annuity *not elected* (single-life form or joint-life form) actually costs less than the estimate indicated.

For example, suppose a participant elected a Joint and 50% Survivor Annuity based on an estimate that was based on a form reduction factor of 0.9. When PBGC determines the final benefit, the correct form reduction factor is 0.75. Because the benefit form elected is far more expensive than the participant was told it would be at the time he made his election, he will be allowed to change his or her benefit form.

The magnitude of an error will be determined under the rules in Appendix 1 of this policy, which also contains additional examples. PPD concurrence is required for a determination to allow a new benefit form election.

If PPD concurs that a new election should be allowed, PBGC will notify the payee or surviving spouse, who will be allowed 30 days from the date of the notice with the correct benefit information (typically in the benefit determination) to contact PBGC to request a new application in order to change the benefit form. The revised application (including required consent) changing the benefit form (but not ASD) must be returned within 90 days of the date it is sent. If the participant had a spouse at the time the original application was filed and the spouse is still alive, that spouse must consent in writing to the benefit form change.

If a new benefit form is elected on an application returned within 90 days of the date it is sent, the change in benefit form will be made retroactive to the ASD. If a new benefit form election is not received within the 90 days of the date it is sent, PBGC will not change the benefit form.

b. Change in form of benefit for incorrect early retirement factors

If PBGC erred by 10% or more in the early retirement factor used to provide estimated benefit information to an applicant, the payee may be allowed to change the ASD under **section G.2** of PBGC Policy **5.2-4, Annuity Starting Dates**. In such cases, the benefit form may change when a valid and timely new application for benefits is filed.

3. Death of a participant

PBGC will change a benefit form retroactively to the participants ASD based on the death of a participant, regardless of when notification occurs, only under the circumstances described in this section. In all other cases, payment of survivor benefits will be determined by the form of benefit the participant elected.

a. **Death before ASD.** Except as described in the bullets below, if PBGC is notified that a married participant died before the ASD, PBGC will pay the surviving spouse the QPSA, regardless of the benefit form elected on the application. The surviving spouse may elect the ASD and benefit form for the QPSA. See PBGC Policy **5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984** for rules relating to QPSAs.

- If the participant properly elected an optional J&S form of benefit with the surviving spouse as the beneficiary, and the optional form provides a survivor annuity of 50-100%, the surviving spouse will receive the elected annuity form as the QPSA. The ASD will be the ASD chosen on the participants application.
- If the deceased participant had a de minimis benefit but had elected to receive it as an annuity, PBGC will not pay a QPSA. The participants benefit will be treated as a benefit payable to a deceased participant, and any contingent annuitant named on the application for annuity benefits will be treated as a contingent annuitant for the purpose of determining to whom to make the payment owed to the deceased participant.

b. **Death between ASD and first payment date.** If PBGC is notified that a married participant who waived the QJSA and elected a straight-life annuity died on or after the ASD but before the first payment date, PBGC will pay the surviving spouse the QJSA survivor annuity, retroactive to the first of the month following the participants death. Amounts owed to the participant between the ASD and the month of death will be paid to the surviving spouse in accordance with PBGC Policy **8.6-1 Payments to Beneficiaries**.

4. Payment adjustments for benefit form changes

If a benefit change under these rules results in an overpayment or underpayment, such overpayment or underpayment will be handled under the rules in PBGC Policy **6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**; PBGC Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**; and PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments**.

I. Transition Rules for PBGC Optional Forms in 2002

If the first payment date was May 1, 2002, or later, but the payee submitted an application that did not include PBGCs optional forms, PBGC gave the payee a single opportunity to change the form of his or her benefit to a PBGC optional benefit form. See **section H** of 2nd edition of this policy in Outdated Policies.

Appendix 1

Purpose: To determine whether an error in the relative costs of the types of optional annuity forms is 10% or more to determine whether **section H.2.a** applies.

Method: PBGC will calculate the error, e, in the relative values as follows

$$e = \text{absolute value } [(B/A) - (b/a)]$$

where

B = the payees benefit in the plans automatic form for a married participant (joint-life type annuity) as calculated in the estimate provided,

A = the payees benefit in the plans automatic form for an unmarried participant (single-life type annuity) as calculated in the estimate provided,

b = the payees benefit in the plans automatic form for a married participant (joint-life type annuity) correctly calculated, and

a = the payees benefit in the plans automatic form for an unmarried participant (single-life type annuity) correctly calculated.

If $e > 10\%$, then the payee may be allowed to change benefit form under **section H.2.a**, depending on the nature of the error and the form the payee elected.

Examples:

Participant A

PBGC provided a benefit estimate that included the following;

Plan's auto unmarried: SLA - \$1020

Plan's auto married: J&50%S - \$880

The correct amounts are:

Plan's auto unmarried: SLA - \$1020

Plan's auto married: J&50%S - \$790

Error in relative value, e

$$e = \text{abs}[(880/1020)-(790/1020)] = \text{abs}[0.8627 - 0.7745] = 0.0882$$

Participant A elected a joint-life form. While the form elected actually costs more than the estimate indicated, the difference in relative values (8.82%) is less than 10%. Thus, PBGC will not allow Participant A to elect a new annuity benefit form.

Participant B:

PBGC provided a benefit estimate that included the following;

Plan's auto unmarried: SLA - \$1000

Plan's auto married: J&50%S - \$880

The correct amounts are:

Plan's auto unmarried: SLA - \$1020

Plan's auto married: J&50%S - \$790

Error in relative value, e

$$e = \text{abs}[(880/1000)-(790/1020)] = \text{abs}[0.8800 - 0.7745] = 0.1055$$

Participant B elected a joint-life form, and form elected actually costs more than the estimate indicated. The difference in relative values (10.55%) is more than 10%. Thus, if PPD concurs, PBGC will allow Participant B to elect a new annuity benefit form.

If Participant B had elected a single-life form, PBGC would not allow Participant B to elect a new annuity benefit form. In that case, the cost of the form not elected (the joint-life form) was more than the estimate indicated, rather than less.

Participant C:

PBGC provided a benefit estimate that included the following;

Plan's auto unmarried: SLA - \$1000

Plan's auto married: J&50%S - \$750

The correct amounts are:

Plan's auto unmarried: SLA - \$1020

Plan's auto married: J&50%S - \$890

Error in relative value, e

$$e = \text{abs}[(750/1000)-(890/1020)] = \text{abs}[0.7500 - 0.8725] = 0.1225$$

Participant C elected a single-life form, and form not elected (the joint-life form) actually costs less than the estimate indicated. The difference in relative values (12.25%) is more than 10%. Thus, if PPD concurs, PBGC will allow Participant C to elect a new annuity benefit form.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:

Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.

http://intranet/standards_manuals/manuals/policy/5_4_7_3rd.htm

(06/11/2009).

Previous Editions

[5.4-1 J&S, Benefits Effective On & After 10/22/86 1st Ed. - Outdated](#)

[5.4-7 Annuity Benefit Forms 1st Ed. - Outdated](#)

[5.4-7 Annuity Benefit Forms 2nd Ed. - Outdated](#)

[Top of Page](#)

5.4-7 Annuity Benefit Forms

Edition	5 th Edition
Issue Date	1/27/2022
Transmittal	Transmittal 2022-02
Contact	ASK PPD

In this policy

A. Background.....	1
B. Scope and Effective Date	1
C. Definitions	1
D. Form of Benefit Payable.....	2
E. PBGC Optional Benefit Forms	4
F. Permitted Beneficiary Designations for PBGC Optional Benefit Forms	4
G. Calculation of PBGC Optional Form Amounts	5
H. Changes to Form of Benefit After Filing Application or Participant's Death	5
I. Transition Rules for PBGC Optional Forms in 2002	8

A. Background

Earlier editions of this policy prescribed the implementation of the PBGC optional benefit forms described in the April 8, 2002, Benefit Payments regulation (29 CFR § 4022.8(c) *Optional PBGC Forms*). PBGC optional benefit forms are available to post-trusteeship retirees in all trustee plans, and they are available independent of plan provisions.

In this fifth edition, the policy is revised primarily to clarify that a payee's ability to change the designated beneficiary for a certain-and-continuous annuity at any time is subject to specific spousal consent. This change is being made to conform with revisions made to Policy 5.7-5, Spousal Consent. This edition also includes other minor clarifying changes, including removal of disability benefit forms details with reference to 5.9-1, Disability Benefits.

B. Scope and Effective Date

This policy applies to payees in PBGC-trusted plans who enter or entered pay status after the date of PBGC trusteeship, and whose first payment date is on or after May 1, 2002, regardless of the DoPT of the payee's plan or the date of the participant's separation from service.

The revisions contained in this edition are effective upon issuance.

C. Definitions

In this policy, the following definitions apply:

1. **Annuity starting date.** A payee's annuity starting date (ASD) is generally the prospective retirement date he or she requests for the benefit to start when he/she applies for benefits. This date is determined under Policy **5.2-4 Annuity Starting Dates**.
2. **First payment date.** A payee's first payment date is the date on which PBGC actually makes the first payment to the payee. This is the date of the first check, or for payees receiving electronic direct deposits, the first of the month for which the payment is made to his/her account. This date will be later than the payee's ASD if the payee is entitled to retroactive payments.
3. **Plan's automatic benefit form.** Generally, the form of benefit payable under the plan in the absence of an election of an optional benefit form. However, if a married participant's plan was not ERISAfied, that participant will have a joint-and-survivor annuity calculated in accordance with **Section G.2.**, below, as his or her plan's automatic form of benefit.
4. **ERISAfied plan.** A pension plan that, at termination, provides a joint-and-survivor annuity as the automatic form of benefit for a married participant, whether by its own terms or under PBGCs ERISAfication rules.

D. Form of Benefit Payable

1. Pre-trusteeship elections of plan forms

If a payee filed a valid plan application on or before the date of trusteeship (DoTR) and elected a form of benefit that is a life annuity form, PBGC will accept the application and pay the elected form of benefit. PBGC will not accept any plan application filed after DoTR.

If a benefit form is one in which a portion of the benefit is paid in an actuarially derived single sum and the remainder is paid as an annuity, it will be considered a life annuity form and that form will be paid only if it provides a single lump-sum payment of \$5,000 or less. For any other hybrid form of benefit, or any other annuity form, contact PPD for a determination regarding whether the form is payable.

- a. **Prohibited benefit forms under PPA.** Starting with the first day of the 2008 plan year, PPA 2006 provides restrictions on the benefit forms that a plan may pay if the plan is in a period of underfunding. Specifically, if a benefit form provides monthly payments that are more than the monthly amount of a single-life annuity, (including any social security supplement), and the ASD is during a period in which the plan was subject to these IRC § 436(d) limitations, then the payment may be limited or prohibited. If a participant elects a form with payments that would have been prohibited under these rules on an otherwise valid plan application, PBGC will not accept the application. For example, PBGC will not accept an application for a period certain annuity (e.g., a five-year period certain) that is derived from a life annuity, even if elected before DoPT, if the ASD for the benefit was during a period in which a § 436(d) limitations applied. De minimis lump sums are not prohibited under IRC § 436(d).

In addition to these IRC § 436(d) form limitations, PPA provides other limits on the benefits that a plan can pay in a period of underfunding (for example, during a period of underfunding, shutdown benefits may not be payable.)

If you have questions on these limitations, contact PPD.

- b. **Payments before trusteeship.** In a plan in which PBGC is paying benefits before trusteeship (see Policy **3.4-1 Benefit Payments Prior to Trusteeship**), PBGC will accept valid plan applications filed on and before DoTR. However, PBGC will provide new applicants with PBGC applications.

- c. **Plan form cannot be paid.** If the form of benefit elected on a plan application will not be paid because PBGC will not accept the application under the rules in this section, the payee must elect a benefit form on a PBGC application in accordance with the rules that follow. PBGC will preserve the ASD requested by the applicant if the application was otherwise valid and the PBGC application is returned within 90 days of the date it was sent to the applicant.

- 2. Post-trusteeship elections of benefit forms**

- a. PBGC first payment date before May 1, 2002**

A payee whose first payment date is before May 1, 2002, will be paid benefits in accordance with prior PBGC policies on benefit forms. Generally, PBGC paid a participant who was married on his or her ASD a benefit in the plan's Qualified Joint-and-Survivor Annuity form (QJSA), unless the participant waived the joint-and-survivor annuity with spousal consent. PBGC paid a participant who was not married at his or her ASD, or a married participant who waived the joint-and-survivor annuity with spousal consent, a benefit in the automatic form for unmarried participants under the participant's plan. Special rules applied to plans that were not ERISAfied. See Policies **5.4-1 J&S, Benefits Effective On & After 10/22/86** (2nd Ed) and **5.4-2 "Retroactive" J&S Policy, Benefits Effective Before 10/22/1986** (1st Ed) in Outdated Policies.

- b. PBGC first payment date on or after May 1, 2002**

A payee whose first payment date is on or after May 1, 2002, will be paid benefits (subject to any applicable QDRO) based on marital status as of the earlier of his or her required beginning date as defined in Policy 5.2-5 Required Beginning Dates, or his or her application date, as follows:

- 1) Married Participants.** A married participant will receive the plan's automatic form for a married participant (the QJSA), unless he or she waives the QJSA, with spousal consent. If the participant waives the QJSA, he or she may elect the plan's automatic form for unmarried participants or any PBGC optional joint-life annuity form or PBGC optional single-life annuity form.
 - 2) Unmarried Participants.** An unmarried participant will receive the plan's automatic form for an unmarried participant unless he or she elects one of the PBGC optional joint-life annuity forms or one of the PBGC optional single-life annuity forms.
 - 3) Alternate payees** entitled to separate interest benefits under a QDRO, regardless of marital status, will receive the plan's automatic form for an unmarried participant, but may elect any PBGC optional single-life annuity form. In the unlikely event that the plan provides that it will automatically pay an alternate payee a form that is different from the plan's automatic form for unmarried participants, contact PPD.
 - 4) QPSA beneficiaries** will receive the QPSA benefit payable under the plan, but may elect any PBGC optional single-life annuity form.

- 3. Spousal consent.** Spousal consent to the participant's waiver of the QJSA benefit must be obtained at the time the participant applies for a PBGC benefit. Prior to the first payment date, the spouse may revoke consent to the waiver, see **section H.1.b.** For detailed rules on spousal consent, see Policy **5.7-5, Spousal Consent**.

- a. **Joint-Life Annuity Forms** - Spousal consent to the participant's waiver of a QJSA benefit is required when the participant is electing a PBGC optional joint-life annuity form, even if the spouse is the beneficiary.
 - b. **Single-Life Annuity Forms** - Spousal consent to the participant's waiver of a QJSA benefit is required when the participant is electing a PBGC optional single-life annuity form, even if the spouse is the designated beneficiary for a certain and continuous annuity.
4. **Disability benefits.** The benefit forms for participants receiving disability benefits and surviving spouses of deceased participants typically depend on whether the disability benefits are auxiliary or non-auxiliary. For detailed information about disability benefits, including how to correct disability benefits incorrectly administered, see ***Policy 5.9-1, Disability Benefits***.

E. PBGC Optional Benefit Forms

PBGC offers two types of optional benefit forms: single-life forms and joint-life forms.

1. **Single-life annuity forms** are available to all payees:
 - a. **Straight-life annuity.** Provides a fixed monthly benefit for the payee's lifetime only. No continuing survivor benefit will be paid upon the payee's death.
 - b. **5-, 10-, or 15-year certain-and-continuous annuity.** Provides a fixed monthly benefit for the payee's lifetime. If the payee dies within the 5-, 10-, or 15-year certain period (depending on the payee's optional benefit form election) after his or her ASD, his or her designated beneficiary ("contingent annuitant") will receive the benefit for the remainder of the certain period. If the payee dies after the end of the certain period, no continuing survivor benefit is payable.
2. **Joint-life annuity forms are available only to participants:**
 - a. **Joint and 50%, 75% or 100% survivor annuity.** Provides a fixed monthly benefit for the participant's lifetime and 50%, 75%, or 100% of that amount (depending on the participant's election) to the contingent annuitant if the participant dies before the contingent annuitant.
 - b. **Joint-and-survivor 50% pop-up annuity.** Provides a fixed monthly benefit for participant's lifetime and 50% of that amount to the contingent annuitant if the participant dies first. The pop-up annuity is different from the other joint-and-survivor forms because, if the contingent annuitant dies before the participant, the participant's benefit pops up to the straight-life annuity amount as of the first of the month following the death of the contingent annuitant.

F. Permitted Beneficiary Designations for PBGC Optional Benefit Forms

1. **Joint-life Forms.** A participant may designate any living person as the contingent annuitant of an optional joint-life annuity form. The contingent annuitant may not be changed after the first payment date.
2. **Certain-and-continuous annuities.** A payee may designate one or more living persons, an estate, a trust, a church, or other organization as the contingent annuitant of a certain-and-continuous annuity. A payee who is receiving a certain-and-continuous annuity may change his/her contingent annuitant at any time, however, for a payee who was married at retirement a change of contingent annuitant is subject to spousal consent. For rules on spousal consent, see ***Policy 5.7-5, Spousal Consent***.
3. **Alternative designations.** A payee may wish to designate his or her beneficiary in a format other than a PBGC form, or to establish rules for who is entitled to what benefit that cannot be described easily

on PBGC's designation of beneficiary form. In that case, beneficiary designations need not be made on a PBGC form. However, any alternative designation must be provided to PBGC before the death of the payee, and it must be in writing, signed by the payee (or authorized representative), and contain clear instructions and identifying information for all beneficiaries.

See also Policy **8.6-1 Payments to Beneficiaries**, for additional rules on beneficiary designations, especially about payments owed to a payee at date of death.

G. Calculation of PBGC Optional Form Amounts

1. **General rule.** If a payee elects a PBGC optional benefit form, PBGC will convert the payee's benefit amount under the plan's automatic form to the optional benefit form amount using PBGC factors. The PBGC factors are based on an interest rate of six percent and unisex mortality rates that are a fixed blend of 50 percent of the male mortality rates and 50 percent of the female mortality rates from the 1983 Group Annuity Mortality Table as prescribed in Rev. Rul. 95-6, 1995-1 C.B. 80. Single-life forms are converted from the plan's automatic form for unmarried participants, with the amount of the benefit calculated as of the payee's ASD. Joint-life forms are converted from the plan's automatic form for married participants, with the amount of the benefit calculated as of the participant's ASD, using the age at nearest birthday of the participant's named beneficiary.
2. **Rule for joint-life forms in non-ERISAfied plans.** To calculate joint-life forms for a participant in a plan that is not ERISAfied, PBGC will convert the plan's automatic form to a joint-and-50% survivor annuity using the factors described above. Other joint-life forms will be converted from this form, with the amount of the benefit calculated as of the participant's ASD, using the age at nearest birthday of the participant's named beneficiary.
3. **Limitations**
 - a. PBGC will limit all PBGC optional benefit form amounts to the amount of the plan's automatic form for an unmarried participant converted to a straight-life annuity with the factors described above.
 - b. PBGC will not pay a PBGC optional benefit form if the amount of the participant's benefit under that form is equal to or less than one-half of the amount that the participant would receive in the straight-life annuity form (e.g., if the SLA would be \$1,000, the participant's benefit under the elected form must be more than \$500). If the elected form does not satisfy this requirement, PBGC may instead offer an actuarially equivalent version of the optional form e.g., a joint-and-90% survivor annuity rather than a joint-and-100% survivor annuity.

H. Changes to a Form of Benefit After Filing Application or Participant's Death

Generally, PBGC will not allow a payee to change the benefit form after he or she has filed a benefit application. However, PBGC will allow such changes in the following circumstances. A change made under the rules in this section is an elective benefit change under Policy **6.4-1 Recoupment and Recovery of Post-DoPT Benefit Overpayments**.

1. Requests received before first payment date

a. Withdrawal of application

PBGC will allow an applicant to withdraw a plan or a PBGC benefit application in order to change the form of benefit, including a change to the contingent annuitant for continuing benefits, if the applicant contacts PBGC before the first payment date. PBGC will confirm the

decision in writing at the time the request is implemented and will request the return of any payments made to the payee if the ASD changes as a result. See **Section G.1** of Policy **5.2-4 Annuity Starting Dates** for rules relating to annuity starting dates and withdrawn applications.

b. **Revocation of spousal consent.**

If the spouse of a married participant contacts PBGC before the first payment date and advises that he or she wishes to revoke spousal consent to the waiver of the QJSA, PBGC will request the spouse to confirm the revocation in writing within 30 days of the date of the request. If written confirmation is not received from the spouse within 30 days, PBGC will not change the form of benefit initially elected.

If written confirmation is received from the spouse, PBGC will confirm the request in writing to the payee and allow the payee 90 days to return a valid new application changing the benefit form. PBGC will, however, pay the benefit in the form originally elected in the interim. If a valid new application is received within 90 days of the date of the letter sending the application, the change in benefit form will be retroactive to the participant's ASD. If the new application is not received within the 90 days, PBGC will convert the benefit to the plan's automatic form for married participants, retroactive to the participant's ASD.

2. **Requests received on and after first payment date**

a. **Change in form of benefit for incorrect form conversion factors**

If PBGC erred by 10% or more in the relative costs of optional forms when providing a benefit estimate (i.e., used incorrect form conversion factors), the payee (or surviving spouse of a participant who died on or after the first payment date) will be allowed to change the benefit form if, solely as a result of the error, either:

- 1) the annuity benefit form *elected* actually costs more than the estimate indicated, or
- 2) the type of annuity *not elected* (single-life form or joint-life form) actually costs less than the estimate indicated.

For example, suppose a participant elected a Joint and 50% Survivor Annuity based on an estimate that was based on a form reduction factor of 0.9. When PBGC determines the final benefit, the correct form reduction factor is 0.75. Because the benefit form elected is far more expensive than the participant was told it would be at the time he made his election, he will be allowed to change his or her benefit form.

The magnitude of the error is determined by subtracting the correct form conversion factor from the incorrect form conversion factor originally applied. A difference of 0.10 or greater indicates an error of 10 percentage points or more. See Appendix 1 for more information and additional examples. PPD concurrence is required for a determination to allow a new benefit form election.

If PPD concurs that a new election should be allowed, PBGC will notify the payee or surviving spouse, who will be allowed 30 days from the date of the notice with the correct benefit information (typically in the benefit determination) to contact PBGC to request a new application in order to change the benefit form. The revised application (including required consent) changing the benefit form (but not ASD) must be returned within 90 days of the date it is sent. If the participant had a spouse at the time the original application was filed and the spouse is still alive, that spouse must consent in writing to the benefit form change.

If a new benefit form is elected on an application returned within 90 days of the date it is sent, the change in benefit form will be made retroactive to the ASD. If a new benefit form election is not received within the 90 days of the date it is sent, PBGC will not change the benefit form.

b. **Change in form of benefit for incorrect early retirement factors**

If PBGC erred by 10% or more in the early retirement factor used to provide estimated benefit information to an applicant, the payee may be allowed to change the ASD under **section G.2 of Policy 5.2-4, Annuity Starting Dates**. In such cases, the benefit form may change when a valid and timely new application for benefits is filed.

3. **Death of a participant**

Only in situations described in this section will PBGC change a benefit form retroactively to the participant's ASD based on the death of a participant, regardless of when notification of the death occurs. In all other cases, payment of survivor benefits will be determined by the form of benefit the participant elected.

a. **Death before ASD/Married Participant.** Except as described in the bullets below, if PBGC is notified that a married participant died before the ASD, PBGC will pay the surviving spouse the QPSA, regardless of the benefit form elected on the application. The surviving spouse may elect the ASD and benefit form for the QPSA. See Policy **5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984** for rules relating to QPSAs.

- If the deceased participant properly elected an optional J&S form of benefit with the surviving spouse as the beneficiary, and the optional form provides a survivor annuity of 50-100%, the surviving spouse will receive the elected annuity form as the QPSA. The ASD will be the ASD chosen on the participant's application.
- If the deceased participant had a de minimis benefit but had elected to receive it as an annuity, PBGC will not pay a QPSA. The participant's benefit will be treated as a benefit payable to a deceased participant, and any contingent annuitant named on the application for annuity benefits will be treated as a contingent annuitant for the purpose of determining to whom to make the payment owed to the deceased participant.

b. **Death before ASD/Single Participant.** If a single participant dies before his or her ASD, no survivor benefits are due, unless the participant's plan offered special death benefits.

c. **Death between ASD and first payment date/Married Participant.** If PBGC is notified that a married participant who waived the QJS (with spousal consent) and elected a straight-life annuity died on or after the ASD but before the first payment date, PBGC will pay the surviving spouse the QJS survivor annuity, retroactive to the first of the month following the participant's death. Amounts owed to the participant between the ASD and the month of death will be paid to the surviving spouse in accordance with Policy **8.6-1 Payments to Beneficiaries**.

d. **Death between ASD and first payment date/Single Participant.** The general rule applies; payment of survivor benefits will be determined by the form of benefit the participant elected.

4. **Payment adjustments for changes to benefit forms**

If a change to a benefit form under these rules results in a net overpayment or net underpayment, such net overpayment or net underpayment will be determined and handled under the rules in Policy **6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**; Policy **6.4-1 Recoupment and Recovery of Post-DoPT Benefit Overpayments**; and Policy **6.3-1 Underpayment Reimbursement and Interest Payments**.

I. Transition Rules for PBGC Optional Forms in 2002

If the first payment date was May 1, 2002, or later, but the payee submitted an application that did not include PBGC's optional forms, PBGC gave the payee a single opportunity to change the form of his or her benefit to a PBGC optional benefit form. See **section H** of 2nd edition of this policy in Outdated Policies.

Appendix 1

Purpose: To determine whether an error in the relative costs of the types of optional annuity forms is 10% or more to determine whether **section H.2.a** applies.

Method: PBGC will calculate the error, e, in the relative values as follows

$$e = \text{absolute value } [(B/A) - (b/a)]$$

where

B = the payee's benefit in the plan's automatic form for a married participant (joint-life type annuity) as calculated in the estimate provided,

A = the payee's benefit in the plan's automatic form for an unmarried participant (single-life type annuity) as calculated in the estimate provided,

b = the payee's benefit in the plan's automatic form for a married participant (joint-life type annuity) correctly calculated, and

a = the payee's benefit in the plan's automatic form for an unmarried participant (single-life type annuity) correctly calculated.

If $e > 10\%$, then the payee may be allowed to change benefit form under **section H.2.a**, depending on the nature of the error and the form the payee elected.

Examples:

Participant A

PBGC provided a benefit estimate that included the following:

Plan's auto unmarried: SLA - \$1020

Plan's auto married: J&50%S - \$880

The correct amounts are:

Plan's auto unmarried: SLA - \$1020

Plan's auto married: J&50%S - \$790

Error in relative value, e

$$e = \text{abs}[(880/1020)-(790/1020)] = \text{abs}[0.8627 - 0.7745] = 0.0882$$

*Participant A elected a joint-life form. While the form elected actually costs more than the estimate indicated, the difference in relative values (8.82%) is less than 10%. Thus, PBGC will **not** allow Participant A to elect a new annuity benefit form.*

Participant B:

PBGC provided a benefit estimate that included the following:

Plan's auto unmarried: SLA - \$1000

Plan's auto married: J&50%S - \$880

The correct amounts are:

Plan's auto unmarried: SLA - \$1020

Plan's auto married: J&50%S - \$790

Error in relative value, e

$$e = \text{abs}[(880/1000)-(790/1020)] = \text{abs}[0.8800 - 0.7745] = 0.1055$$

Participant B elected a joint-life form, and form elected actually costs more than the estimate indicated. The difference in relative values (10.55%) is more than 10%. Thus, if PPD concurs, PBGC will allow Participant B to elect a new annuity benefit form.

If Participant B had elected a single-life form, PBGC would not allow Participant B to elect a new annuity benefit form. In that case, the cost of the form not elected (the joint-life form) was more than the estimate indicated, rather than less.

Participant C:

PBGC provided a benefit estimate that included the following:

Plan's auto unmarried: SLA - \$1000

Plan's auto married: J&50%S - \$750

The correct amounts are:

Plan's auto unmarried: SLA - \$1020

Plan's auto married: J&50%S - \$890

Error in relative value, e

$$e = \text{abs}[(750/1000)-(890/1020)] = \text{abs}[0.7500 - 0.8725] = 0.1225$$

Participant C elected a single-life form, and form not elected (the joint-life form) actually costs less than the estimate indicated. The difference in relative values (12.25%) is more than 10%. Thus, if PPD concurs, PBGC will allow Participant C to elect a new annuity benefit form.

Policy 5.4-7 Annuity Benefit Forms, 5th Ed.

Concurrence

OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2022.01.25 10:55:07 -05'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	 Digitally signed by LAURA STEPHENS Date: 2022.01.25 09:22:51 -05'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	 MICHELE GRAY Digitally signed by MICHELE GRAY Date: 2022.01.25 16:56:12 -05'00'
OGC: Joseph Krettek, Assistant General Counsel	 JOSEPH KRETTEK Digitally signed by JOSEPH KRETTEK Date: 2022.01.25 17:34:28 -05'00'

Endorsement

General Counsel: F. Russell Dempsey	 FREDRICK DEMPEY Digitally signed by FREDRICK DEMPSEY Date: 2022.01.26 12:37:13 -05'00'
--	--

Approval

Chief of Benefits Administration: David Foley	 DAVID FOLEY Digitally signed by DAVID FOLEY Date: 2022.01.26 13:11:51 -05'00'
--	---

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on **Transmittal 2022-02**.*

5.4-8 Paying and Converting Complex Benefit Forms

Edition	3rd Edition
Issue Date	12/22/2016
Effective Date	12/22/2016
Transmittal	Transmittal 2017-01
Signed Policy	5.4-8 Paying and Converting Complex Benefit Forms
Contact	ASK PPD

In this policy

- [A. Introduction](#)
- [B. Scope and Effective Date](#)
- [C. Definitions Unique to this Policy](#)
- [D. PBGC Policy](#)
- [Concurrence, Endorsement, and Approval](#)

A. Introduction

With the issuance of the Benefit Payments regulation on April 8, 2002, PBGC made a menu of optional annuity forms available to payees in trusteeed plans. Benefits payable under PBGC's optional forms are actuarially equivalent to benefits provided by the plan. A PBGC optional joint-and-survivor annuity is actuarially equivalent to the plan's automatic form for a married participant, and a PBGC optional single life annuity is actuarially equivalent to the plan's automatic form for an unmarried participant.

Some plans contain complex benefit forms. For example, plans in the steel industry often contain "Free Surviving Spouse Benefits" and "Five-Year Term Certain Benefits." These and other plans may also contain "Temporary Supplements" (Social Security Supplements).

This policy statement supplements [5.4-7 Annuity Benefit Forms](#) of the PBGC Operating Policy Manual by providing guidance for administering complex benefits and converting them to PBGC's optional annuity forms.

With the third edition of this policy statement, PBGC clarifies its rules on paying and converting qualified joint-and-survivor "pop-up" annuities, which increase ("pop up") if the participant's spouse predeceases the participant.

B. Scope and Effective Date

This policy statement applies to payees in PBGC-trusteed plans. It is effective upon issuance.

C. Definitions Unique to this Policy

1. **Free Surviving Spouse Benefit (FSSB).** A survivor benefit in addition to the QJSA, or benefit elected in lieu of a QJSA, that provides, at no cost (reduction) to the participant and spouse, a 50% survivor annuity until the surviving spouse reaches a specified age, at which time the survivor annuity is substantially reduced based on the spouse's Social Security benefit.
2. **Automatic Five-Year Term Certain Benefit.** A period certain benefit that is paid for the first five years of retirement. Regardless of the annuity form elected at retirement, this benefit is paid in an amount equal to the participant's full accrued benefit computed as a straight life annuity. The participant receives this benefit for five years, and then the benefit is paid in the form that the participant elected at retirement. If the participant dies within five years of retirement, the remainder of the five-year term certain benefit is paid to the participant's beneficiary.

Example 1: A participant has a monthly accrued benefit of \$1,000 payable as a Straight Life Annuity. Assume his Annuity Starting Date is 01/01/2004 and he elects a Joint and 50% Survivor Annuity of \$900 per month (using his age and his spouse's age on 01/01/2004). The participant receives \$1,000 per month from 01/01/2004 through 12/01/2008 and begins receiving \$900 per month on 01/01/2009. If the participant dies on 12/15/2007, he would have received \$1,000 per month from 01/01/2004 through 12/01/2007. His spouse would also receive \$1,000 per month from 01/01/2008 through 12/01/2008 (the end of the five-year period). On 01/01/2009 she would begin receiving \$450 per month (her 50% survivor annuity).

3. **Temporary Supplement.** A benefit form that provides an additional monthly benefit (often \$400) until the participant becomes eligible for Social Security benefits. Temporary supplements generally are not adjusted based on the age of the participant at retirement or the form of benefit elected.

D. PBGC Policy

1. **General Rule.** Calculate and administer annuity benefit forms based on the following rules. Use the method given in chapter [5.4-7 Annuity Benefit Forms](#) of the PBGC Operating Policy Manual for determining actuarial equivalence to convert any plan benefit into one of PBGC's optional annuity forms.

2. Complex Benefit Forms

a. **FSSB for a Married Participant.** If a married participant who is eligible for a plan benefit that includes an FSSB elects to receive a plan-provided annuity form, the participant's surviving spouse receives the FSSB in addition to any survivor benefits provided in the form chosen. If a married participant who is eligible for a plan benefit that includes an FSSB elects to receive a PBGC optional annuity form, the value of the FSSB is calculated and added to the benefit that the participant receives in the form chosen. The following table contains the specific rules.

Annuity Form Elected	Joint-life Annuitant	Payment of FSSB
Plan's Automatic Annuity Form for Married Participants (QJSA)	Spouse	Pay the FSSB to the surviving spouse according to plan provisions.
Plan's Automatic Annuity Form for Unmarried Participants	N/A	Pay the FSSB to the surviving spouse according to plan provisions.
PBGC Optional J&S	Spouse	Calculate the FSSB that would have been payable under the plan to the participant's spouse. Convert the value of this FSSB into an additional benefit payable in the form of the PBGC optional J&S annuity elected with the spouse as the joint life annuitant.
PBGC Optional J&S	Non-spouse	Calculate the FSSB that would have been payable under the plan to the participant's spouse. Convert the value of this FSSB into an additional benefit payable in the form of the PBGC optional J&S annuity elected with the non-spouse joint life annuitant.
PBGC Optional Single Life Annuity	N/A	Calculate the FSSB that would have been payable under the plan to the participant's spouse. Convert the value of this FSSB into an additional benefit payable in the form of the PBGC optional single-life annuity elected.

b. **FSSB for an Unmarried Participant.** Some plans provide an FSSB for a participant who is unmarried at the annuity starting date but marries later. If such a participant elects to receive an annuity form provided by the plan, PBGC will pay the FSSB in accordance with plan provisions. If, instead, such a participant elects to receive a benefit in one of PBGC's optional annuity forms, no FSSB is payable by PBGC, and no additional annuity amount will be paid on account of the FSSB because PBGC will value the FSSB at \$0 for form conversion purposes.

c. **Automatic Five-Year Term Certain Benefit.** PBGC's optional annuity forms are generally level life benefits, even when a plan's automatic annuity forms are not. If a participant eligible for an Automatic Five-Year Term Certain Benefit elects one of PBGC's optional annuity forms, convert this Automatic Five-Year Term Certain Benefit into an equivalent level-life annuity payable in the optional form elected.

d. **Temporary Supplements.** Unlike the other forms described above, temporary supplements are generally not converted to an additional value for PBGC optional forms. Subject to limitations on guaranteed benefits, they are paid as temporary supplements. However, if the temporary supplement includes a survivor annuity payable for the remainder of the temporary period, PBGC will convert the temporary supplement and survivor benefit to an additional value for PBGC optional forms. If the temporary supplement includes a survivor benefit and is subject to earnings offsets, OBA will refer the case to PPD.

e. **Joint-and-Survivor "Pop-Up" Annuities.** PBGC will generally pay and convert the "pop-up" component of a plan's qualified joint-and-survivor annuity (QJSA) the same way PBGC pays and converts the "pop-up" component of PBGC's optional joint-and-50% survivor "pop-up" form of annuity. Specifically, if the spouse of a participant whose benefit form is the plan's QJSA with a "pop-up" predeceases the participant, the participant's benefit generally increases ("pops up") on the first of the month following the spouse's death – and converts the benefit to PBGC optional forms accordingly.

If the plan provides that the QJSA payable to the participant will pop up only upon notification to the plan of the spouse's death and/or only after a certain waiting period has elapsed (for example, three months following notification to the plan of the spouse's death), then how PBGC pays and converts the "pop-up" component will depend on whether the spouse died before DOPT (see [section D.2.e.1](#) below) or dies on or after DOPT (see [section D.2.e.2](#) below).

(1) Spouse's Death before DOPT. If the spouse died before DOPT, PBGC will deem the plan to have been notified of the death (if applicable) no later than DOPT and will treat the plan's waiting period (if any) to have elapsed no later than on DOPT.

Example 2: The plan's QJSA is a joint-and-50% survivor "pop-up" annuity. The plan provides that the participant's benefit will increase to the level of the automatic single form three months following notification by the participant of the spouse's death. A participant was in pay status with the plan's automatic married form. The participant's spouse died two months before DOPT, but the plan was not notified of the spouse's death. After DOPT, PBGC discovers that the spouse has predeceased the participant. PBGC will consider the plan to have been notified of the spouse's death on DOPT and will treat the three-month waiting period as having elapsed on DOPT. Thus, PBGC will increase the participant's benefit to the level of the plan's automatic single form on the first of the month following DOPT (or on DOPT if DOPT falls on the first day of the month).

(2) Spouse's Death on or after DOPT. If the spouse dies on or after DOPT, PBGC will disregard the plan's notification and/or waiting period requirement(s) (if applicable) for purposes of paying and converting the "pop-up" component of a QJSA.

Example 3: Same facts as Example 2 above except that the spouse dies two months after DOPT. PBGC will increase the participant's benefit to the level of the plan's automatic single form on the first of the month following the spouse's date of death.

If at DOTR the participant is receiving a plan optional benefit form with a "pop-up" (or similar) component, and the benefit includes a notification and/or waiting period (and/or similar) requirement under the plan, [contact PPD](#).

f. **Other Complex Benefit Forms.** [Contact PPD](#) for determinations regarding conversion of other complex benefit forms.

Concurrence, Endorsement, and Approval

Policy 5.4-8 Paying and Converting Complex Benefit Forms (3rd Ed.)		
Concurrence	Initials	Date
OBA/ASD: Scott Young, Director	S.Y.	11/16/2016
OBA/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	11/09/2016
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	11/16/2016
OBA/OPCMD: Jennifer Messina, Director	J.M	11/30/2016
OCC: Joseph Krettek, Assistant Chief Counsel	J.M.K.	11/18/2016
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	11/09/2016
Endorsements		
General Counsel: Judith R. Starr	J.S.	12/02/2016
Chief Financial Officer: Patricia Kelly	P.K.	12/02/2016
Approval		

Chief of Benefits Administration and Director of OBA: Dave Foley for Cathleen Kronopolus	D.F.	11/30/2016
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2017-01.</i>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_4_8_3rd.htm
(12/22/2016).

Previous Editions

[5.4-8 Paying and Converting Complex Benefit Forms 1st Ed.](#)

- Outdated

[5.4-8 Paying and Converting Complex Benefit Forms 2nd Ed.](#)

- Outdated

[Top of Page](#)

5.4-9 Lump-Sum Benefit Payments

Edition	4th Edition
Issue Date	07/30/2015
Effective Date	Upon Issuance
Transmittal	Transmittal 2015-07
Signed Policy	5.4-9 Lump-Sum Benefit Payments
Contact	ASK PPD
Related Links	See section C.3. Other Applicable PBGC Operating Policy

In this policy

- [A. Introduction](#)
 - [B. Scope and Effective Date](#)
 - [C. General Policy](#)
 - [D. Lump Sums Payable after Death](#)
 - [E. Payment Options and Methodology](#)
 - [F. Lump-Sum Payments by a Prior Plan Administrator](#)
 - [G. Exceptions Applicable to Lump-Sum Payments](#)
 - [H. Correction of Lump-Sum Benefit and Payment Errors](#)
 - [I. P5K Benefits](#)
- [Appendix: Conversion of a Residual Benefit to Annuity Amount](#)
- [Concurrence, Endorsement, and Approval](#)

A. Introduction

Pension plans sometimes give participants and beneficiaries the option of receiving all or part of their pension benefit in a [lump-sum payment](#) instead of receiving annuity payments. In addition, as provided under section 203(e)(1) of [ERISA](#) and section 411(a)(11) of the [Internal Revenue Code](#) (IRC), a pension plan may pay a benefit with a [present value](#) of \$5,000 or less in a [mandatory distribution](#). Effective January 01, 2008, the [Pension Protection Act of 2006](#) placed limitations on [prohibited payments](#), including certain lump-sum payments, when a plan does not meet specified funding requirements. PBGC's regulations on the calculation and payment of benefits in a lump sum are set forth in 29 CFR §4022.7.

Under its current regulations, PBGC may pay a benefit in a lump sum if the [lump-sum value](#) of the benefit as of DOPT is \$5,000 or less (a "*de minimis* benefit") and annuity benefits are not already in pay status. [Spousal consent](#) generally is not required to pay *de minimis* benefits in a lump sum. PBGC generally offers to pay *de minimis* benefits that are not already in pay status in a lump sum. However, an option to receive an annuity instead of a lump sum is also given to participants and certain beneficiaries, including an [alternate payee](#).

This policy describes the rules under which PBGC pays all or part of a benefit in a lump sum. With this edition, PBGC is reinstating the rule that the option to roll over a lump sum payment to an individual retirement arrangement or other eligible retirement plan will only be offered to a payee if the lump sum payment is at least \$200, including interest. This revision conforms to the provisions of the second edition of policy [5.4-10 Small Benefit Payments](#).

B. Scope and Effective Date

For the purposes of this policy, a *lump sum* is the payment of all or part of the [lump-sum value](#) of a pension benefit in a single sum. The terms *lump sum*, *lump-sum payment*, and *lump-sum benefit*, may be used interchangeably within this policy to describe the payment of a benefit in a lump sum. Other single-sum or non-periodic payments that PBGC may operationally refer to as a *lump sum* or *lump-sum payment* (for instance, an underpayment or large single-sum back payment of annuity benefits) are not covered by this policy. In addition, this policy statement does not apply to payments made pursuant to settlement agreements under which PBGC agrees or has agreed to pay benefits in a lump sum.

This policy statement applies to all plans trusteeed by PBGC including plans that are sufficiently funded, whether for guaranteed benefits or benefit liabilities. It also applies to a plan that PBGC has not trusteeed but for which PBGC is paying benefits as provided under *PBGC Operating Policy 3.4-1 Benefit Payments Prior to Trusteeship*. This policy statement is effective upon issuance.

C. General Policy

1. **De Minimis Benefit.** If the ►lump-sum value of a benefit as of DOPT is \$5,000 or less (a "*de minimis* benefit") and annuity benefits are not yet in pay status, PBGC generally will pay the benefit in a ►lump sum as provided in this policy if so elected by the payee. However, the benefit may be paid as an annuity as provided below in section [E.1. Annuity Option](#).

In addition, PBGC will treat a benefit as *de minimis* as of DOPT and thereby payable in a lump sum as otherwise provided in this policy if the sum of any payments owed prior to DOPT and the lump-sum value of the remaining benefit as of DOPT is \$5,000 or less and annuity benefits have not commenced (for instance, a participant reached his or her required beginning date before DOPT and the plan had not begun making annuity payments).

For an exception to paying a *de minimis* benefit in a lump sum, see section [E.6. Retroactive Annuity Payments Exceed Lump-sum Payment](#).

Note: When PBGC increased the amount of a *de minimis* benefit from \$3,500 to \$5,000, certain participants who were issued ►benefit determinations for annuity benefits before July 16, 1998, were allowed to elect a lump-sum payment if specific conditions were met (P5K benefit rules.) For guidance on eligibility for a lump-sum payment under the P5K benefit rules, see section [I. P5K Benefits](#) of this policy.

2. **Non-De Minimis Benefit.** If the lump-sum value of a benefit as of DOPT is more than \$5,000 (a "non-*de minimis* benefit"), PBGC generally will not pay the benefit in a lump sum, except as otherwise provided below under section [C.3. Other Applicable PBGC Operating Policy](#).

If a benefit is not payable in a lump sum, it will be administered in accordance with PBGC operating policies on the calculation and payment of annuities (for instance, *PBGC Operating Policies 5.2-4 Annuity Starting Dates, 5.4-7 Annuity Benefit Forms, 5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)*, and so forth).

3. **Other Applicable PBGC Operating Policy.** Lump-sum benefits are paid in accordance with this policy except as otherwise specified in PBGC operating policy, including but not limited to:

- [3.4-1 Benefit Payments Prior to Trusteeship](#)
- [5.2-6 Erroneous Commencement](#)
- [5.11-2 Payment of Priority Category 2 Benefits](#)
- [5.12-1 Cash Balance Plans - Valuing and Paying Benefits](#)
- [5.12-2 Statutory Hybrid Plans – Valuing and Paying Benefits](#)
- [6.6-2 Assignment or Alienation of Benefits](#)
- [6.6-4 Plan Loans](#)
- [6.7-1 4022\(c\) Amounts](#)
- [8.8-1 Missing Participants Program](#)

4. Residual Benefits

- a. **Benefits disregarded.** When determining the lump-sum value of a benefit as of DOPT, PBGC disregards the value of any distributions made by the plan before DOPT.

Further, in determining if the lump-sum value of a benefit is \$5,000 or less and therefore payable in a lump sum, PBGC disregards the value of (i) any benefits paid in a lump sum by the plan or PBGC on or after DOPT and (ii) any benefits PBGC has not yet determined under §4022(c) of ERISA (for additional guidance on payment of §4022(c) amounts, see *PBGC Operating Policy 6.7-1 4022(c) Amounts*).

- b. **Payment of residual benefits.** A ►residual benefit means the lump-sum value of a benefit that remains after PBGC disregards the value of any benefits described above in section C.4.a. in determining if a benefit is *de minimis* and therefore payable in a lump sum. If a residual benefit as of DOPT is:

- i. \$5,000 or less and annuity benefits are not in pay status, the residual benefit may be paid in:

- A lump sum as otherwise provided in this policy, even if the lump-sum value of the benefit as of DOPT exceeds \$5,000, or
- As an annuity as provided below in section [**E.1. Annuity Option**](#).

If an annuity is already in pay status, the residual benefit is payable only as an increase in the annuity.

- More than \$5,000, the residual benefit is payable only as an annuity unless otherwise provided above under section [**C.3**](#).

Example 1: A participant's estimated benefit had a lump-sum value of \$4,500 as of DOPT. The participant was paid an estimated lump sum of \$4,680 including interest. Upon completion of the valuation, the lump-sum value of the participant's benefit as of DOPT was determined to be \$6,025. The value of the residual benefit as of DOPT is \$1,525 (\$6,025 - \$4,500). Therefore, the residual benefit is payable in a lump sum or as an annuity if so elected by the participant.

Example 2: A participant's estimated benefit had a lump-sum value of \$525 as of DOPT. The participant was paid an estimated lump sum of \$578 including interest. Upon completion of the valuation, the value of the participant's benefit as of DOPT is determined to be \$5,535. The value of the residual benefit as of DOPT is \$5,010 (\$5,535 - \$525). Therefore, the residual benefit is payable only as an annuity.

- Conversion of residual benefit to annuity amount.** PBGC will convert a residual benefit as of DOPT to an annuity as described in the [**Appendix**](#).

- Unpaid Plan Application for a Lump-Sum Payment.** PBGC generally will not honor a plan application for a lump-sum payment (whether *de minimis* or not) that was not paid by the plan administrator regardless of when the application was filed with the plan administrator or when the payment was originally due.
- Spousal Consent.** PBGC does not require [spousal consent](#) to pay a *de minimis* benefit in a lump sum, including a residual benefit that is *de minimis*, except as provided in section [**I. P5K Benefits**](#).
- Application of §436(d) Benefit Limitations.** PBGC follows its rules in *PBGC Policy 5.14-2 §436 Benefit Limitation Under PPA 2006* in paying a benefit in a lump sum and does not limit payment of a *de minimis* benefit in a lump sum due to a §436(d) limitation in effect as of DOPT.

D. Lump Sums Payable after Death

- Post-DOPT Death – *De Minimis* Benefit Owed.** If a participant or beneficiary who is entitled to a [► de minimis ►](#) benefit dies on or after DOPT and before payment is made, the benefit is treated as a payment owed to a deceased payee, unless the decedent filed for annuity payments and died after the [► annuity starting date](#) (for guidance on deaths after the annuity starting date, see section [**E.1. Annuity Option**](#), below).
 - If a participant was married at the time of death, a [► qualified preretirement survivor annuity](#) (QPSA) is not payable to the surviving spouse as the participant is treated as not having future annuity benefits payable as of DOPT.
 - The benefit is payable only in a [► lump sum](#) to the deceased payee's beneficiary determined under *PBGC Operating Policy 8.6-1 Payments to Beneficiaries*.
- Pre-DOPT Death – *De Minimis* Benefit Owed.** If a participant or beneficiary who was entitled to a *de minimis* benefit under plan provisions died before DOPT and before payment was made, PBGC follows plan provisions regarding payment of the benefit as a QPSA or other death benefit, if any, provided by the plan (for instance, as a lump-sum death benefit).
- QPSA Payable.** PBGC will pay a surviving spouse a lump sum in lieu of annuity payments due under a QPSA if so elected by the spouse and the lump-sum value of the QPSA as of DOPT is \$5,000 or less, even if the [► lump-sum value](#) of the participant's benefit as of DOPT was not *de minimis*.

Note: For additional guidance on QPSAs, see *PBGC Operating Policy 5.7-2 Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984*.

- Lump Sum Payable to an Estate.** Continuing annuity payments owed to an [► estate](#) are payable in a lump sum, regardless of the lump-sum value of the benefit as of DOPT, as provided in *PBGC Operating Policy 8.6-1 Payments to Beneficiaries*.

E. Payment Options and Methodology

1. Annuity Option. PBGC gives a participant or beneficiary entitled to a ► *de minimis*► benefit the option of receiving an annuity instead of a ► lump-sum payment as follows:

- a. The annuity option is not offered to a beneficiary due a ► lump-sum benefit owed to a deceased payee as described above in section **D.1**.
- b. The annuity option generally is offered regardless of the ► lump-sum value of the benefit.
- c. If the participant or beneficiary applies for an annuity instead of a lump sum, the benefit will be administered in accordance with PBGC policies on the calculation and payment of annuities. However, if the applicant dies before the annuity payments commence and the death occurs:
 - Before the ► annuity starting date, the benefit will be treated as a lump-sum payment owed to a deceased payee as provided above in section **D.1**.
 - On or after the annuity starting date, payment of survivor benefits will be determined in accordance with *PBGC Operating Policies 5.4-7 Annuity Benefit Forms* and *8.6-1 Payments to Beneficiaries*.
- d. After a participant or beneficiary applies for a lump sum or an annuity, PBGC will honor a request to change the payment option if the request is received before the date the lump-sum payment is made or the annuity payments commence.
- e. For purposes of recoupment and recovery, a payee is treated as entitled to future benefit payments as of DOPT once annuity benefits are in pay status.

A payee is treated as not entitled to future benefit payments as of DOPT once the benefit has been paid in a lump sum.

2. Payment of Interest. Interest is paid on a lump sum as provided in *PBGC Policy 6.3-1 Underpayment Reimbursement and Interest Payments*.

3. Rollover Option. PBGC offers a payee due a lump-sum payment of \$200 or more the option of making a ► direct rollover of all or part of the payment into an individual retirement arrangement or other eligible retirement plan as required under the ► *IRC*.

PBGC will honor a rollover election only if the total payment, including interest, will be rolled over or the portion of a payment to be rolled over is \$500 or more.

4. Tax Withholding. Tax will be withheld from a lump-sum payment when required and as provided under the ► *IRC* and guidance thereunder.

5. Lump Sums Payable under a QDRO. *PBGC Operating Policy 6.6-3 Qualified Domestic Relations Orders* establishes the rules under which all or part of a participant's benefit may be paid to an ► alternate payee under a ► *QDRO*. Benefits due a participant and/or an alternate payee as provided under a QDRO are payable in a lump sum as follows:

- a. **Separate interest QDRO.** Under a ► *separate interest QDRO*, after applying the terms of the QDRO, PBGC will determine if an alternate payee's interest and a participant's interest in a benefit is payable in a lump sum by applying this policy separately to the lump-sum value as of DOPT of each interest in the benefit.

Example 3: A separate interest QDRO awards an alternate payee a portion of the participant's accrued benefit. PBGC calculates the lump-sum value of the participant's interest as of DOPT as \$6,000 and the lump-sum value of the alternate payee's interest as of DOPT as \$2,500. The participant's interest in the benefit is not *de minimis* and therefore cannot be paid in a lump sum. However, the alternate payee's interest in the benefit is *de minimis* and therefore is payable in a lump-sum.

Example 4: A separate interest QDRO awards an alternate payee a portion of the participant's accrued benefit. PBGC calculates that the lump-sum value of the participant's interest as of DOPT as \$4,500 and the lump-sum value of the alternate payee's interest as of DOPT as \$3,500. The participant and the alternate payee's benefits are both payable in lump sums as each party's interest in the benefit is *de minimis*.

- b. **Shared payment QDRO.** Under a ► *shared payment QDRO*, a lump sum will be payable to an alternate payee only if the participant's benefit, before applying the terms of the QDRO, is payable in a lump sum as provided under this policy and the participant elects to receive the benefit in a lump sum.

Example 5: A shared payment QDRO awards an alternate payee a portion of the participant's monthly payments. The benefit is not yet in pay status and has a lump-sum value of \$8,000 as of DOPT. A lump sum is not payable to the

participant or alternate payee because the participant's benefit is not *de minimis* as of DOPT. Payment to the participant and the alternate payee can be made only as an annuity.

Example 6: A shared payment QDRO awards the alternate payee a portion of the participant's monthly payments. The benefit is not yet in pay status and has a lump-sum value of \$4,900 as of DOPT. Since the benefit is *de minimis*, the participant may elect to receive the benefit in a lump sum or as an annuity. If the participant elects a lump sum, PBGC concludes that a lump sum of \$3,300 plus interest will be payable to the participant and a lump sum of \$1,600 plus interest will be payable to the alternate payee. However, if the participant elects an annuity, the alternate payee will also be paid an annuity.

- c. **QDRO-ordered lump-sum payments.** If a QDRO provides that a benefit or payment due an alternate payee is payable in a lump sum, payment will be made in a lump sum only as provided in this section E.5.

6. **Retroactive Annuity Payments Exceed Lump-sum Payment.** A payee whose benefit is *de minimis* and who may elect to receive an annuity instead of a lump sum may be eligible for a retroactive annuity starting date under *PBGC Policy 5.2-4 Annuity Starting Dates* or *PBGC Policy 5.2-5 Required Beginning Dates*. In some instances, retroactive annuity payments may equal or exceed the amount of the lump-sum payment due the payee if paid on the same date.

If PBGC determines that the payment of retroactive annuity payments will equal or exceed the amount of the lump sum payable as of the same payment date, PBGC will pay the benefit only as an annuity.

Example 7: A participant's benefit has a lump-sum value of \$2,322 as of DOPT. The participant is eligible for a retroactive annuity starting date under *PBGC Policy 5.2-5 Required Beginning Dates*. At the time the benefit determination is being prepared, a lump-sum payment of \$3,600 including interest is payable. However, if the participant is paid an annuity, retroactive annuity payments of \$4,900 including interest are payable. The participant will be notified of the annuity benefit and sent an annuity application.

7. **Partial Payments.** PBGC will not pay a benefit in a lump sum that is less than the lump-sum value of the benefit or the lump-sum value of the ►residual benefit, except as otherwise provided in this policy (e.g., a payment under a separate interest QDRO or a withdrawal of ►employee contributions).

Example 8: A participant's benefit has a lump-sum value of \$11,000 as of DOPT. The participant, claiming hardship, requests that PBGC pay \$4,000 of the benefit in a lump sum now and pay the remainder of the benefit as an annuity. Even though the requested payment is \$5,000 or less, the benefit is not *de minimis*. PBGC will pay the benefit only as an annuity on or after the participant's earliest PBGC retirement date.

Example 9: A participant's benefit has a lump-sum value of \$5,010 as of DOPT; therefore, the participant is due an annuity. The participant requests a lump sum of \$5,000 in lieu of the annuity. The participant may not forfeit a portion of the benefit (i.e., the \$10) to receive a lump-sum payment. PBGC will pay the benefit only as an annuity on or after the participant's earliest PBGC retirement date.

Example 10: A participant is due a total lump-sum payment with interest of \$5,624 on December 1. The participant wants to reduce his/her tax liability for the current year and requests that one half of the payment be paid as a direct payment on December 1 of the current tax year and that the remainder be paid in a direct payment on January 1 of the following tax year. PBGC will not make a partial payment in each year.

F. Lump-Sum Payments by a Prior Plan Administrator

1. **Lump-Sum Payments Due Prior to DOPT.** PBGC generally will accept the calculation, valuation and payment of a benefit in a ►lump sum by the ►plan administrator if the payment was due before DOPT regardless of whether the payment was made before or on or after DOPT.
2. **Lump-Sum Payments Due On or After DOPT.** If the plan administrator made a ►lump-sum payment that was due on or after DOPT, PBGC generally will determine (i) whether such benefits were calculated, valued, and paid correctly under plan provisions, ►ERISA, the ►IRC, or other applicable law, and (ii) for payments made after the ►overpayment accrual commencement date (OACD) and subject to recovery, whether amounts in excess of those payable under Title IV were paid.

G. Exceptions Applicable to Lump-Sum Payments

1. **General Rule.** Nothing in this policy requires PBGC to pay a benefit in a ►lump sum or prohibits PBGC from recalculating, valuing, recapturing or recovering a benefit paid in a lump sum if PBGC determines:
 - Payment would be or was made in violation of ►ERISA, PBGC regulations (e.g., the regulations found in § 4041.42 or § 4044.4), the ►IRC, or other law applicable to the allocation and distribution of pension plan assets.

- There is evidence of fraud, waste or abuse regarding the payment.
 - Errors in the calculation, valuation and/or payment of a benefit were made by the plan administrator.
 - Amounts greater than the guaranteed portion of the benefit are subject to recapture under section 4045 of ERISA.
2. No inference should be drawn from this policy as to whether a plan administrator was justified in paying lump sums at a particular time or under particular circumstances.
 3. When necessary, in consultation with the Office of Chief Counsel (OCC), Office of General Counsel (OGC) and the Actuarial Services Division (ASD), Policy and Procedures Division (PPD) will provide assistance and guidance in determining whether a benefit was acceptably calculated, valued and/or paid in a lump sum by a plan administrator and what if any, corrective, legal or other action may be required.

H. Correction of Lump-Sum Benefit and Payment Errors

Errors in lump-sum benefits or payments are corrected as provided in *PBGC Operating Policy 5.8-1 Benefit Corrections*.

I. P5K Benefits

Effective July 16, 1998, PBGC raised its *de minimis* amount to \$5,000. ► [Benefit determinations](#) issued since July 16, 1998, inform participants and beneficiaries that benefits with a ► [lump-sum value](#) as of DOPT of \$5,000 or less (and that are not already in pay status) are payable in a ► [lump sum](#) and benefits with a ► [present value](#) of more than \$5,000 are only payable as an annuity. In addition, certain benefits that were non-*de minimis* under earlier regulations and policy are now payable in an elective lump sum (with spousal consent) for participants who were alive on DOPT and on July 16, 1998. From July 16, 1998 through March 9, 1999, PBGC conducted the P5K Project to offer lump sums instead of annuity payments to affected participants (P5K participants) to whom a benefit determination was issued before July 16, 1998.

An affected participant who may not have been offered a lump sum under the P5K Project (or the surviving spouse of a deceased P5K participant) is eligible to receive a ► [lump-sum payment](#) under the following rules.

1. Living P5K Participant. A lump sum is payable to a living P5K participant as follows:

- a. The lump-sum value of the benefit as of DOPT is \$5,000 or less.
- b. A benefit determination for an annuity was sent to the participant before July 16, 1998 (i.e., the participant was a deferred vested participant entitled to a future annuity benefit at DOPT under previous *de minimis* benefit rules).
- c. A lump sum has not already been paid, and
- d. An annuity is not already in pay status.

PBGC will pay the benefit in a lump sum upon receipt of a completed lump-sum application with spousal consent to the lump-sum payment. Spousal consent is required because the spouse is waiving the right to a ► [QPSA](#) or ► [QJSA](#) that may be associated with the annuity payable under earlier regulations and policy.

2. Deceased P5K Participant. Provided the conditions described above in section I.1.a.-d. are met, a benefit owed a deceased P5K participant is payable, as follows:

a. Post-Retirement Equity Act (REA) Plan (DOPT on and after August 23, 1984). If the participant died:

- Before July 16, 1998, a surviving spouse may elect a lump sum equal to the present value of the QPSA *benefit* (not the participant's benefit). If the participant was not married, a lump sum is not payable.
- On or after July 16, 1998, a surviving spouse may elect to receive a lump sum equal to the value of the *participant's benefit* (not the QPSA benefit) or to receive a QPSA benefit. If the participant was not married, the lump sum is treated as a payment owed a deceased participant, which is payable to the participant's beneficiary as determined under *PBGC Policy 8.6-1 Payments to Beneficiaries*.

b. Pre-REA Plan (DOPT before August 23, 1984). If the participant died:

- Before July 16, 1998, a lump sum is not payable. In addition, a QPSA benefit is not payable; however, certain surviving spouses may be due a survivor benefit under *PBGC Policy 5.7-3 Survivor Annuities in pre-REA Terminations*.
- On and after July 16, 1998, the lump sum is treated as a payment owed the deceased participant, which is payable to the participant's beneficiary as determined under *PBGC Policy 8.6-1 Payments to Beneficiaries*.

For additional guidance on entitlement to a QPSA, see *PBGC Policy 5.7-2 Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984*.

Appendix: Conversion of a Residual Benefit to Annuity Amount

A ▶ **residual benefit** means the ▶ **lump-sum value** of a benefit as of DOPT that remains after PBGC disregards the value of any benefits described above in section **C.4.a.** in determining if a benefit is de minimis and therefore payable in a lump sum. PBGC converts a residual benefit to an annuity as follows, except as otherwise provided under PBGC operating policy (for instance, in the case of a withdrawal of ▶ **employee contributions**):

1. The lump-sum value of the annuity benefit as of DOPT, including the value of the benefits paid on or after DOPT, will be calculated as otherwise provided in 29 CFR §4022.7(d).
2. The lump-sum value of the benefit that was paid on or after DOPT will be disregarded to establish the residual benefit.
3. The ratio of the residual benefit to the lump-sum value of the benefit as of DOPT will be calculated.
4. This ratio will be applied to the annuity benefit that would have been due to calculate the residual annuity benefit that is due.

Example: A participant's ▶ **estimated benefit** had a lump-sum value of \$4,000 as of DOPT. The participant was paid an estimated lump sum of \$4,100 including interest. PBGC determines the amount of the annuity benefit due the participant (the ▶ **final benefit**) as follows:

1. The participant's monthly benefit is \$110 (before taking into account the estimated lump-sum that was paid).
2. The lump-sum value as of DOPT of the benefit of \$110 is \$10,000.
3. The residual benefit as of DOPT is \$6,000 (\$10,000 - \$4,000). Therefore, a lump-sum payment of the residual benefit is not permitted.
4. The ratio of the residual benefit, \$6,000, to the lump-sum value of the monthly benefit, \$10,000, is .6000 (\$6,000 ÷ \$10,000).
5. The participant is due a final monthly benefit of \$66 (\$110 X .6000).

Concurrence, Endorsement, and Approval

Policy 5.4-9 Lump-Sum Benefit Payments, 4th Ed.		
Concurrence	Initials	Date
ASD: Scott Young, Manager	S.G.Y.	06/24/2015
PPD: Janice Brown-Taylor, Manager	J.B.T.	06/24/2015
OCC: Joseph Krettek, Assistant Chief Counsel	J.M.K.	06/24/2015
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	06/26/2015
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	06/30/2015
Chief Financial Officer: Patricia Kelly	P.K.	06/30/2015
Approval		
Chief of Benefits Administration and Director of OBA: Cathleen Kronopolus	C.K.	06/29/2015
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration and Director of the Office of Benefits Administration on Transmittal 2015-07.</i>		

Previous Editions

- [5.4-9 Lump-Sum Benefit Payments 1st Ed. - Outdated](#)
- [5.4-9 Lump-Sum Benefit Payments 2nd Ed. - Outdated](#)
- [5.4-9 Lump-Sum Benefit Payments 3rd Ed. - Outdated](#)

[Top of Page](#)

5.4-9 Lump-Sum Benefit Payments

Edition	5 th Edition
Issue Date	03/30/2021
Effective Date	Upon Issuance
Transmittal	Transmittal 2021-03
Contact	ASK PPD
Related Links	See section C.3. Other Applicable PBGC Operating Policy

In this policy

- [A. Introduction](#)
- [B. Scope and Effective Date](#)
- [C. General Policy](#)
- [D. Lump Sums Payable after Death](#)
- [E. Payment Options and Methodology](#)
- [F. Lump-Sum Payments by a Prior Plan Administrator](#)
- [G. Exceptions Applicable to Lump-Sum Payments](#)
- [H. Correction of Lump-Sum Benefit and Payment Errors](#)
- [I. P5K Benefits](#)

[Appendix - Conversion of a Residual Benefit to Annuity Amount](#)

[Concurrence, Endorsement, and Approval](#)

A. Introduction

Pension plans sometimes give participants and beneficiaries the option of receiving all or part of their pension benefit in a [lump-sum payment](#) instead of receiving annuity payments. In addition, as provided under section 203(e)(1) of [ERISA](#) and section 411(a)(11) of the [Internal Revenue Code](#) (IRC), a pension plan may pay a benefit with a [present value](#) of \$5,000 or less in a [mandatory distribution](#). Effective January 1, 2008, the [Pension Protection Act of 2006](#) placed limitations on [prohibited payments](#), including certain lump-sum payments, when a plan does not meet specified funding requirements. PBGC's regulations on the calculation and payment of benefits in a lump sum are set forth in 29 CFR §4022.7.

Under its current regulations, PBGC may pay a benefit in a lump sum if the [lump-sum value](#) of the benefit as of DOPT is \$5,000 or less (a “*de minimis* benefit”) and annuity benefits are not already in pay status. [Spousal consent](#) generally is not required to pay *de minimis* benefits in a lump sum. PBGC generally offers to pay *de minimis* benefits that are not already in pay status in a lump sum. However, an option to receive an annuity instead of a lump sum is also given to participants and certain beneficiaries, including an [alternate payee](#).

This policy describes the rules under which PBGC pays all or part of a benefit in a lump sum. With this edition, PBGC clarifies in Section E.3 that a payee who has reached his or her required beginning date (RBD) will not be permitted to directly roll over their entire lump-sum benefit but will be provided information about possible eligibility for a partial indirect rollover (60 day).

5.4-9 Lump-Sum Benefit Payments

B. Scope and Effective Date

For the purposes of this policy, a *lump sum* is the payment of all or part of the [lump-sum value](#) of a pension benefit in a single sum. The terms *lump sum*, *lump-sum payment*, and *lump-sum benefit*, may be used interchangeably within this policy to describe the payment of a benefit in a lump sum. Other single-sum or non-periodic payments that PBGC may operationally refer to as a *lump sum* or *lump-sum payment* (for instance, an underpayment or large single-sum back payment of annuity benefits) are not covered by this policy. In addition, this policy statement does not apply to payments made pursuant to settlement agreements under which PBGC agrees or has agreed to pay benefits in a lump sum.

This policy statement applies to all plans trusteeed by PBGC including plans that are sufficiently funded, whether for guaranteed benefits or benefit liabilities. It also applies to a plan that PBGC has not trusteeed but for which PBGC is paying benefits as provided under *PBGC Operating Policy 3.4-1 Benefit Payments Prior to Trusteeship*. This policy statement is effective upon issuance for all payments communicated on or after April 1, 2021. Payments communicated prior to this effective date will be paid according to the provisions of E.3, fourth edition.

C. General Policy

1. **De Minimis Benefit.** If the [lump-sum value](#) of a benefit as of DOPT is \$5,000 or less (a “*de minimis* benefit”) and annuity benefits are not yet in pay status, PBGC generally will pay the benefit in a [lump sum](#) as provided in this policy if so elected by the payee. However, the benefit may be paid as an annuity as provided below in section [E.1. Annuity Option](#).

In addition, PBGC will treat a benefit as *de minimis* as of DOPT and thereby payable in a lump sum as otherwise provided in this policy if the sum of any annuity payments owed prior to DOPT and the lump-sum value of the remaining benefit as of DOPT is \$5,000 or less and annuity benefits have not commenced (for instance, a participant reached his or her required beginning date before DOPT and the plan had not begun making annuity payments).

For an exception to paying a *de minimis* benefit in a lump sum, see section [E.6. Retroactive Annuity Payments Exceed Lump-sum Payment](#).

Note: When PBGC increased the amount of a *de minimis* benefit from \$3,500 to \$5,000, certain participants who were issued [benefit determinations](#) for annuity benefits before July 16, 1998, were allowed to elect a lump-sum payment if specific conditions were met (P5K benefit rules.) For guidance on eligibility for a lump-sum payment under the P5K benefit rules, see section [I. P5K Benefits](#) of this policy.

2. **Non-De Minimis Benefit.** If the lump-sum value of a benefit as of DOPT is more than \$5,000 (a “non-*de minimis* benefit”), PBGC generally will not pay the benefit in a lump sum, except as otherwise provided below under section [C.3. Other Applicable PBGC Operating Policy](#).

If a benefit is not payable in a lump sum, it will be administered in accordance with PBGC operating policies on the calculation and payment of annuities (for instance, *PBGC Operating Policies 5.2-4 Annuity Starting Dates, 5.4-7 Annuity Benefit Forms, 5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)*, and so forth).

5.4-9 Lump-Sum Benefit Payments

3. **Other Applicable PBGC Operating Policy.** Lump-sum benefits are paid in accordance with this policy except as otherwise specified in PBGC operating policy, including but not limited to:

- ***3.4-1 Benefit Payments Prior to Trusteeship***
- ***5.2-6 Erroneous Commencement***
- ***5.11-2 Payment of Priority Category 2 Benefits***
- ***5.12-1 Cash Balance Plans - Valuing and Paying Benefits***
- ***5.12-2 Statutory Hybrid Plans – Valuing and Paying Benefits***
- ***6.7-1 4022(c) Amounts***
- ***6.3-1 Underpayment Reimbursement and Interest Payments***
- ***6.6-2 Assignment or Alienation of Benefits***
- ***6.6-4 Plan Loans***
- ***8.8-1 Missing Participants Program***
- ***8.8-2 Expanded Missing Participants Program***

4. Residual Benefits

a. **Benefits disregarded.** When determining the lump-sum value of a benefit as of DOPT, PBGC disregards the value of any distributions made by the plan before DOPT.

Further, in determining if the lump-sum value of a benefit is \$5,000 or less and therefore payable in a lump sum, PBGC disregards the value of (i) any benefits paid in a lump sum by the plan or PBGC on or after DOPT and (ii) any benefits PBGC has not yet determined under §4022(c) of ERISA (for additional guidance on payment of §4022(c) amounts, see *PBGC Operating Policy 6.7-1 4022(c) Amounts*).

b. **Payment of residual benefits.** A residual benefit means the lump-sum value of a benefit that remains after PBGC disregards the value of any benefits described above in section C.4.a. in determining if a benefit is *de minimis* and therefore payable in a lump sum. If a residual benefit as of DOPT is:

- 1) \$5,000 or less and annuity benefits are not in pay status, the residual benefit may be paid in:
 - A lump sum as otherwise provided in this policy, even if the lump-sum value of the benefit as of DOPT exceeds \$5,000, or
 - As an annuity as provided below in section ***E.1. Annuity Option***.

If an annuity is already in pay status, the residual benefit is payable only as an increase in the annuity.

- 2) More than \$5,000, the residual benefit is payable only as an annuity unless otherwise provided above under **section C.3**.

Example 1: A participant's estimated benefit had a lump-sum value of \$4,500 as of DOPT. The participant was paid an estimated lump sum of \$4,680 including interest. Upon completion of the valuation, the lump-sum value of the participant's benefit as of DOPT was determined to be \$6,025. The value of the residual benefit as of DOPT is \$1,525 (\$6,025 - \$4,500). Therefore, the residual benefit is payable in a lump sum or as an annuity if so elected by the participant.

5.4-9 Lump-Sum Benefit Payments

Example 2: A participant's estimated benefit had a lump-sum value of \$525 as of DOPT. The participant was paid an estimated lump sum of \$578 including interest. Upon completion of the valuation, the value of the participant's benefit as of DOPT is determined to be \$5,535. The value of the residual benefit as of DOPT is \$5,010 (\$5,535 - \$525). Therefore, the residual benefit is payable only as an annuity.

- c. **Conversion of residual benefit to annuity amount.** PBGC will convert a residual benefit as of DOPT to an annuity as described in the [**Appendix**](#).
5. **Unpaid Plan Application for a Lump-Sum Payment.**

PBGC generally will not honor a plan application for a lump-sum payment (whether *de minimis* or not) that was not paid by the plan administrator regardless of when the application was filed with the plan administrator or when the payment was originally due.

6. **Spousal Consent**

PBGC does not require [**spousal consent**](#) to pay a *de minimis* benefit in a lump sum, including a residual benefit that is *de minimis*, except as provided in section [**I. P5K Benefits**](#).

7. **Application of §436(d) Benefit Limitations**

PBGC follows its rules in [**PBGC Policy 5.14-2 §436 Benefit Limitation Under PPA 2006**](#) in paying a benefit in a lump sum and does not limit payment of a *de minimis* benefit in a lump sum due to a §436(d) limitation in effect as of DOPT.

D. Lump Sums Payable after Death

1. **Post-DOPT Death – *De Minimis* Benefit Owed.** If a participant or beneficiary who is entitled to a [*de minimis* benefit](#) dies on or after DOPT and before payment is made, the benefit is treated as a payment owed to a deceased payee, unless the decedent filed for annuity payments and died after the [*annuity starting date*](#) (for guidance on deaths after the annuity starting date, see section [**F.1. Annuity Option**](#), below).
 - a. If a participant was married at the time of death, a [*qualified preretirement survivor annuity*](#) (QPSA) is not payable to the surviving spouse as the participant is treated as not having future annuity benefits payable as of DOPT.
 - b. The benefit is payable only in a [*lump sum*](#) to the deceased payee's beneficiary determined under [**PBGC Operating Policy 8.6-1 Payments to Beneficiaries**](#).
2. **Pre-DOPT Death – *De Minimis* Benefit Owed.** If a participant or beneficiary who was entitled to a *de minimis* benefit under plan provisions died before DOPT and before payment was made, PBGC follows plan provisions regarding payment of the benefit as a QPSA or other death benefit, if any, provided by the plan (for instance, as a lump-sum death benefit).
3. **QPSA Payable.** PBGC will pay a surviving spouse a lump sum in lieu of annuity payments due under a QPSA if so elected by the spouse and the [*lump-sum value*](#) of the QPSA as of DOPT is \$5,000 or less, even if the lump-sum value of the participant's benefit as of DOPT was not *de minimis*.

5.4-9 Lump-Sum Benefit Payments

For additional guidance on QPSAs, see *PBGC Operating Policy 5.7-2 Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984*.

4. **Lump Sum Payable to an Estate.** Continuing annuity payments owed to an estate are payable in a lump sum, regardless of the lump-sum value of the benefit as of DOPT, as provided in *PBGC Operating Policy 8.6-1 Payments to Beneficiaries*.

E. Payment Options and Methodology

1. **Annuity Option.** PBGC gives a participant or beneficiary entitled to a de minimis benefit the option of receiving an annuity instead of a lump-sum payment as follows:
 - a. The annuity option is not offered to a beneficiary due a lump-sum benefit owed to a deceased payee as described above in **section D.1**.
 - b. The annuity option generally is offered regardless of the lump-sum value of the benefit.
 - c. If the participant or beneficiary applies for an annuity instead of a lump sum, the benefit will be administered in accordance with PBGC policies on the calculation and payment of annuities. However, if the applicant dies before the annuity payments commence and the death occurs:
 - Before the annuity starting date, the benefit will be treated as a lump-sum payment owed to a deceased payee as provided above in **section D.1**.
 - On or after the annuity starting date, payment of survivor benefits will be determined in accordance with *PBGC Operating Policies 5.4-7 Annuity Benefit Forms* and *8.6-1 Payments to Beneficiaries*.
 - d. After a participant or beneficiary applies for a lump sum or an annuity, PBGC will honor a request to change the payment option if the request is received before the date the lump-sum payment is made or the annuity payments commence.
 - e. For purposes of recoupment and recovery, a payee is treated as entitled to future benefit payments as of DOPT once annuity benefits are in pay status

A payee is treated as not entitled to future benefit payments as of DOPT once the benefit has been paid in a lump sum.

2. **Payment of Interest.** Interest is paid on a lump sum as provided in PBGC Policy *6.3-1 Underpayment Reimbursement and Interest Payments*.
3. **Eligible Rollover Distribution.** PBGC offers a payee due a lump-sum payment of \$200 or more the ability to make a direct rollover of all or part of the payment into an individual retirement arrangement or other eligible retirement plan as permitted under the IRC. If the payment is made after the payee's required beginning date (RBD), PBGC will process the full payment as ineligible for direct rollover, but will provide information about the possibility of a partial indirect rollover (60 day).

5.4-9 Lump-Sum Benefit Payments

PBGC will honor a rollover election only if the total payment, including interest, will be rolled over or, if the payee's election splits the payment between a rollover and a direct payment, the rollover portion is \$500 or more.

4. **Tax Withholding.** Tax will be withheld from a lump-sum payment when required and as provided under the [IRC](#) and guidance thereunder.
5. **Lump Sums Payable under a QDRO.** *PBGC Operating Policy 6.6-3 Qualified Domestic Relations Orders* establishes the rules under which all or part of a participant's benefit may be paid to an [alternate payee](#) under a [QDRO](#). Benefits due a participant and/or an alternate payee as provided under a QDRO are payable in a lump sum as follows:
 - a. **Separate interest QDRO.** Under a [separate interest QDRO](#), after applying the terms of the QDRO, PBGC will determine if an alternate payee's interest and a participant's interest in a benefit is payable in a lump sum by applying this policy separately to the lump-sum value as of DOPT of each interest in the benefit.

Example 3: A separate interest QDRO awards an alternate payee a portion of the participant's accrued benefit. PBGC calculates the lump-sum value of the participant's interest as of DOPT as \$6,000 and the lump-sum value of the alternate payee's interest as of DOPT as \$2,500. The participant's interest in the benefit is not *de minimis* and therefore cannot be paid in a lump sum. However, the alternate payee's interest in the benefit is *de minimis* and therefore is payable in a lump-sum.

Example 4: A separate interest QDRO awards an alternate payee a portion of the participant's accrued benefit. PBGC calculates that the lump-sum value of the participant's interest as of DOPT as \$4,500 and the lump-sum value of the alternate payee's interest as of DOPT as \$3,500. The participant and the alternate payee's benefits are both payable in lump sums as each party's interest in the benefit is *de minimis*.

- b. **Shared payment QDRO.** Under a [shared payment QDRO](#), a lump sum will be payable to an alternate payee only if the participant's benefit, before applying the terms of the QDRO, is payable in a lump sum as provided under this policy and the participant elects to receive the benefit in a lump sum.

Example 5: A shared payment QDRO awards an alternate payee a portion of the participant's monthly payments. The benefit is not yet in pay status and has a lump-sum value of \$8,000 as of DOPT. A lump sum is not payable to the participant or alternate payee because the participant's benefit is not *de minimis* as of DOPT. Payment to the participant and the alternate payee can be made only as an annuity.

Example 6: A shared payment QDRO awards the alternate payee a portion of the participant's monthly payments. The benefit is not yet in pay status and has a lump-sum value of \$4,900 as of DOPT. Since the benefit is *de minimis*, the participant may elect to receive the benefit in a lump sum or as an annuity. If the participant elects a lump sum, PBGC concludes that a lump sum of \$3,300 plus interest will be payable to the participant and a lump sum of \$1,600 plus interest will be payable to the alternate payee. However, if the participant elects an annuity, the alternate payee will also be paid an annuity.

5.4-9 Lump-Sum Benefit Payments

- c. **QDRO-ordered lump-sum payments.** If a QDRO provides that a benefit or payment due an alternate payee is payable in a lump sum, payment will be made in a lump sum only as provided in this section E.5.
6. **Retroactive Annuity Payments Exceed Lump-sum Payment.** A payee whose benefit is *de minimis* and who may elect to receive an annuity instead of a lump sum may be eligible for a retroactive annuity starting date under PBGC Policy **5.2-4 Annuity Starting Dates** or PBGC Policy **5.2-5 Required Beginning Dates**. In some instances, retroactive annuity payments may equal or exceed the amount of the lump-sum payment due the payee if paid on the same date.

If PBGC determines that the payment of retroactive annuity payments will equal or exceed the amount of the lump sum payable as of the same payment date, PBGC will pay the benefit only as an annuity.

Example 7: A participant's benefit has a lump-sum value of \$2,322 as of DOPT. The participant is eligible for a retroactive annuity starting date under PBGC Policy **5.2-5 Required Beginning Dates**. At the time the benefit determination is being prepared, a lump-sum payment of \$3,600 including interest is payable. However, if the participant is paid an annuity, retroactive annuity payments of \$4,900 including interest are payable. The participant will be notified of the annuity benefit and sent an annuity application.

7. **Partial Payments.** PBGC will not pay a benefit in a lump sum that is less than the lump-sum value of the benefit or the lump-sum value of the residual benefit, except as otherwise provided in this policy (e.g., a payment under a separate interest QDRO or a withdrawal of employee contributions).

Example 8: A participant's benefit has a lump-sum value of \$11,000 as of DOPT. The participant, claiming hardship, requests that PBGC pay \$4,000 of the benefit in a lump sum now and pay the remainder of the benefit as an annuity. Even though the requested payment is \$5,000 or less, the benefit is not *de minimis*. PBGC will pay the benefit only as an annuity on or after the participant's earliest PBGC retirement date.

Example 9: A participant's benefit has a lump-sum value of \$5,010 as of DOPT; therefore, the participant is due an annuity. The participant requests a lump sum of \$5,000 in lieu of the annuity. The participant may not forfeit a portion of the benefit (i.e., the \$10) to receive a lump-sum payment. PBGC will pay the benefit only as an annuity on or after the participant's earliest PBGC retirement date.

Example 10: A participant is due a total lump-sum payment with interest of \$5,624 on December 1. The participant wants to reduce his/her tax liability for the current year and requests that one half of the payment be paid as a direct payment on December 1 of the current tax year and that the remainder be paid in a direct payment on January 1 of the following tax year. PBGC will not make a partial payment in each year.

F. Lump-Sum Payments by a Prior Plan Administrator

1. **Lump-Sum Payments Due Prior to DOPT.** PBGC generally will accept the calculation, valuation and payment of a benefit in a lump sum by the plan administrator if the payment was due before DOPT regardless of whether the payment was made before or on or after DOPT.

5.4-9 Lump-Sum Benefit Payments

2. **Lump-Sum Payments Due On or After DOPT.** If the plan administrator made a [lump-sum payment](#) that was due on or after DOPT, PBGC generally will determine (i) whether such benefits were calculated, valued, and paid correctly under plan provisions, [ERISA](#), the [IRC](#), or other applicable law, and (ii) for payments made after the [overpayment accrual commencement date](#) ('OACD') and subject to recovery, whether amounts in excess of those payable under Title IV were paid.

G. Exceptions Applicable to Lump-Sum Payments

1. **General Rule.** Nothing in this policy requires PBGC to pay a benefit in a [lump sum](#) or prohibits PBGC from recalculating, valuing, recapturing or recovering a benefit paid in a lump sum if PBGC determines:
 - Payment would be or was made in violation of [ERISA](#), PBGC regulations (e.g., the regulations found in § 4041.42 or § 4044.4), the [IRC](#), or other law applicable to the allocation and distribution of pension plan assets.
 - There is evidence of fraud, waste or abuse regarding the payment.
 - Errors in the calculation, valuation and/or payment of a benefit were made by the plan administrator.
 - Amounts greater than the guaranteed portion of the benefit are subject to recapture under section 4045 of ERISA.
2. No inference should be drawn from this policy as to whether a plan administrator was justified in paying lump sums at a particular time or under particular circumstances.
3. When necessary, in consultation with the Office of General Counsel (OGC), the Actuarial Services Division (ASD) and the Policy and Procedures Division (PPD) will provide assistance and guidance in determining whether a benefit was acceptably calculated, valued and/or paid in a lump sum by a plan administrator and what if any, corrective, legal or other action may be required.

H. Correction of Lump-Sum Benefit and Payment Errors

Errors in lump-sum benefits or payments are corrected as provided in *PBGC Operating Policy 5.8-1 Benefit Corrections*.

I. P5K Benefits

Effective July 16, 1998, PBGC raised its *de minimis* amount to \$5,000. [Benefit determinations](#) issued since July 16, 1998, inform participants and beneficiaries that benefits with a [lump-sum value](#) as of DOPT of \$5,000 or less (and that are not already in pay status) are payable in a [lump sum](#) and benefits with a [present value](#) of more than \$5,000 are only payable as an annuity. In addition, certain benefits that were non-*de minimis* under earlier regulations and policy are now payable in an elective lump sum (with spousal consent) for participants who were alive on DOPT and on July 16, 1998. From July 16, 1998 through March 9, 1999, PBGC conducted the P5K Project to offer lump sums instead of annuity payments to affected participants ('P5K participants') to whom a benefit determination was issued before July 16, 1998.

5.4-9 Lump-Sum Benefit Payments

An affected participant who may not have been offered a lump sum under the P5K Project (or the surviving spouse of a deceased P5K participant) is eligible to receive a [lump-sum payment](#) under the following rules.

1. **Living P5K Participant.** A lump sum is payable to a living P5K participant as follows:
 - a. The lump-sum value of the benefit as of DOPT is \$5,000 or less.
 - b. A benefit determination for an annuity was sent to the participant before July 16, 1998 (i.e., the participant was a deferred vested participant entitled to a future annuity benefit at DOPT under previous *de minimis* benefit rules).
 - c. A lump sum has not already been paid, and
 - d. An annuity is not already in pay status.

PBGC will pay the benefit in a lump sum upon receipt of a completed lump-sum application with spousal consent to the lump-sum payment. Spousal consent is required because the spouse is waiving the right to a [QPSA](#) or [QJSA](#) that may be associated with the annuity payable under earlier regulations and policy.

2. **Deceased P5K Participant.** Provided the conditions described above in section J.1.a.-d. are met, a benefit owed a deceased P5K participant is payable, as follows:
 - a. **Post-Retirement Equity Act (REA) Plan (DOPT on and after August 23, 1984).** If the participant died:
 - **Before July 16, 1998,** a surviving spouse may elect a lump sum equal to the present value of the QPSA *benefit* (not the participant's benefit). If the participant was not married, a lump sum is not payable.
 - **On or after July 16, 1998,** a surviving spouse may elect to receive a lump sum equal to the value of the *participant's benefit* (not the QPSA benefit) or to receive a QPSA benefit. If the participant was not married, the lump sum is treated as a payment owed a deceased participant, which is payable to the participant's beneficiary as determined under PBGC Policy [8.6-1 Payments to Beneficiaries](#).
 - b. **Pre-REA Plan (DOPT before August 23, 1984).** If the participant died:
 - **Before July 16, 1998,** a lump sum is not payable. In addition, a QPSA benefit is not payable; however, certain surviving spouses may be due a survivor benefit under PBGC Policy [5.7-3 Survivor Annuities in pre-REA Terminations](#).
 - **On and after July 16, 1998,** the lump sum is treated as a payment owed the deceased participant, which is payable to the participant's beneficiary as determined under PBGC Policy [8.6-1 Payments to Beneficiaries](#).

For additional guidance on entitlement to a QPSA, see PBGC Policy [5.7-2 Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984](#).

5.4-9 Lump-Sum Benefit Payments

Appendix Conversion of Residual Benefit to Annuity Amount

A residual benefit means the lump-sum value of a benefit as of DOPT that remains after PBGC disregards the value of any benefits described above in **section C.4.a.** in determining if a benefit is de minimis and therefore payable in a lump sum. PBGC converts a residual benefit to an annuity as follows, except as otherwise provided under PBGC operating policy (for instance, in the case of a withdrawal of employee contributions):

1. The lump-sum value of the annuity benefit as of DOPT, including the value of the benefits paid on or after DOPT, will be calculated as otherwise provided in 29 CFR §4022.7(d).
2. The lump-sum value of the benefit that was paid on or after DOPT will be disregarded to establish the residual benefit.
3. The ratio of the residual benefit to the lump-sum value of the benefit as of DOPT will be calculated.
4. This ratio will be applied to the annuity benefit that would have been due to calculate the residual annuity benefit that is due.

Example: A participant's estimated benefit had a lump-sum value of \$4,000 as of DOPT. The participant was paid an estimated lump sum of \$4,100 including interest. PBGC determines the amount of the annuity benefit due the participant (the final benefit) as follows:

- 1) The participant's monthly benefit is \$110 (before taking into account the estimated lump-sum that was paid).
- 2) The lump-sum value as of DOPT of the benefit of \$110 is \$10,000.
- 3) The residual benefit as of DOPT is \$6,000 ($\$10,000 - \$4,000$). Therefore, a lump-sum payment of the residual benefit is not permitted.
- 4) The ratio of the residual benefit, \$6,000, to the lump-sum value of the monthly benefit, \$10,000, is .6000 ($\$6,000 \div \$10,000$).
- 5) The participant is due a final monthly benefit of \$66 ($\$110 \times .6000$).

5.4-9 Lump-Sum Benefit Payments

Policy 5.4-9 Lump-Sum Benefit Payments, 5 th Ed.	
Concurrence	
OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	Digitally signed by  DAVID JOSEPH Date: 2021.03.26 07:41:40 -04'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	LAURA STEPHENS  Laura M. Stephens 2021.03.26 06:23:51 -04'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	MICHELE GRAY  Digitally signed by MICHELE GRAY Date: 2021.03.30 14:15:59 -04'00'
OBA/PSD: Jennifer Messina, Director	Digitally signed by  JENNIFER MESSINA Date: 2021.03.29 09:27:05 -04'00'
OGC: Joseph Krettek, Assistant General Counsel	JOSEPH KRETTEK  Digitally signed by JOSEPH KRETTEK Date: 2021.03.31 08:48:03 -04'00'
Endorsements	
General Counsel: F. Russell Dempsey	FREDRICK DEMPSEY  Digitally signed by FREDRICK DEMPSEY Date: 2021.03.31 10:49:57 -05'00'
Chief Financial Officer: Patricia Kelly	PATRICIA KELLY  Digitally signed by PATRICIA KELLY Date: 2021.03.31 08:03:14 -04'00'
Approval	
Chief of Benefits Administration: David Foley	DAVID FOLEY  Digitally signed by DAVID FOLEY Date: 2021.03.30 15:30:46 -04'00'
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on Transmittal 2021-03.</i>	

5.4-10 Small Benefit Payments

Edition	3rd Edition
Issue Date	03/30/2017
Transmittal	Transmittal Record 2017-02
Signed Policy	5.4-10 Small Benefit Payments
Contact	ASK PPD

In this policy

- A. Background
 - B. Scope and Effective Date
 - C. Definition
 - D. Policy
 - E. Notifications Issued Prior to this Policy
 - F. Examples
- Concurrence, Endorsement, and Approval

A. Background

Participants, beneficiaries, and alternate payees entitled to small benefit payments that are payable in a single sum, at times, fail to submit a benefit application. In these cases, the requirement that a benefit application must be received before payment can be made creates an administrative burden for PBGC. PBGC must keep records for these payees and benefits in its systems until payment is made. The longer the benefit or payments remain unpaid, the more burdensome payment may become later (e.g., the payee due the payment dies before receiving payment and PBGC must then determine to whom payment is due).

Section 205(g) of ERISA and section 417(e) of the Internal Revenue Code (IRC) allow pension plans to pay certain benefits without the consent of the payee (i.e., a benefit application from the payee requesting payment is not required).

This policy expands rules for making small benefit payments of less than \$200 without the submission of a benefit application to payees in the Missing Participants Program. This policy supplements Policy [5.4-9 Lump-Sum Benefit Payments](#), Policy [6.3-1 Underpayment Reimbursement and Interest Payments](#), Policy [8.8-1 Missing Participants Program](#), and Policy [8.6-1 Payments to Beneficiaries](#).

B. Scope and Effective Date

This policy applies to small benefit payments due participants, beneficiaries, and alternate payees in PBGC-trusteed plans (collectively "payees"). It also applies to payees covered under the Missing Participants Program. This policy is effective upon issuance.

C. Definition

1. **Small Benefit Payment** - For purposes of this policy, a Small Benefit Payment is a payment of less than \$200 including interest payable either as a lump-sum benefit, as described in Policy [5.4-9 Lump-Sum Benefit Payments](#), or as a single sum where ongoing or continuing annuity payments are not due the payee (e.g., back payments or underpayments owed to a deceased payee that are payable to the payee's designated beneficiary).

D. Policy

If a Small Benefit Payment is due and PBGC considers the available information on the payee to be reliable and sufficient to make payment, PBGC will pay it without an application for the benefit in accordance with the following rules.

1. **Notification.** PBGC will notify the payee in a benefit determination or other applicable notification (e.g., notification of an estimated benefit or of entitlement to a benefit under the Missing Participants Program) of its intent to pay the benefit as soon as practicable after the notification is sent. The payee will not be given the option of receiving an annuity nor to have the benefit paid in a direct rollover to an individual retirement arrangement or another qualified retirement plan, even if the Small Benefit Payment is a lump sum.

2. **Payment.** Federal income tax will be withheld only if required under the IRC, and payment will be made as soon as practicable after the notification is sent.
3. **Multiple payees.** If payments with respect to the benefit are payable to more than one payee (e.g., multiple beneficiaries or a participant and a beneficiary) in the same tax year and the total payment including interest payable to a payee is less than \$200, payment will be made to that payee as provided in this section.
4. **Subsequent Payments after Initial Small Benefit Payment.** If more than one payment with respect to the benefit is payable to the same payee in the same tax year, and the payments will total \$200 or more, a benefit application is required and federal income tax will be withheld as provided in the IRC. If the subsequent payment(s) made to the same payee occur in different tax years, and total less than \$200 in the tax year paid, no application or tax withholding will be required.

E. Notifications Issued Prior to this Policy

In general, if an individual who is due a small benefit payment requests payment, the individual may be paid without submission of a benefit application in accordance with **Section D**, regardless of whether PBGC previously requested a completed application in order to receive the benefit.

F. Examples

Example 1:

A participant's estimated benefit has a lump-sum value as of DOPT of \$175. The participant is due a lump-sum payment of \$189 including interest as of the expected payment date of February 1. Information about the participant is considered reliable and sufficient to make the payment; therefore, a benefit application is not required, and payment can be made as provided in **Section D**. PBGC notification of the estimated payment is mailed January 3, and the gross payment of \$189 (tax will not be withheld) will be sent directly to the payee on February 1.

Example 2: Subsequent Payment – Payments total more than \$200 in the Same Tax Year

Continuing from Example 1: Later in the year after the valuation is completed, PBGC determines that the value of the benefit as of DOPT is \$275. The participant is due a residual benefit of \$100 (\$275 - \$175). The payment for the residual benefit will be \$110 including interest as of the expected payment date of November 1. Because payments for the tax year will total \$299 (\$189 + \$110), a benefit application is required and federal income tax will be withheld as provided in the IRC.

Example 3: Subsequent Payment in Different Tax Years

Continuing from Example 1: The following year after the valuation is completed, PBGC determines that the value of the benefit as of DOPT is \$275. The participant is due a residual benefit of \$100 (\$275 - \$175). The payment for the residual benefit will be \$113 including interest as of the expected payment date of March 1.

Although payments with respect to the benefit total more than \$200, **Section D** applies because the payment of the residual benefit will be made in a different tax year. An application is not required if information about the payee is still considered reliable and sufficient to make payment.

Example 4: Single-sum Small Benefit Payment Due

A participant was receiving a monthly benefit of \$80 in the form of a 15-year C&C. The participant died in April. PBGC was notified of the death in May when the Post Office returned the May payment. The certain period ended in June of the same year, and therefore, two months remained in the certain period, May and June. In mid-July, PBGC determines that the participant's surviving child is due the remainder of the C&C. An underpayment for May and June of \$162 including interest is payable on September 1. Information about the beneficiary is considered reliable and sufficient to make payment without an application; therefore, payment can be made as provided in **Section D**.

Example 5: Multiple Payees

a. Participant and Beneficiary Due Payment in the Same Tax Year

Continued from Example 1: Shortly after receiving the payment of \$189, the participant died. Later in the same year after the valuation is completed, PBGC determines that the value of the benefit as of DOPT is \$275. The participant was due a residual benefit of \$100 (\$275 - \$175) that is now payable to the participant's designated beneficiary. The payment for the residual benefit will be \$110 including interest as of the expected payment date of November 1. Payments for the tax year will total \$299 (\$189 + \$110).

Although payments with respect to the benefit will total more than \$200, **Section D** applies to the beneficiary because the subsequent payment is being made to a different payee and will be less than \$200. An application is not required if information about the beneficiary is considered reliable and sufficient to make payment.

b. Multiple Beneficiaries

A participant was due a lump-sum benefit of \$300, but dies before payment is made. PBGC determines that three beneficiaries are each due an equal share of the benefit or \$100 ($\$300 \div 3$) each. A payment of \$100 including interest is due each beneficiary as of the expected payment date. Information about two of the beneficiaries is considered reliable and sufficient to make payment without an application; therefore, payment can be made to the two beneficiaries, as provided in **Section D**. The third beneficiary cannot be located; therefore, payment cannot be made without an application.

Example 6: Notification Issued Prior to this Policy

Two years before the issuance of this policy, PBGC sent a benefit determination informing a participant that a lump-sum benefit of \$150 plus interest was payable. The participant did not complete and return the enclosed lump-sum application. A year after the issuance of this policy, the participant inquires about the benefit and requests a lump-sum payment. As of the expected payment date, the total payment with interest is \$170. The benefit is payable without an application, as provided in **Section D**, if information about the participant is considered to be reliable and sufficient to make payment.

Concurrence, Endorsement, and Approval

Policy 5.4-10 Small Benefit Payments, 3rd Ed.		
Concurrence	Initials	Date
OBA/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	02/22/2017
OBA/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	02/22/2017
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	02/23/2017
OBA/OPCMD: Jennifer Messina, Director	J.M.	03/03/2017
OCC: Joseph Krettek, Assistant Chief Counsel	J.M.K.	02/22/2017
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	02/28/2017
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	03/06/2017
Chief Financial Officer: Patricia Kelly	P.K.	03/07/2017
Approval		
Chief of Benefits Administration: Cathy Kronopolus	C.K.	03/08/2017

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on **Transmittal 2017-02**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_4_10_3rd.htm
(03/30/2017).

Previous Editions

[5.4-10 Small Benefit Payments 1st Ed. - Outdated](#)

[5.4-10 Small Benefit Payments 2nd Ed. - Outdated](#)

5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984

Edition	4th Edition
Issue Date	05/16/2006
Transmittal	Transmittal 91
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definition](#)
- [D. Policy](#)
- [Appendix](#)

A. Background

The Retirement Equity Act of 1984 (REA) amended the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code) to require all defined benefit pension plans to provide a qualified preretirement survivor annuity (QPSA) to the surviving spouse of any participant with vested benefits who dies prior to commencing retirement benefits.

ERISA § 205(e) generally defines a QPSA as a survivor annuity for the life of the surviving spouse with payments not less than the amount payable under the survivor portion of the qualified joint and survivor annuity (QJSA) assuming the participant had started the QJSA on the later of the day preceding the participant's date of death or the earliest retirement age under the plan.

From 1984 until 1997, PBGC took the position that QPSA benefits were not guaranteed benefits if the participant died on or after the plan termination date (DOPT). As a substitute for the QPSA, PBGC provided a preretirement survivor annuity (PSA), described in the appendix to this policy. In 1997, PBGC determined that, subject to the limitations of ERISA § 4022(b), PBGC is required under ERISA to guarantee the QPSA benefit that is provided under a terminated plan. PBGC provides QPSA coverage on and after DOPT to all participants within the scope of this policy free of charge.

B. Scope and Effective Date

This policy applies to any plan trustee by the PBGC with a DOPT on or after August 23, 1984, REA's date of enactment, and to any participant in such a plan who dies (or died) on or after August 23, 1984, even if the participant earned no credited service under the plan on or after August 23, 1984.

C. Definition

Earliest QPSA commencement date is the earliest annuity starting date for the payment of a QPSA. The earliest QPSA commencement date is the later of (a) the first day of the month on or after the participant's Earliest PBGC Retirement Date (EPRD) described in [section C](#) of PBGC Policy 6.1-2 Earliest PBGC Retirement Date, and (b) the first day of the month following the month of the participant's death. The earliest QPSA commencement date can be no later than the surviving spouse's required beginning date described in [section D](#) of PBGC Policy 5.2.5 Required Beginning Dates.

D. Policy

1. General Rule

QPSA benefits payable to the surviving spouse of a deceased participant (including an alternate payee entitled to all or part of a participant's QPSA benefit under a QDRO) are guaranteeable benefits regardless of whether the participant dies before or after DOPT. The QPSA benefit payable to the spouse of a vested participant is a nonforfeitable pension benefit. The amount, form, and annuity starting date of the QPSA benefit will be determined in accordance with plan provisions except that the surviving spouse may begin receiving the QPSA benefit no earlier than his or her earliest QPSA commencement date. Conditions for retroactive payment of QPSA benefits are described in [section D](#) of PBGC Policy **5.2-4 Annuity Starting Dates**.

Starting Dates. A plan benefit that meets the statutory definition of a QPSA will be treated as a QPSA for Title IV purposes even if the plan does not identify the benefit as a QPSA.

a. Deferral of Starting Date

The surviving spouse may elect to start the QPSA benefit as of the first day of any month on or after earliest QPSA commencement date. The spouse cannot defer the start of the QPSA benefit beyond his or her required beginning date as described in **section D** of PBGC Policy **5.2-5 Required Beginning Dates**.

b. Plans with Mandatory Employee Contributions

For plans with mandatory employee contributions, PBGC will determine the QPSA benefit based upon the participant's benefit derived from both employer and employee contributions, excluding benefit amounts attributable to withdrawn mandatory employee contributions.

c. Disability Benefits

QPSA coverage applies until the earlier of a participant's death or annuity starting date. For purposes of this policy, the annuity starting date for a participant entitled to a disability benefit depends on whether the disability benefit is an "auxiliary benefit." The annuity starting date for a participant who is receiving a disability benefit that is not an "auxiliary benefit" is the first date on which the participant's disability benefit becomes payable. The annuity starting date for a participant who is receiving a disability benefit that is an "auxiliary benefit" is the date on which the participant's disability benefit converts to either a QJSA benefit (normal or early retirement) or other retirement benefit under the plan. Determination of whether a participant's disability benefit is an "auxiliary benefit" will be made in accordance with the Code and IRS rules. See also **section G** of PBGC Policy **5.9-1 Disability Benefits**.

2. Special Rules

a. QPSA Charges and Elections

Some plans charge for QPSA coverage. Plans that charge for QPSA coverage must provide written notice of the charge to participants and the opportunity for participants, with spousal consent, to waive QPSA coverage. The charge generally accrues for each month of coverage up to retirement or death and is collected in the form of a reduction to the monthly annuity.

1) Participant Death on or after DOPT

PBGC will provide QPSA coverage free of charge on and after DOPT, regardless of whether the participant (with spousal consent) waived QPSA coverage prior to DOPT and regardless of any charges the plan would have applied. Because QPSA coverage is free of charge, QPSA notices and elections are not required. Any post-DOPT PSA charges that PBGC has assessed will be refunded. PBGC, however, will apply any plan charges for QPSA coverage prior to DOPT in accordance with section a.2 below.

2) Participant Death before DOPT

PBGC will assess any plan QPSA coverage charges for the period before DOPT in accordance with plan provisions when it determines the participant's or surviving spouse's benefits at DOPT, but only to the extent such provisions comply with ERISA (e.g., only for periods after the plan allowed the participant to waive QPSA coverage and provided notice of the ability to waive).

Example: Pre-DOPT accrual of QPSA charges

Sam worked for the ABC Company for 10 years. He was 53 years old and had been married to Carol for fifteen years when the ABC Company Pension Plan terminated October 1, 2003. Sam and Carol accepted the ABC Company's QPSA coverage. The plan charged 0.02% per month of coverage. Sam had 120 months of QPSA coverage before the plan ended.

Sam started his annuity from PBGC October 1, 2005. Sam's accrued monthly benefit is \$1,500 as a J&50%. Sam's plan benefit is fully guaranteed.

The ABC Plan's pre-DOPT QPSA coverage charge is 2.4% (120 months of coverage x 0.02% per month of coverage).

PBGC does not assess any additional charge for QPSA coverage for the period after DOPT.

Sam's monthly benefit from PBGC is \$1,464 (\$1500 reduced by 2.4%). If Sam dies first, Carol's survivor benefit will be \$732 (half of \$1,464) for the rest of her life.

b. Plans with Length of Marriage Requirements for QPSA coverage

Pension plans may require that a participant have been married for up to one year before Qualified Preretirement Survivor Annuity (QPSA) coverage applies. Plans with a marriage requirement may deny QPSA benefits if a

participant has not met the plan's marriage requirement as of the participant's death. PBGC Policy **5.7-4 Marriage Requirements**, provides guidance for applying a plan's marriage requirement for QPSA coverage.

1) Participant Death before DOPT

See **section C.2.a.1** of PBGC Policy 5.7-4 Marriage Requirements.

2) Participant Death on or after DOPT

See **section C.2.b.1** of PBGC Policy 5.7-4 Marriage Requirements.

c. Pay Status PSA Spouses/Spousal PSA Benefit Determinations

Surviving spouses who were receiving a preretirement survivor annuity (PSA) or had been notified that, at some future date, they would receive a specific benefit under the policy "Payment of Pre-retirement Survivor Annuities in PBGC-Trusteed Plans Terminating on and after August 23, 1984" will be entitled to receive the greater of the monthly benefit determined under the PSA policy (determined in accordance with the Appendix to this policy) or the plan QPSA.

d. Plans Lacking a QPSA Benefit

In a plan covered by this policy but not amended to provide a QPSA, PBGC will provide a QPSA to the surviving spouse of a deceased, vested participant. The amount of the QPSA will be the minimum QPSA required by ERISA (basically the "survivor's" portion of the plan's QJSA) with no charge. A QJSA, as defined in ERISA § 205(d), is an annuity for the life of the participant with a survivor annuity for the life of the spouse that is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity that is payable during the joint lives of the participant and the spouse, and that is the actuarial equivalent of a single life annuity for the life of the participant. If a plan does not have a QJSA, PBGC will treat the plan as if it contained a QPSA equal to the survivor portion of a joint and 50% survivor annuity (calculated using joint and survivor factors determined by PBGC).

e. Lump sum in lieu of QPSA

1) Deceased participant entitled to de minimis lump sum as of date of death

i. Death on or after DOPT

If a married participant who is entitled to a lump sum payment under 29 CFR 4022.7(b)(1)(i) dies before going into pay status, PBGC will make the lump sum distribution to the designated beneficiary or, if none, the person or estate entitled in accordance with PBGC Policy **8.6-1 Payments to Beneficiaries**. There will be no annuity option for the beneficiary or estate. The surviving spouse, if any, will not be entitled to a QPSA and will not have the right to elect a QPSA in lieu a lump-sum distribution.

ii. Death before DOPT

If a married participant who is entitled to a lump sum payment of \$5,000 or less dies before DOPT and before going into pay status, PBGC will follow plan provisions regarding payment of a lump sum in lieu of a QPSA.

2) Deceased participant not entitled to de minimis lump sum as of date of death

If the lump sum value of annuity payments to a surviving spouse under a QPSA is \$5,000 or less and the annuity benefit has never been in pay status, the benefit will be paid in a lump sum unless otherwise elected by the surviving spouse, regardless of whether the participant's death occurred before or after DOPT.

PBGC will calculate the annuity payable to the surviving spouse starting on the surviving spouse's earliest QPSA commencement date or, if later, the first day of the month on or after DOPT. PBGC will value the annuity as of DOPT using PBGC's lump sum rates.

f. QPSA coverage after application for retirement

If a participant makes a valid election for a benefit form that provides a life annuity to the surviving spouse of at least 50% but no more than 100% of the amount of the annuity that is payable during the joint lives of the participant and the spouse, and the participant dies before the annuity starting date, the elected annuity form will be treated as the QPSA.

Example (1) J&75% Elected:

The Qualified Joint and Survivor Annuity (QJSA) in Sam's plan is a \$1200 per month J&50%S annuity. Sam, with the consent of his spouse, Carol, elects PBGC's optional \$1000 per month J&75%S annuity. Sam dies before his annuity starting date. The validly elected J&75%S annuity will be treated as the QPSA. Carol will be paid \$750 per month for her life.

Example (2) 15C&C elected:

The QJSA in Sam's plan is a \$1200 per month J&50%S annuity commencing on Sam's EPRD. Sam, with the consent of his spouse, Carol, elects PBGC's optional \$1100 per month 15C&C annuity. Sam dies before his annuity starting date. Because the elected 15C&C does not pay a survivor benefit for Carol's life, it will not be treated as the QPSA. Carol is entitled only to the plan's QPSA.

Appendix

PSA Benefits

surviving spouses who will receive a PSA are entitled to a benefit determined under this Appendix, which summarizes the PSA rules under previous policy.

1. Availability

The surviving spouse may begin receiving the PSA benefit no earlier than the first day of the month following the month in which (a) the participant died, or (b) the participant would have attained the earliest early retirement age at which he or she would have become eligible for a benefit under the plan, whichever is later.

2. Amount and Form of Benefit

The amount of the spouse's benefit will be computed by first determining the benefit that the participant would have been entitled to receive on the earliest date determined under step 1. Availability, above, in the normal form for unmarried participants under the plan. Plan early retirement factors are used. That benefit will then be converted to an actuarially equivalent joint-and-50% survivor annuity (contingent basis), using the PBGC factors for converting the maximum insurance limit for a single life annuity amount to a joint and 50% survivor annuity amount. The surviving spouse will be paid the amount of that 50% survivor annuity. (For plans with mandatory employee contributions, see paragraph 5.).

3. Deferral of Starting Date

The surviving spouse may elect to start the PSA benefit as of the first day of any month on or after the benefit is first available under paragraph 1., above. The benefit paid will be determined by converting the survivor annuity described in step 2. Amount and Form of Benefit, above. to a present value and then converting this present value to an actuarially equivalent benefit payable on the deferred annuity starting date selected by the surviving spouse. ASD will develop factors for computing benefits under this paragraph using the PBGC rates in effect at termination of the plan for valuing deferred benefits.

4. Marriage Requirement

There is no minimum period of time for which a participant must have been married prior to the death of the participant for preretirement survivor annuity coverage.

5. Mandatory Employee Contributions

In the case of a pension plan that required mandatory employee contributions, the participant's entitlement to a refund of those contributions will not be affected by this policy. If the surviving spouse of a participant in such a plan who has elected and received a refund becomes entitled to a preretirement survivor annuity, the benefit will be determined based solely on the employer contributions. (If mandatory employee contributions have not been withdrawn and the participant dies before going into pay status, the mandatory contributions will be refunded in accordance with plan provisions and PBGC regulations and policy.)

6. Disability Benefits

PSA coverage applies until the earlier of a participant's death or annuity starting date. For purposes of this policy, the annuity starting date for a participant entitled to a disability benefit depends on whether the disability benefit is an "auxiliary benefit." The annuity starting date for a participant who is receiving a disability benefit that is not an "auxiliary benefit" is the first date on which the participant's disability benefit becomes payable. The annuity starting date for a participant who is receiving a disability benefit that is an "auxiliary benefit" is the date on which the participant's disability benefit converts to either a QJSA benefit (normal or early retirement) or another optional retirement benefit under the plan. Determination of

whether a participant's disability benefit is an "auxiliary benefit" will be made in accordance with the Code and IRS rules. See also **Section G** of PBGC Policy 5.9-1 Disability Benefits.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_7_2_4th.htm
(05/16/2006)

Previous Editions

- [5.7-2 Payment of Preretirement Survivor Annuities 1st Ed. - Outdated](#)
- [5.7-2 Payment of Preretirement Survivor Annuities 2nd Ed. - Outdated](#)
- [5.7-2 QPSAs in Plans Terminating on and after 8/23/84 3rd Ed. - Outdated](#)

[Top of Page](#)

5.7-3 Survivor Annuities - pre-REA Terminations - Payment of Certain Survivor Annuities in PBGC-Trusteed Plans Terminated before August 23, 1984

Edition	2nd Edition
Issue Date	11/05/1990
Transmittal	Transmittal 25
Contact	ASK PPD

In this policy

- [A. Scope](#)
- [B. Policy Statement](#)

A. Scope

1. Plans Covered

This policy applies to PBGC-trusteed plans that terminated prior to August 23, 1984.

2. Participants Covered

This policy applies to any vested participant in a covered plan who:

- a. separates from service with the DOPT employer on or after the participant's earliest eligibility age for payment of a benefit under the plan and PBGC rules¹; **and**

Note 1: As originally issued on 02/10/88, this policy required that the participant's separation from service have occurred after DOPT. This was an error; the separation may occur prior to DOPT.

- b. dies after DOPT but before beginning to receive benefit payments; **and**
- c. dies on and after October 22, 1986 (see exception below for some deaths prior to October 22, 1986); **and**
- d. has a benefit payable in the form of a joint-and-survivor annuity at the time of his or her death²; **and**

Note 2: For participant deaths occurring on or after October 22, 1986, a participant in an ERISAfied plan has a benefit payable in the form of a joint-and-survivor annuity if he or she was married on the date of death. See PBGC Policy [5.4-7 Annuity Benefit Forms](#) for rules on payment of joint-and-survivor annuities.

- e. has a benefit the entire value of which is not paid by the PBGC in a lump-sum.

Deaths Prior to October 22, 1986

This policy also will be applied to any participant in an ERISAfied plan whose death occurred before October 22, 1986, if the participant's surviving spouse appeals or informally requests review of the PBGC's determination that a survivor annuity was not payable **and** if the participant met requirements (a), (b), (d)³ and (e), above.

Note 3: For participant deaths occurring on or after October 22, 1986, a participant in an ERISAfied plan has a benefit payable in the form of a joint-and-survivor annuity if the participant was married on DOPT or had elected an optional form of joint-and-survivor annuity prior to DOPT.

B. Policy Statement

1. Introduction

The PBGC's policy on payment of survivor benefits has been revised to provide a survivor annuity under the limited circumstances in which the participant survives to earliest eligibility age for payment of a benefit, then separates from service, and later dies without having retired but, on the date of death, has a benefit payable in the form of a joint-and-survivor annuity. This policy is only applicable to plans that terminated prior to the enactment of REA (08/23/84); for plans terminating after that date, the PBGC will offer preretirement survivor annuities, which provide broader spousal protection.

(See PBGC Policy **5.7-2 QPSAs in Plans Terminating on and after 08/23/84** for a description of the preretirement survivor annuity policy.)

2. General Rule

The PBGC will pay a survivor annuity to the surviving spouse (i.e., the spouse on the date of the participant's death) of a participant covered by this policy.

a. Amount of the Benefit

The surviving spouse's benefit will be equal to the survivor portion of the joint-and-survivor annuity that would have been payable had the participant applied for a benefit on the date of his or her death.

b. Annuity Starting Date.

The annuity starting date⁴ for the surviving spouse's benefit is the first day of the month following the month in which the participant's death occurred, even if the surviving spouse's application is not filed until a later date. The surviving spouse may not defer the starting date of this benefit.

Note 4: The annuity starting date as of which benefit payments are first made to a participant or beneficiary.

3. Relationship of this Policy to Other Policies

a. **5.2-1 Retroactive Payment of Early Retirement Benefits**

If the participant was eligible for a benefit under the retroactive payment policy, the benefit will be paid under the retroactive payment policy. Under the retroactive payment policy, there may be a payment to the participant's estate in addition to a survivor benefit.

b. **5.7-2 Preretirement Survivor Annuities**

A surviving spouse benefit will not be paid under this policy to any participant in a plan that terminates on or after August 23, 1984.

c. **5.4-1 Payment of Joint-and-Survivor Annuities**

Entitlement to and amount of a joint-and-survivor annuity under this policy will be determined in accordance with the policy on payment of joint-and-survivor annuities in cases involving participant deaths occurring on and after October 22, 1986. (For deaths occurring prior to October 22, 1986, see note ³.)

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_7_3_2nd.htm
(11/05/1990)

5.7-4 Marriage Requirements

Edition	5th Edition
Issue Date	08/30/2018
Transmittal	Transmittal 2018-07
Signed Policy	5.7-4 Marriage Requirements
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Policy](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

This policy provides guidance for establishing the existence of a marital relationship in PBGC-trusted plans. PBGC's general rule has been that we recognize a marriage based on the laws of the jurisdiction in which the marriage was celebrated. But, for purposes of interpreting any federal law, Section 3 of the Defense of Marriage Act of 1996 ("DOMA") defined "marriage" as a "legal union of one man and one woman as husband and wife" and "spouse" as "a person of the opposite sex who is a husband or a wife." 1 U.S.C. § 7. In accordance with DOMA, PBGC did not recognize same-sex spouses for purposes of paying spousal benefits, even if the marriage was recognized in the jurisdiction where it was celebrated. On June 26, 2013, the U.S. Supreme Court ruled that Section 3 of DOMA is unconstitutional. See *United States v. Windsor*, 133 S. Ct. 2675 (2013). As a result, PBGC changed its policy effective June 26, 2013, to recognize same-sex marriages in our administration of benefits in terminated plans under the same rules applicable to opposite-sex marriages in all new marriage determinations.

On April 4, 2014, the IRS issued Notice 2014-19, which provided guidance on how qualified retirement plans should treat same-sex marriages following the Supreme Court's decision in *United States v. Windsor*. Under this guidance, plans could amend to reflect the outcome of the *Windsor* ruling as of a date earlier than June 26, 2013, and could choose for what purposes it would apply *Windsor* retroactively. Accordingly, PBGC changed its policy so that, in a case where PBGC previously determined that it would not recognize a same-sex marriage but where PBGC still considered the case to be "open," PBGC would treat the marriage under the same rules applicable to an opposite-sex marriage.

On June 26, 2015, the U.S. Supreme Court held in *Obergefell v. Hodges* that state-level bans on same-sex marriages were unconstitutional. However, the Supreme Court did not address whether the *Obergefell* decision should be applied retroactively. PBGC's research and experience shows that the trend among federal and state courts is to interpret *Obergefell* as having a retroactive effect, and that states whose laws were unclear before *Obergefell* but where certain counties issued licenses to same-sex couples before June 29, 2015, the states recognize the validity of these marriages. As a result, PBGC is changing its policy to clarify that PBGC recognizes same-sex marriages performed prior to *Obergefell* in our administration of benefits in terminated plans under the same rules applicable to opposite-sex marriages. This edition of the policy will be effective for both marriage determinations made for the first time on or after the effective date of this policy, and marriage determinations where PBGC or the prior plan administrator previously denied survivor benefits.

B. Scope and Effective Date

This policy statement applies to participants in PBGC-trusted plans. It provides guidance on recognizing a marital relationship and applying a pension plan's length of marriage requirement, if applicable, in determining entitlement to benefits based on a marital relationship (e.g., QPSA and QJSA benefits). This policy is effective upon issuance.

C. Policy

1. PBGC Recognition of a Marriage

General rule. PBGC recognizes a marriage based on the laws of the jurisdiction in which the marriage was celebrated. PBGC will recognize as marriages only those arrangements specifically denominated as marriages by state law – PBGC will not recognize other arrangements such as civil unions, domestic partnerships, etc., as marriages unless they are explicitly denominated as marriages by state law.

For purposes of this Policy, the term "state" means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Northern Mariana Islands, any other territory or possession of the United States, and any foreign jurisdiction having the legal authority to sanction marriages.

PBGC will not apply a plan's marriage requirements if they are inconsistent with the laws of the jurisdiction in which the marriage was celebrated.

In rare circumstances PBGC may not recognize a marriage, even though the marriage was valid where it was celebrated, if the marriage would not be recognized as valid by the United States (for example, a polygamous marriage). However, PBGC will not routinely attempt to establish that a marriage is not valid unless PBGC finds reason to suspect the validity of the marriage.

- a. **Marriage Determinations after the Effective Date of this Policy.** In any case in which a marriage determination has not previously been made, PBGC will apply the **general rule in C.1.** to determine if the spouse is entitled to benefits.
- b. **Marriage Determinations Where Spousal Benefits were Previously Denied.** Contact [Ask PPD](#) in any case in which a spouse requests survivor benefits that were previously denied by PBGC or the plan. PBGC will re-examine the case and issue a revised marriage determination, if appropriate.
 1. **Retroactive QJSA Entitlement.** Any retroactive entitlements will be determined in accordance with Policy **5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities).**
 2. **Retroactive QPSA Entitlement.** In cases where the spouse's QPSA entitlement was previously denied, PBGC will apply the **general rule in C.1.** to determine if the spouse of a participant who died without commencing benefits is eligible for QPSA benefits. If the spouse is determined to be eligible for the QPSA, and the Earliest QPSA Commencement Date (as defined in Policy **5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984**) has already passed, PBGC will offer the surviving spouse the opportunity to commence QPSA benefits retroactively in accordance with **Section D.6. of Policy 5.2-4 Annuity Starting Dates.**
- c. **Competing Beneficiaries.** If PBGC determines that a spouse previously denied benefits is entitled to benefits, and the spouse's entitlement would result in another beneficiary's losing entitlement to benefits, contact [Ask PPD](#) for guidance.

If the plan or PBGC paid any death benefits other than the QPSA either to the spouse or to another beneficiary, contact [Ask PPD](#) for guidance.

2. Length of Marriage Requirements

Pension plans may require a participant to have been married for up to one year (but no more than one year) before Qualified Preretirement Survivor Annuity (QPSA) or Qualified Joint and Survivor Annuity (QJSA) coverage applies. Plans with a one-year marriage requirement may deny QPSA benefits if a participant has not been married for a full year as of the participant's death. Plans are required to pay benefits in the form of a QJSA to a married participant (unless the spouse waives the QJSA). However, if the participant dies or the couple divorce before a full year of marriage, the spouse may not be entitled to survivor benefits.

To be valid, a plan's one-year marriage requirement must be explicit. If a plan is silent, no such requirement applies. A plan may impose a one-year marriage requirement for one type of spousal benefit but not another (for example, for QPSAs but not QJSAs).

A plan's length of marriage requirement may be less than one year. But because one year is the most common, length of marriage requirements are referred to in this policy as one-year marriage requirements regardless of the length of the period. The same PBGC rules that apply to a one-year marriage requirement apply to a requirement that is less than one year.

- a. **Death or Divorce Prior to Date of Plan Termination (DOPT)**
 1. **Death.** PBGC will apply a plan's one-year marriage requirement to eligibility for QPSA or QJSA survivor benefits if a participant dies before DOPT and the spouse applies for benefits on or after DOPT.
 2. **Divorce.** PBGC will apply a plan's one-year marriage requirement to eligibility for QJSA benefits if a couple divorces before DOPT.
 3. **Qualified Domestic Relations Orders (QDRO).** If a QDRO assigns survivor benefits to a former spouse, PBGC will pay survivor benefits under the terms of a QDRO without regard to a plan's one-year marriage

requirement if the participant's death occurs prior to DOPT.

4. **Conversion to Automatic Form of Benefit for Unmarried Participants.** If a plan so provides, a participant's benefit will revert to the automatic form of benefit payable to a single participant the first of the month after

- the effective date of a divorce, or
- the death of the spouse,

if the couple were not married for one year. If the divorce or death occurs after the one-year period has elapsed, PBGC will not change the participant's form of benefit.

b. Death or Divorce on or after DOPT

1. **Death.** PBGC will not apply a plan's a one-year marriage requirement to eligibility for QJSA or QPSA survivor benefits if a married participant dies on or after DOPT.
2. **Divorce.** PBGC will not apply a plan's a one-year marriage requirement to eligibility for QJSA survivor benefits if a married participant divorces on or after DOPT.
3. **QDRO.** If a participant divorces before DOPT and a QDRO assigns survivor benefits to a former spouse, PBGC will pay survivor benefits under the terms of the QDRO without regard to a plan's one-year marriage requirement if the participant's death occurs on or after DOPT.

3. Multiple Marriages

In cases where a participant has been married more than once, PBGC will generally assume that all previous marriages properly terminated in death or divorce and that the latest marriage is valid. However, if PBGC has evidence that calls into question the validity of a later marriage (such as a claim by a prior spouse that he or she remains married to the participant), PBGC may need to examine state laws to determine which of two competing spouses is entitled to spousal benefits.

Concurrence, Endorsement, and Approval

Policy 5.7-4 Marriage Requirements, 5th Ed.

Concurrence	Initials	Date
OBA/ASTD/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	07/25/2018
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	07/25/2018
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	07/25/2018
OBA/PSD: Jennifer Messina, Director	J.M.	07/25/2018
OGC: Joseph Krettek, Assistant General Counsel	J.M.K.	07/25/2018
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	07/27/2018
Chief Financial Officer: Patricia Kelly	P.K.	07/27/2018
Approval		
Chief of Benefits Administration: Cathy Kronopolus	C.K.	07/26/2018

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on **Transmittal 2018-07**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_7_4_5th.htm
(08/30/2018).

[5.7-4 Payment of Benefits to Common-Law Spouses 1st Ed.](#)

- Outdated

[5.7-4 Marriage Requirements 2nd Ed. - Outdated](#)

[5.7-4 Marriage Requirements 3rd Ed. - Outdated](#)

[5.7-4 Marriage Requirements 4th Ed. - Outdated](#)

[Top of Page](#)

5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)

Edition	3rd Edition
Issue Date	08/30/2018
Transmittal	Transmittal 2018-08
Last Review Date	N/A
Signed Policy	5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)
Contact	ASK PPD

In this policy

[A. Background](#)

[B. Scope and Effective Date](#)

[C. Policy](#)

[Concurrence, Endorsement, and Approval](#)

A. Background

The Employee Retirement Income Security Act (ERISA) as enacted in 1974 required pension plans to provide a joint-and-survivor annuity (J&S annuity) benefit as the automatic form of benefit for married participants. The J&S annuity had to provide a survivor annuity for the participant's spouse of at least 50% of the participant's benefit. However, under ERISA as originally enacted, spousal consent was not required if a married participant elected a form other than the plan's J&SA. The Retirement Equity Act of 1984 (REA) continues to require pension plans to pay a married participant a qualified J&S annuity (QJSA) that provides a surviving spouse benefit equal to at least 50% of the participant's benefit. However, under REA, written, informed spousal consent is required if the participant wants to waive the QJSA and elect another form of benefit. This policy provides guidance for the rules PBGC follows in requiring spousal consent and supplements PBGC's rules for paying QJSA benefits.

This third edition of this policy expands the rules on missing spousal consent (Section [C.6.a.](#)) to include the option for the spouse to sign an affidavit asserting that spousal consent was not given. This edition also includes new guidance in Section [C.6.d.](#) directing the staff to contact PPD if the Office of Inspector General (OIG) chooses not to review a case of alleged forgery of spousal consent.

B. Scope and Effective Date

This policy applies to payees in any PBGC-trusted plan regardless of the DOPT of the payee's plan or the date of the participant's separation from service and is effective upon issuance.

C. Policy

1. PBGC pays a QJSA to a married participant unless the participant waives the QJSA with spousal consent as provided by PBGC Policy [5.4-7 Annuity Benefit Forms](#). Before trusteeship, plans are not required to obtain spousal consent to a participant's election of a form of benefit that (i) meets the requirements for a QJSA, including that it provides a survivor annuity between 50% and 100% of the amount payable during the participant's lifetime, (ii) is actuarially equivalent to the plan's QJSA, and (iii) names the spouse as the beneficiary. However, in trusted plans, PBGC requires spousal consent even if the participant is electing a PBGC optional joint-life annuity form with the spouse as the beneficiary. PBGC will provide the participant with relevant information, including the monthly benefit amounts of the annuity benefit forms with the spouse as beneficiary, so the spouse may provide informed and effective consent.

- a. At the time a participant applies for a PBGC benefit, the participant's waiver of the QJSA with spousal consent must be obtained in writing on a form that is acceptable to PBGC. Spousal consent must be notarized; however, for an application processed by the prior plan administrator, spousal consent may otherwise be witnessed by the plan administrator.
- b. A participant's waiver of the QJSA and the spousal consent must be executed no more than 180 days before the participant's annuity starting date (ASD). If a participant has a retroactive ASD, the waiver and spousal consent must be executed no more than 180 days before the date they are received by PBGC.
- c. Before the first payment date, PBGC generally will honor a request to revoke spousal consent as provided under section [H.1.b.](#) of PBGC Policy [5.4-7 Annuity Benefit Forms](#).

d. If a spouse is legally incompetent to give consent, PBGC will accept spousal consent given on behalf of the spouse by his or her legal guardian or representative under a durable power of attorney (who may be the participant) pursuant to PBGC Policy [**8.4-1 Power of Attorney**](#) and PBGC Policy [**8.4-2 Guardianships and Conservatorships**](#).

e. PBGC may request or accept spousal consent in any benefit payment situation PBGC deems prudent, even if it is unclear whether spousal consent is required. For example, if a participant chooses a form of benefit other than the QJSA and a marriage is alleged, but it is unclear whether PBGC can recognize the marriage (such as with a common-law marriage), PBGC may request spousal consent, and if it is provided, will pay the benefit in the elected form.

2. Assignment and alienation of benefits

PBGC may require spousal consent if assignment or alienation of a participant's pension benefits is permitted (e.g., by alternative treatment of majority owner's benefit or by a benefit offset for a plan loan, fiduciary breach, or other transfer of assets) as provided by PBGC Policy [**6.6-2 Assignment or Alienation of Benefits**](#).

3. De minimis lump-sum distributions

PBGC generally will not require spousal consent to pay a benefit in a lump sum if the lump-sum value or residual lump-sum value of a benefit is \$5,000 or less as of DOPT.

4. Employee contribution distributions

PBGC requires spousal consent if a participant elects a return of his or her accumulated mandatory employee contributions (AMEC) as provided by PBGC Policy [**5.11-2 Payment of Priority Category 2 Benefits**](#).

5. Cash balance plans – de minimis lump-sum distributions

PBGC pays a cash balance benefit in a lump sum if either the lump-sum value of the benefit or the hypothetical account balance is \$5,000 or less as of DOPT, even if one of them is more than \$5,000. If either the lump-sum value of the benefit or the hypothetical account balance is more than \$5,000 as of DOPT, spousal consent is required to pay the lump sum as provided by PBGC Policy [**5.12-1 Cash Balance Plans - Valuing and Paying Benefits**](#).

6. Exceptions

a. Spousal consent not in file

If a participant is receiving a benefit that required spousal consent, but evidence shows that effective spousal consent was not properly obtained, PBGC will provide the spouse the opportunity to consent retroactively to or to refuse to consent to the participant's waiver of the QJSA and election of an optional form of benefit. If the spouse is deceased, PBGC will continue to pay the benefit in the elected form.

If a spouse claims that a QJSA survivor benefit is payable and spousal consent is not in the file, PBGC will determine if the spouse is due a benefit as provided by the applicable pension plan provisions, regulations, and/or PBGC policy in effect when the participant retired (except as provided in Policy [**5.7-4 Marriage Requirements**](#)¹).

1. Annuity starting dates on or after January 1, 1985.² If the participant had an annuity starting date on or after January 1, 1985 and PBGC does not have spousal consent on file, PBGC generally will pay the QJSA survivor benefit, except as follows:

a. **Post-Trusteeship Retiree.** If PBGC determines that a post-trusteeship retiree was correctly paid in accordance with prior PBGC policy, PBGC generally will not change the benefit to the QJSA.

b. **Pre-Trusteeship Retiree.**

i. PBGC generally will assume that a prior plan administrator routinely followed the REA requirements when placing a pre-trusteeship retiree into pay status and will not change the benefit to the QJSA unless convincing evidence to the contrary is found.³

ii. If PBGC does not have spousal consent on file and the spouse asserts that consent was never given, the spouse may provide PBGC with a signed notarized affidavit asserting that spousal consent was never given. Generally, PBGC will consider the affidavit as demonstrating that REA requirements were not followed by the prior Plan Administrator in the spouse's case.

2. **Annuity starting dates before January 1, 1985.**⁴ If the participant's annuity starting date was prior to January 1, 1985, and a benefit determination has become final, PBGC generally will only pay benefits in accordance with the benefit determination; PBGC will not pay a surviving spouse benefit. If the benefit determination has not become final, PBGC will determine if surviving spouse benefits are due as provided by the applicable pension plan provisions, regulations, and/or PBGC policy in effect as of the annuity starting date (except as provided in Policy [5.7-4 Marriage Requirements](#)¹).
3. **Affirmation that spousal consent was not given.** Prior to making payment under this provision, PBGC may require a spouse to affirm in writing that he or she did not give spousal consent for the form of benefit in pay and that he or she agrees to immediately repay PBGC any survivor benefits received if PBGC subsequently finds otherwise.

Note 1: Policy [5.7-4 Marriage Requirements](#) addresses, among other things, PBGC's recognition of same-sex marriages. PBGC generally will recognize such marriages in open cases for purposes of QJSA and QPSA entitlement.

Note 2: Effective January 1, 1985 (or the earlier of the expiration of the current collective bargaining agreement and January 1, 1987 for collectively bargained plans), REA requires pension plans to pay a married a participant who had at least one hour of service or paid leave on or after August 23, 1984, a QJSA unless the spouse consents to the participant's waiver of the QJSA. When putting a participant into pay, PBGC does not require participants to have the one hour of service or paid leave as provided in REA.

Note 3: PBGC may not be able to obtain all retiree records and forms when it trustees a plan. The absence of a spousal consent form is not necessarily considered indicative that the plan did not follow the REA requirements.

Note 4: Prior to January 1, 1985, in ongoing plans, spousal consent was not required for participants to waive a plan's automatic J&S annuity. However, prior to October 22, 1986, PBGC generally paid benefits based on the participant's marital status at DOPT and did not give participants the opportunity to waive a plan's automatic J&S annuity.

b. Abandoned or separated spouse

PBGC will treat a participant as unmarried (for purposes of requiring spousal consent) if the participant provides a court order declaring the participant to be legally separated or legally abandoned (within the meaning of local law); thus, spousal consent will not be required to elect a form of benefit other than the QJSA. If PBGC is later provided with a court order reversing or vacating the court order provided by the participant, PBGC will provide the spouse the opportunity to consent to or to refuse to consent to the participant's waiver of the QJSA.

c. Missing or unlocatable spouse

When a married participant who does not want to receive a QJSA applies for pension benefits and asserts that the spouse is missing or cannot be located, PBGC will attempt to locate the spouse.

1. If PBGC establishes to its satisfaction that the spouse is "unlocatable," PBGC will not require spousal consent to pay the benefit in a form other than a QJSA.
2. **Spouse located.** If the spouse is located, before or after the participant enters pay status, PBGC will provide the spouse the opportunity to consent to or to refuse to consent to the participant's waiver of the QJSA.

PBGC generally will not communicate (in writing or orally) any confidential information (e.g., name used, address, location, phone number, etc.) about the participant or the spouse to the other party even if the parties agree to the communication of the information.

3. **Participant deceased.** If the spouse is subsequently located after the participant's death, PBGC will pay the spouse a surviving spouse benefit as provided in PBGC Policy [5.4-7 Annuity Benefit Forms](#). If the participant's death was on or after the participant's ASD, PBGC will pay a QJSA survivor benefit. If the participant's death was before the participant's ASD, PBGC will pay preretirement survivor benefits as provided under PBGC Policies [5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating On and After August 23, 1984](#) and [5.7-3 Survivor Annuities - pre-REA Terminations](#).

d. Alleged forgery of spousal consent

If a spouse alleges that his or her signature on a spousal consent is forged, PBGC will refer the matter to its Office of Inspector General (OIG) for possible investigation.

1. If the OIG finds that the signature was forged, PBGC will change the participant's form of benefit to the QJSA.
2. If the OIG concludes the signature was not forged, PBGC will not change the participant's form of benefit to the QJSA.
3. If the OIG decides not to investigate the alleged forgery, please contact [ASK PPD](#) for guidance.
4. Prior to changing the participant's form of benefit, PBGC may require a spouse to affirm in writing that he or she did not give spousal consent to the participant's waiver of the QJSA and that he or she agrees to immediately repay PBGC any survivor benefits received if PBGC subsequently finds otherwise.

e. **QJSA-related benefit changes and recoupment**

PBGC will change a form of benefit to the QJSA and recalculate a benefit when appropriate under this policy and in accordance with PBGC Policy [**5.8-1 Benefit Corrections**](#). (If the participant wants a form of benefit other than the QJSA, please contact [ASK PPD](#).) Any resulting net benefit overpayments or underpayments will be calculated, recouped or recovered, or paid in accordance with PBGC Policies [**6.3-1 Underpayment Reimbursement and Interest Payments**](#), [**6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**](#) and [**6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**](#).

Concurrence, Endorsement, and Approval

Policy 5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities), 3rd Ed.		
Concurrence	Initials	Date
OBA/ASTD/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	07/25/2018
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	07/25/2018
OBA/PSD/CSD: Michelle Gray, Division Manager	L.S.	07/25/2018
OBA/PSD: Jennifer Messina, Director	J.M.	07/25/2018
OGC: Joseph Krettek, Assistant Chief Counsel	J.K.	07/25/2018
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	07/27/2018
Chief Financial Officer: Patricia Kelly	P.K.	07/27/2018
Approval		
Chief of Benefits Administration: Cathy Kronopolus	C.K.	07/26/2018

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on [Transmittal 2018-08](#).

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
[\(08/30/2018\).](http://intranet/standards_manuals/manuals/policy/5_7_5_3rd.htm)

Previous Editions

[5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities\) 1st Ed. - Outdated](#)

[5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities\) 2nd Ed. - Outdated](#)

5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)

Edition	5th Edition
Issue Date	09/09/2021
Transmittal	Transmittal 2021-07
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Policy](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

The Employee Retirement Income Security Act (ERISA) as enacted in 1974 required pension plans to provide a joint-and-survivor annuity (J&S annuity) benefit as the automatic form of benefit for married participants. The J&S annuity had to provide a survivor annuity for the participant's spouse of at least 50% of the participant's benefit. However, under ERISA as originally enacted, spousal consent was not required if a married participant elected a form other than the plan's J&SA. The Retirement Equity Act of 1984 (REA) continues to require pension plans to pay a married participant a qualified J&S annuity (QJSA) that provides a surviving spouse benefit equal to at least 50% of the participant's benefit. However, under REA, written, informed spousal consent is required if the participant wants to waive the QJSA and elect another form of benefit. This policy provides guidance for the rules PBGC follows in requiring spousal consent and supplements PBGC's rules for paying QJSA benefits.

This fifth edition includes conforming changes to the 10th edition of Policy 5.2-4 Annuity Starting Dates that requires that spousal consent generally be obtained in order for a married participant to elect a retroactive annuity starting date. This fifth edition also provides that spousal consent must be obtained when a participant who was married when they elected a certain and continuous benefit form wishes to change their beneficiary. These changes do not take effect until the forms necessary to implement them have been approved by the Office of Management and Budget (OMB) and implemented by PBGC.

B. Scope and Effective Date

This policy applies to payees in any PBGC-trusteed plan regardless of the DOPT of the payee's plan or the date of the participant's separation from service. It will become effective on November 1, 2021, concurrent with PBGC's implementation of related OMB approved forms.

C. Policy

1. General policy

PBGC pays a QJSA to a married participant unless the participant waives the QJSA with spousal consent as provided by PBGC Policy [5.4-7 Annuity Benefit Forms](#). Before trusteeship, plans are not required to obtain spousal consent to a participant's election of a form of benefit that (i) meets the requirements for a QJSA, including that it provides a survivor annuity between 50% and 100% of the amount payable during the participant's lifetime, (ii) is actuarially equivalent to the plan's QJSA, and (iii) names the spouse as the beneficiary. However, in trusted plans, PBGC requires spousal consent even if the participant is electing a PBGC optional joint-life annuity form with the spouse as the beneficiary. PBGC will provide the participant with relevant information, including the monthly benefit amounts of the annuity benefit forms with the spouse as beneficiary, so the spouse may provide informed and effective consent.

- a. At the time a participant applies for a PBGC benefit, the participant's waiver of the QJSA with spousal consent must be obtained in writing on a form that is acceptable to PBGC. Spousal consent must be notarized; however, for an application processed by the prior plan administrator, spousal consent may otherwise be witnessed by the plan representative.
- b. A participant's waiver of the QJSA and the spousal consent must be executed no more than 180 days before the participant's annuity starting date (ASD). If a participant has a retroactive ASD, the waiver and spousal consent must be executed no more than 180 days before the date they are received by PBGC.
- c. Before the first payment date, PBGC generally will honor a request to revoke spousal consent as provided under section H.1.b. of PBGC Policy [5.4-7 Annuity Benefit Forms](#).
- d. If a spouse is incapacitated, PBGC will accept spousal consent given on behalf of the spouse by his or her legal guardian or agent under a durable power of attorney, if the guardian or agent is authorized to waive benefits, pursuant to PBGC Policy [8.4-1 Power of Attorney](#) and PBGC Policy [8.4-2 Guardianships and Conservatorships](#). The guardian or agent may be the participant.
- e. PBGC may request or accept spousal consent in any benefit payment situation PBGC deems prudent, even if it is unclear whether spousal consent is required. For example, if a participant chooses a form of benefit other than the QJSA and a marriage is alleged, but it is unclear whether PBGC can recognize the marriage (such as with a common-law marriage), PBGC may request spousal consent, and if it is provided, will pay the benefit in the elected form.

2. Assignment and alienation of benefits

PBGC may require spousal consent if assignment or alienation of a participant's pension benefits is permitted (e.g., by alternative treatment of majority owner's benefit or by a benefit offset for a plan loan, fiduciary breach, or other transfer of assets) as provided by PBGC Policy [6.6-2 Assignment or Alienation of Benefits](#).

3. De minimis lump-sum distributions

PBGC generally will not require spousal consent to pay a benefit in a lump sum if the lump-sum value or residual lump-sum value of a benefit is \$5,000 or less as of DOPT.

4. Employee contribution distributions

PBGC requires spousal consent if a participant elects a return of his or her accumulated mandatory employee contributions (AMEC) as provided by PBGC Policy [5.11-2 Payment of Priority Category 2 Benefits](#).

5. Cash balance plans – de minimis lump-sum distributions

PBGC pays a cash balance benefit in a lump sum if either the lump-sum value of the benefit or the hypothetical account balance is \$5,000 or less as of DOPT, even if one of them is more than \$5,000. If either the lump-sum value of the benefit or the hypothetical account balance is more than \$5,000 as of DOPT, spousal consent is required to pay the lump sum as provided by PBGC Policy [5.12-1 Cash Balance Plans - Valuing and Paying Benefits](#).

6. Retroactive Annuity Starting Dates

PBGC generally will require spousal consent to a participant's election of a retroactive annuity starting date as provided by Section D 1 of PBGC Policy 5.2-4 Annuity Starting Dates.

7. Change of Beneficiary for Certain and Continuous Annuity

PBGC requires that a participant who wishes to change the beneficiary of a previously elected certain and continuous annuity benefit form, and who was married at the time of their original benefit form election, must obtain spousal consent prior to changing their beneficiary. The consent must be obtained from the spouse to whom the participant was married when their original benefit form election was made (i.e. the spouse to whom the participant was married when the participant started receiving benefits) if that spouse is still living, unless that spouse is being named as the 100% beneficiary of the certain and continuous annuity. This requirement applies to pre-trusteeship and post-trusteeship retirees.

PBGC will not retroactively require spousal consent for changes of beneficiaries for certain and continuous annuities that were made prior to the effective date of the new forms that require the additional consent.

If a participant or spouse raises an objection about the additional spousal consent or the original spousal consent provided when the participant made the original benefit election (e.g., because of an earlier general consent, which purports to fully waive the right to limit consent to future changes to optional forms of benefit and future changes to beneficiaries), please contact PPD.

8. Exceptions

a. Spousal consent not in file

If a participant is receiving a benefit that required spousal consent, but evidence shows that effective spousal consent was not properly obtained, PBGC will provide the spouse the opportunity to consent retroactively to or to refuse to consent to the participant's waiver of the QJSA and election of an optional form of benefit. If the spouse is deceased, PBGC will continue to pay the benefit in the elected form.

If a spouse claims that a QJSA survivor benefit is payable and spousal consent is not in the file, PBGC will determine if the spouse is due a benefit as provided by the applicable pension plan provisions, regulations, and/or PBGC policy in effect when the participant retired (except as provided in Policy 5.7-4 Marriage Requirements¹).

1. Annuity starting dates on or after January 1, 1985.²

a. Post-Trusteeship Retiree. If the participant had an annuity starting date on or after January 1, 1985 and PBGC does not have spousal consent on file, PBGC generally will pay the QJSA survivor benefit. However, if PBGC determines that a post-trusteeship retiree was correctly paid in accordance with prior PBGC policy, PBGC generally will not change the benefit to the QJSA.

b. Pre-Trusteeship Retiree. PBGC generally will assume that a prior plan administrator routinely followed the REA requirements when placing a pre-trusteeship retiree into pay status and will not change the benefit to the QJSA unless convincing evidence to the contrary is found.³

2. Annuity starting dates before January 1, 1985.⁴ If the participant's annuity starting date was prior to January 1, 1985, and a benefit determination has become final, PBGC generally will only pay benefits in accordance with the benefit determination; PBGC will not pay a surviving spouse benefit. If the benefit determination has not become final, PBGC

will determine if surviving spouse benefits are due as provided by the applicable pension plan provisions, regulations, and/or PBGC policy in effect as of the annuity starting date (except as provided in Policy 5.7-4 Marriage Requirements¹).

- 3. Affirmation that spousal consent was not given.** Prior to making payment under this provision, PBGC may require a spouse to affirm in writing that he or she did not give spousal consent for the form of benefit in pay and that he or she agrees to immediately repay PBGC any survivor benefits received if PBGC subsequently finds otherwise.

Note 1: Policy 5.7-4 Marriage Requirements addresses, among other things, PBGC's recognition of same-sex marriages. PBGC generally will recognize such marriages in open cases for purposes of QJSA and QPSA entitlement.

Note 2: Effective January 1, 1985 (or the earlier of the expiration of the current collective bargaining agreement and January 1, 1987 for collectively bargained plans), REA requires pension plans to pay a married participant who had at least one hour of service or paid leave on or after August 23, 1984, a QJSA unless the spouse consents to the participant's waiver of the QJSA. When putting a participant into pay, PBGC does not require participants to have the one hour of service or paid leave as provided in REA.

Note 3: PBGC may not be able to obtain all retiree records and forms when it trustees a plan. The absence of a spousal consent form is not considered indicative that the plan did not follow the REA requirements.

Note 4: Prior to January 1, 1985, in ongoing plans, spousal consent was not required for participants to waive a plan's automatic J&S annuity. However, prior to October 22, 1986, PBGC generally paid benefits based on the participant's marital status at DOPT and did not give participants the opportunity to waive a plan's automatic J&S annuity.

b. Abandoned or separated spouse

PBGC will treat a participant as unmarried (for purposes of requiring spousal consent) if the participant provides a court order declaring the participant to be legally separated or legally abandoned (within the meaning of local law); thus, spousal consent will not be required to elect a form of benefit other than the QJSA. If PBGC is later provided with a court order reversing or vacating the court order provided by the participant, PBGC will provide the spouse the opportunity to consent to or to refuse to consent to the participant's waiver of the QJSA.

c. Missing or unlocatable spouse

When a married participant who does not want to receive a QJSA applies for pension benefits and asserts that the spouse is missing or cannot be located, PBGC will attempt to locate the spouse.

- 1.** If PBGC establishes to its satisfaction that the spouse is "unlocatable," PBGC will not require spousal consent to pay the benefit in a form other than a QJSA.
- 2. Spouse located.** If the spouse is located, before or after the participant enters pay status, PBGC will provide the spouse the opportunity to consent to or to refuse to consent to the participant's waiver of the QJSA.

PBGC generally will not communicate (in writing or orally) any confidential information (e.g., name used, address, location, phone number, etc.) about the participant or the spouse to the other party even if the parties agree to the communication of the information.

- 3. Participant deceased.** If the spouse is subsequently located after the participant's death, PBGC will pay the spouse a surviving spouse benefit as provided in PBGC Policy [5.4-7 Annuity Benefit Forms](#). If the participant's death was on or after the participant's ASD, PBGC will pay a QJSA survivor benefit. If the participant's death was before the participant's ASD, PBGC will pay preretirement survivor benefits as provided under PBGC Policies [5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating On and After August 23, 1984](#) and [5.7-3 Survivor Annuities - pre-REA Terminations](#).

d. Alleged forgery of spousal consent

If a spouse alleges that his or her signature on a spousal consent is forged, PBGC will refer the matter to its Office of Inspector General (OIG) for possible investigation.

- 1.** If the OIG finds that the signature was forged, PBGC will change the participant's form of benefit to the QJSA.
- 2.** If the OIG concludes the signature was not forged, PBGC will not change the participant's form of benefit to the QJSA.
- 3. Instances where the OIG does not make a determination on the alleged forgery.** PBGC generally will assume that a notarized spouse signature is valid. Also, for applications processed by the prior plan administrator, PBGC generally will assume any spouse signature witnessed by a plan representative is valid.

4. Prior to changing the participant's form of benefit, PBGC may require a spouse to affirm in writing that he or she did not give spousal consent to the participant's waiver of the QJSA and that he or she agrees to immediately repay PBGC any survivor benefits received if PBGC subsequently finds otherwise.

e. QJSA-related benefit changes and recoupment

PBGC will change a form of benefit to the QJSA and recalculate a benefit when appropriate under this policy and in accordance with PBGC Policy [5.8-1 Benefit Corrections](#). (If the participant wants a form of benefit other than the QJSA, please contact Ask PPD.) Any resulting net benefit overpayments or underpayments will be calculated, recouped or recovered, or paid in accordance with PBGC Policies 6.3-1 Underpayment Reimbursement and Interest Payments, 6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery and 6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments.

5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities) 5th Ed.

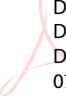
Concurrence

OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2021.09.03 13:55:30 -04'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	 Digitally signed by LAURA STEPHENS Date: 2021.09.03 11:27:30 -04'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	 Digitally signed by MICHELE GRAY Date: 2021.09.08 07:23:11 -04'00'
OGC: Joseph Krettek, Assistant General Counsel	 Digitally signed by JOSEPH KRETTEK Date: 2021.09.08 08:32:11 -04'00'

Endorsements

General Counsel: F. Russell Dempsey	 Digitally signed by FREDRICK DEMPSEY Date: 2021.09.08 08:53:07 -04'00'
--	---

Approval

Chief of Benefits Administration: David Foley	 Digitally signed by DAVID FOLEY Date: 2021.09.08 07:53:59 -04'00'
--	--

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on **Transmittal 2021-07**.*

5.8-1 Benefit Corrections

Edition	3 rd Edition
Issue Date	10/02/2014
Transmittal	Transmittal 2015-01
Last Review Date	N/A
Signed Policy	5.8-1 Benefit Corrections
Contact	ASK PPD

In this policy

[A. Introduction](#)

[B. Scope and Effective Date](#)

[C. Definitions](#)

[D. Policy](#)

[Concurrence, Endorsement, and Approval](#)

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 trustee 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 policy 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 of PBGC Operating Policy 5.8-1, now titled Benefit Corrections, PBGC is changing its policy 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 Policy [5.8-1](#). PBGC is changing its policy 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 policy 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 policy 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 PBGC Operating Policy **4.4-1 Asset 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 PBGC Operating Policy **5.8-1 Benefit Changes 2nd Ed.** continue to apply to benefit determinations issued for plans trustee before October 1, 2014. Otherwise this edition of the policy applies to benefit errors identified by PBGC on or after its effective date and is effective upon issuance.

C. Definitions

As used in this policy:

- 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 policy; 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. Policy

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 policy.

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 policy 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 policy except as specified below:

- **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 Operating Policy **6.3-1 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 PBGC Operating Policy [5.4-9 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 policy (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 policy 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 policy 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 PBGC Operating Policy [5.4-9 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 PBGC Operating Policy [5.4-9 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 policy.

- 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 policy, or applicable pension law, PBGC corrects the benefit form.
- 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 policy, 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 PBGC Operating Policy [5.2-6 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

- Change in legal Interpretation or PBGC policy.** A benefit determination generally will not be revised due to a change in legal interpretation or in PBGC policy 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 Policy **5.8-1** if the error was previously identified by PBGC and no corrective action was taken by PBGC under the policy in effect at that time.
- 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.
- 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.
- Fraud or Incorrect Information Provided by Participant or Beneficiary**

- 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.
 - 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:

- Notification of a benefit correction.** Written notice of a benefit correction will be sent as follows.
 - 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.
 - 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 policy 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 Operating Policy **6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**.

- **Benefit overpayments.** Benefit overpayments will be recouped or recovered in accordance with PBGC Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**, unless determined otherwise as provided under this policy.
- **Benefit underpayment.** Resulting underpayments will be paid as provided in PBGC Operating Policy **6.3-1 Underpayment Reimbursement and Interest Payments**.

Concurrence, Endorsement, and Approval

Policy 5.8-1 Benefit Corrections Concurrence, Endorsement, and Approval		
Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	09/18/2014
PPD: Laura Stephens, Acting Manager	L.S.	09/18/2014
OCC: James Armbruster, Assistant Chief Counsel	J.A.	09/18/2014
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	09/18/2014

Endorsements		
General Counsel: Judith R. Starr	J.R.S.	09/25/2014
Chief Financial Officer: Patricia Kelly	P.K.	09/30/2014
Approval		
Acting Chief of Benefits Administration and Director of the Office of Benefits Administration: Cathleen Kronopolus	C.K.	10/01/2014
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration and Director of the Office of Benefits Administration on Transmittal 2015-01.</i>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_8_1_3rd.htm
(10/02/2014).

Previous Editions

[5.8-1 Revising Benefit Determinations 1st Ed. - Outdated](#)

[5.8-1 Benefit Changes 2nd Ed. - Outdated](#)

[Top of Page](#)

5.8-2 Limited-Scope Benefit Determinations

Edition	2nd Edition
Approval Date	04/27/2017
Transmittal	Transmittal 2017-04
Last Review Date	N/A
Signed Policy	5.8-2 Limited-Scope Benefit Determinations
Contact	ASK PPD

In this policy

- [A. Introduction](#)
- [B. Scope and Effective Date](#)
- [C. General Policy](#)
- [Concurrence, Endorsement, and Approval](#)

A. Introduction

PBGC issues benefit determinations that address an individual's entitlement to benefits. These benefit determinations are "full-scope." They cover all aspects of the person's benefit entitlement.

In some cases, it may be appropriate for PBGC to make a limited-scope benefit determination either before or after issuance of the full-scope benefit determination. These could include situations involving an individual (e.g., that a participant is not entitled to a disability benefit) and those involving a group of participants (e.g., that participants are not entitled to shutdown benefits).

With this second edition, PBGC expands the scope to cover limited-scope benefit determinations sent after an earlier benefit determination has been issued, includes conforming changes to Policy [5.8-1 Benefit Corrections](#), and makes other minor clarifications.

B. Scope and Effective Date

This policy provides the rules on issuing limited-scope benefit determinations. It is effective upon issuance.

C. General Policy

A limited-scope benefit determination is a benefit determination that addresses one or more aspects of an individual's benefit entitlement, but not all aspects of that entitlement. It may be issued before or after a full scope benefit determination based on the facts and circumstance of a case. In some cases, a limited-scope benefit determination supplements an earlier benefit determination.

1. Limited-Scope Benefit Determinations for Individuals

PBGC may issue a limited-scope benefit determination to an individual upon review of the facts and circumstances with supervisory approval. Situations in which it may be appropriate to issue a limited-scope benefit determination to an individual include:

- Participant is not entitled to disability benefits,
- Surviving spouse is not entitled to survivor annuities,
- An earlier benefit determination was correct but omitted or did not address other significant information required to adequately describe the benefit entitlement, or
- Form of Benefit was not accurately reflected in the original benefit determination.

2. Limited-Scope Benefit Determinations for Groups of Participants

PBGC may issue limited-scope benefit determinations to a group of participants or other individuals upon review of the facts and circumstances with PPD approval. Situations in which it may be appropriate to issue a limited-scope benefit determination to a group of participants or other individuals, for instance, may include:

- Shutdown benefits are determined not to be payable,
- Special payments or supplements are not payable, or

- Form of Benefit was not accurately reflected in the original benefit determination.

See Section **D.7.a.2.** of Policy **5.8-1 Benefit Corrections** for examples of the use of limited-scope benefit determinations in correcting previously issued benefit determinations

Concurrence, Endorsement, and Approval

Policy 5.8-2 Limited Scope Benefit Determinations, 2nd Ed.		
Concurrence	Initials	Date
OBA/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	03/27/2017
OBA/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	03/27/2017
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	03/27/2017
OBA/OPCMD: Jennifer Messina, Director	J.M.	03/29/2017
OCC: Joseph Krettek, Assistant Chief Counsel	J.M.K.	03/27/2017
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	03/27/2017
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	04/06/2017
Chief Financial Officer: Patricia Kelly	P.K.	04/11/2017
Approval		
Chief of Benefits Administration: Cathleen Kronopolus	C.K.	04/02/2017

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on **Transmittal 2017-04.***

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_8_2_2nd.htm
(04/27/2017).

Previous Editions

5.8-2 Limited-Scope Benefit Determinations 1st Ed. -
Outdated

[Top of Page](#)

5.9-1 Disability Benefits

Edition	3 rd Edition
Issue Date	03/30/2011
Transmittal	Transmittal 2011-03
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. Guarantee of Disability Benefits](#)
- [E. Special Guarantee Rules for Disabled Participants](#)
- [F. Priority Category 3 Benefits](#)
- [G. Continued Entitlement to Disability-Conditioned Benefits](#)
- [H. Benefit Form for Disability Benefits](#)
- [I. Overpayments and Recoupment](#)

Examples

A. Background

Prior versions of this policy established rules for

- determining whether a disability benefit is guaranteed by PBGC;
- applying the Disability Maximum Guarantee (and not applying the Accrued-at-Normal Limit) to disability benefits paid to disabled participants; and
- applying the Disability Maximum Guarantee (and not applying the Accrued-at-Normal Limit) to the benefits of certain disabled participants who are receiving non-disability benefits.

With this edition of the policy, PBGC:

- establishes rules relating to a disabled participant's continued eligibility for a benefit that is dependent on the participant's remaining disabled, including:
 - notifying a disabled participant that the benefit is payable only upon continued disabled status (e.g., continued eligibility for Social Security Disability);
 - requiring a disabled participant to periodically certify to PBGC that he is still disabled.
- clarifies that PBGC offers annuity form elections to certain disabled participants who must choose a form of retirement benefit at ERA or NRA ([section H.2](#)); and
- clarifies the rules that apply to participants in PPA 2006 Bankruptcy Plans who become disabled between the Bankruptcy Petition Date (BPD) and DOPT.

B. Scope and Effective Date

This policy statement applies to disabled and formerly disabled participants in PBGC-trusteed plans. As it is primarily a restatement of existing policies, most of the rules contained herein have been effective for many years. The revisions in [sections D.2.b](#). and [G](#) are effective for plans with a DOTR on or after the effective date of this policy, or which have a valuation completed on or after January 1, 2012.

This policy provides guidance for the treatment of disability benefits provided in the pension plan. Disability benefits provided outside of the pension plan — for example, in a separate disability plan — are not payable by PBGC. In addition, the Special Guarantee Rules for Disabled Participants ([section E](#)) are applicable only if the pension plan provides a disability benefit.

C. Definitions

- 1. Disability Maximum Guarantee** The Retirement Protection Act of 1994 (RPA) eliminated the reduction for ages less than 65 in the maximum guarantee limit for certain benefits paid to disabled participants. The higher maximum guarantee limit is referred to as the "Disability Maximum Guarantee" and applies in plans with Termination Initiation Dates on or after December 8, 1994, to participants who meet the conditions described in [sections E.2](#) and [E.3](#).
- 2. PPA 2006 Bankruptcy Plan** means a single-employer plan that terminates in a distress or PBGC-initiated termination while bankruptcy proceedings are pending with respect to at least one of the plan's contributing sponsors if the bankruptcy proceedings were initiated on or after 9/16/06. (See PBGC's Operating Policy [5.14-1, Benefits in PPA 2006 Bankruptcy Plans](#).)
- 3. Special Guarantee Rules for Disabled Participants:** There are two special rules that may apply in determining the guaranteed benefit for a disabled participant. The first is that the Accrued-at-Normal (AAN) Limit is not applied to the participant's benefit if the requirements in [section D.1.a.](#) of this policy are satisfied. The second is the Disability Maximum Guarantee, as described above. Together, these two rules are referred to as the Special Guarantee Rules for Disabled Participants.

D. Guarantee of Disability Benefits

For a disability benefit to be guaranteed, it must be a guaranteeable benefit, as described in [section D.1](#), and the participant must be entitled to the benefit, as described in [section D.2](#).

1. Guaranteeability of Disability Benefits

a. General Rule

Under PBGC's regulation on Guaranteed Benefits (29 CFR part 4022), an annuity benefit that is payable under plan terms on account of the total and permanent disability of a participant that is expected to last for the lifetime of the participant is a guaranteeable benefit (§ 4022.6(a)) unless the plan standard for determining disability falls under the exception described in [section D.1.b](#) below. In addition to guaranteeing disability benefits when a plan disability standard is the same as the Social Security disability standard, PBGC will generally guarantee disability benefits under a plan standard that either is reasonably similar to the Social Security disability standard (i.e., one that defines disability as inability to engage in any substantial gainful activity) or is a typical occupational-disability standard (i.e., one that requires only that the participant be unable to perform the duties of his particular job or, sometimes, "similar" jobs).

b. Exception

Under 29 CFR §4022.6(b), if PBGC determines that a plan's standards for determining total and permanent disability were unreasonable or were modified in anticipation of plan termination, the disability benefit under a plan will be guaranteed only for a participant who meets the Social Security Administration's standards for disability. This exception allows PBGC to exclude from its guarantee those disability benefits where the plan standards (1) are unreasonably low either as written or as administered, or (2) were lowered in anticipation of plan termination. A finding under §4022.6(b) must have the concurrence of PPD.

2. Participant Entitlement to a Disability Benefit

For a participant to be entitled to a disability benefit from PBGC, the plan must provide a disability benefit.

- a. Initial Entitlement** For a disability benefit to be guaranteeable, a participant's disability must have begun, or be attributable to a disabling event that occurred, on or before the plan's DOPT. If a participant's disability benefit was properly in pay status on or before the plan's DOPT, the benefit is guaranteeable. If a participant had satisfied all of the plan's conditions for receipt of a disability benefit on or before the plan's DOPT, but the benefit was not in pay status on DOPT because the participant either did not apply or was in a waiting period required under the plan, or because of administrative delay, the benefit is also guaranteeable. PBGC may require a participant who is receiving a disability benefit or who has applied for a disability benefit to submit to an examination or provide other proof of disability before PBGC commences payment of a disability benefit.
- b. Continued Entitlement** PBGC will require a disabled participant to periodically certify that he or she remains disabled in order to continue receiving payment of the disability benefit or, in the case of a participant receiving a non-disability benefit (as described in [section D.3.a](#)), to continue having the Special Guarantee Rules for Disabled Participants apply to his benefit (see [section E](#)). In some instances PBGC may require participants to submit to an examination or provide other proof of disability. See [section G](#).
- c. PPA 2006 Bankruptcy Plans** For a disability benefit to be guaranteeable in a PPA 2006 Bankruptcy Plan, the disability must have begun, or be attributable to a disabling event that occurred, on or before the plan sponsor's bankruptcy

petition date (BPD) (see Policy 5.14-1, Benefits in PPA 2006 Bankruptcy Plans, [section D.3](#)). Although PBGC determines its guarantee of disability benefits using the BPD, eligibility for entry into pay status depends on the conditions that were satisfied under the plan on or before DOPT (see Policy 5.14-1, Benefits in PPA 2006 Bankruptcy Plans, [section D.3](#)).

E. Special Guarantee Rules for Disabled Participants

1. Requirements for Not Applying the Accrued-at-Normal (“AAN”) Limitation to Benefits Paid to Disabled Participants

The Accrued-at-Normal limitation is not applied where the participant meets the requirements under [section D.2](#) above for entitlement to the plan's disability benefit on or before DOPT (or BPD, when applicable) and -

- a. The participant retired under the plan's disability provision (e.g., permanent incapacity retirement);

OR

- b. (i) The participant retired under a non-disability type of retirement (e.g., 70/80, 30-year) *and* demonstrates to the satisfaction of PBGC that the Social Security Administration has determined that he or she satisfied the definition of disability under Title II or XVI of the Social Security Act and the regulations thereunder (SSA disability definition) on or before the earlier of the date of retirement or DOPT (or BPD, when applicable), *and* (ii) the plan's Termination Initiation Date was on or after December 8, 1994.

2. Requirements for the Disability Maximum Guarantee

- a. The Disability Maximum Guarantee applies, regardless of the retirement type (e.g., permanent incapacity retirement, 70/80, 30-year), where the participant meets the requirements under [section D.2](#) above for entitlement to the plan's disability benefit on or before DOPT (or BPD, when applicable), *and* demonstrates to the satisfaction of PBGC that the Social Security Administration has determined that he or she satisfied the SSA disability definition on or before the earlier of the date of retirement or DOPT (or BPD, when applicable).
- b. The Disability Maximum Guarantee continues to apply if the plan disability benefit changes under the plan's terms to an early or normal retirement benefit, provided the change is not because the participant no longer meets the SSA disability definition or the plan's disability requirements.
- c. The Disability Maximum Guarantee ceases to apply if the participant no longer satisfies the SSA disability definition or the plan's disability requirements. The participant may be eligible under the plan's terms to a normal or early retirement benefit, which would be subject to the PBGC's normal guarantee limitations.
- d. For PPA 2006 Bankruptcy Plans, PBGC will calculate and apply the Disability Maximum Guarantee based on the participant's age on BPD (not DOPT) (see PBGC Policy 5.14-1, Benefits in PPA 2006 Bankruptcy Plans, [section D.4.b](#)).

3. Calculation Rules When Disabled Participant Retired Under Non-Disability Provision of Plan

For a disabled participant who retired under a non-disability plan provision, but who satisfied the requirements under [section E.1.b](#) and [section E.2.a](#), the amount the participant will receive will be the greater of:

- a. The benefit that he or she would have received had the participant retired under the disability provisions of the plan (after PBGC applies the Special Guarantee Rules for Disabled Participants);
or
- b. The benefit under the retirement type elected at date of retirement (after PBGC applies “normal” guarantee rules, i.e. not the Special Guarantee Rules for Disabled Participants.)

Continued entitlement to the greater amount determined under a. will be based on the participant's continuing to meet the plan's disability requirements and the SSA disability definition, as further described in [section G](#).

F. Priority Category 3 Benefits

This Section F is effective for participants who receive a benefit determination on or after August 20, 2003.

The disability benefit of a participant whose disability benefit was, or could have been, in pay status on the date three years before DOPT (or, in the case of a PPA 2006 Bankruptcy Plan, on the date three years before BPD (see PBGC Policy [5.14-1, Benefits in PPA 2006 Bankruptcy Plans](#))), is assigned to Priority Category 3 for purposes of asset allocation. PBGC will look to plan provisions to determine if a participant who was in a waiting period on the date three years before DOPT (or BPD, when applicable) has a benefit assigned to Priority Category 3. If the plan provides that participants receive payments retroactive to a date that is on or before the beginning of the three-year period, then participants who are in a waiting period three years before DOPT/BPD will have a disability

benefit assigned to Priority Category 3. However, if the plan provides that disability benefits do not begin until the end of the waiting period, then participants who are in a waiting period three years before DOPT/BPD will not have a disability benefit assigned to Priority Category 3.

G. Continued Entitlement to Disability-Conditioned Benefits

Continued payment of a disability-conditioned benefit and/or amount to which the participant is entitled as of DOPT (or BPD, where applicable) is contingent on the participant's continuing to meet the same conditions ([section D.2.b](#)). In its Benefit Determination, PBGC will notify a participant with a disability-conditioned benefit or amount that:

- The disability benefit or increased non-disability benefit amount is conditioned upon the participant's remaining disabled and will be terminated or reduced if the participant's disability status changes;
- The participant will be required to periodically certify to his continued disability status; and
- The participant is responsible for repaying any overpayments that occur after a change in disability status.

PBGC will generally rely on the participant's certification that he or she remains disabled as indicated above. However, PBGC may also require a disabled participant to submit to an examination or provide other proof to demonstrate continued disability.

1. Certification of Continued Entitlement to Disability Benefits

PBGC will periodically request that a participant receiving a disability benefit certify as to his continued disability status.

PBGC will provide a reasonable amount of time for the participant to respond and certify that the disability continues, or, if it has ceased, the disability cessation date. If the participant does not certify to continuing disability, PBGC will discontinue the disability benefit as described in [section G.3](#).

- a. Continued entitlement to the disability benefit under the plan

1) Plan Disability Requires SSA Disability Eligibility

A disabled participant eligible for SSA disability must certify that he or she remains eligible for SSA disability. A participant who ceases to meet the SSA disability definition ceases to be eligible for the plan disability benefit as of the SSA disability cessation date.

2) Plan Disability Does Not Require SSA Disability Eligibility

A disabled participant must certify that he remains disabled under the plan's provisions. A participant who ceases to meet the plan's disability provisions ceases to be eligible for the plan's disability benefit as of the disability cessation date.

- b. Continued entitlement to the Special Guarantee Rules for Disabled Participants for participants who are receiving disability benefits under the plan.

1) Accrued-at-Normal (AAN) Limitation

A participant whose benefit is exempt from the AAN limitation due to his disability status must certify that he remains disabled under the plan's provisions, when requested by PBGC.

2) Disability Maximum Guarantee

A participant whose benefit is affected by the Disability Maximum Guarantee must certify that he continues to meet the plan's disability requirements and the SSA disability definition, when requested by PBGC.

- c. Continued entitlement to the Special Guarantee Rules for Disabled Participants for participants who are not receiving a disability benefit under the plan.

A participant whose benefit is affected by the Special Guarantee Rules for Disabled Participants must certify that he continues to meet the plan's disability requirements and the SSA disability definition, when requested by PBGC.

2. Cessation of Disability Benefits

If PBGC finds that a participant receiving a disability benefit is no longer disabled under the plan's standards (regardless of whether the plan's standard requires that the SSA disability definition be met (see [section G.1.a](#) and [b](#)), PBGC will discontinue payment of the disability benefit. PBGC will determine whether the participant has a current or future entitlement to a non-disability benefit under the plan. If the participant has not received a Benefit Determination, PBGC will provide an estimate of the non-disability benefit entitlement and of overpayments and (future) recoupment, as appropriate. If the participant has already received a Benefit Determination, PBGC will issue a new Benefit Determination describing the

non-disability benefit entitlement and any overpayments and recoupment, as appropriate. (See [section I](#).) The participant may apply for the non-disability benefit when he or she becomes eligible for such benefit.

3. Cessation of application of the Special Guarantee Rules for Disabled Participants for Participants Retired Under Non-Disability Provisions

If PBGC learns that a participant who is receiving a non-disability benefit that is increased by the Special Guarantee Rules for Disabled Participants no longer meets the requirements for such Special Rules, PBGC will apply the benefit guarantee limits for non-disabled participants. For example, if the Disability Maximum Guarantee was applied to the benefit, but the participant no longer meets the SSA disability definition, PBGC will apply the regular Maximum Guarantee Limit for non-disabled participants from the date as of which the participant was found by the SSA to no longer meet the SSA disability definition, and adjust benefits accordingly.

If the participant has not yet received a Benefit Determination, PBGC will provide an estimate of the participant's benefit entitlement (without the Special Guarantee Rules for Disabled Participants), showing overpayments and (future) recoupment as appropriate. If a Benefit Determination has already been issued reflecting the benefit determined contingent upon the participant's continued SSA disability eligibility, PBGC will issue a revised Benefit Determination reflecting the change in circumstances, the new benefit entitlement, overpayments, and recoupment, as appropriate. (See [section I](#).)

H. Benefit Form for Disability Benefits

1. General

The survivor benefit payable upon the death of a participant who was receiving a disability benefit depends on the plan provisions. Typically, a plan disability benefit is an "auxiliary benefit." A disability benefit is an auxiliary benefit if, when the participant attains early or normal retirement age, the disability benefit converts to an early or normal retirement benefit (benefit conversion) *that is not reduced by any disability benefit payments* made before the conversion. Such auxiliary benefits are not required to, and rarely do, provide survivor benefits. Instead, the plan QPSA is payable to the surviving spouse of a participant who died while receiving such a benefit, i.e., before a conversion at early or normal retirement age. If an auxiliary disability benefit does provide survivor benefits, contact PPD.

If a married participant receiving a disability benefit died after benefit conversion, a QJSA would be payable unless the participant (with spousal consent) had elected a different benefit form at conversion. In rare cases, disability benefits are non-auxiliary benefits. In these cases, the normal benefit form is required to be a QJSA because the participant is deemed to have retired as soon as he began receiving the disability benefit.

See PBGC's Operating Policy [5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984](#), and PBGC Policy [5.4-7 Annuity Benefit Forms](#) for detailed rules on survivor benefits.

2. Participant Form Elections at ERA or NRA

In a plan where the disability benefit is an auxiliary benefit and the participant did not make a form election previously, PBGC will offer a benefit form election when the benefit converts to an early or normal retirement benefit. See PBGC Policy [5.4-7, Annuity Benefit Forms](#).

3. Application of Disability Maximum Guarantee to Survivor Benefits

When a disabled participant who is receiving a disability or non-disability benefit that meets the requirements for application of the Disability Maximum Guarantee ([section D.2](#)) dies, the Disability Maximum Guarantee, rather than the regular maximum guarantee limit, will continue, and be applied to any survivor benefits. Thus, for example, where a disabled participant dies while receiving an auxiliary disability benefit, and his spouse is eligible for the plan's QPSA, the Disability Maximum Guarantee will be applied, rather than the regular maximum guarantee limit. Likewise, if at the time of his death, a participant is receiving a non-disability benefit that meets the requirements for application of the Disability Maximum Guarantee, the Disability Maximum Guarantee will be applied to any survivor benefits payable under the participant's benefit form. If the disability benefit provides survivor benefits, contact PPD.

The Disability Maximum Guarantee will **not** apply to a survivor benefit where the participant no longer met the conditions for the Disability Maximum Guarantee at date of death or where the participant's death is pre-DOPT.

4. PPA 2006 Bankruptcy Plans

In the case of a participant whose disability annuity commencement date occurred after BPD, and on or before DOPT, PBGC will calculate the benefit in accordance with PBGC Policy 5.14-1, Benefits in PPA 2006 Bankruptcy Plans, [section D.3.b](#). If the disability benefit was an auxiliary benefit, PBGC will offer an annuity election form for the recalculated non-disability benefit as soon as possible after trusteeship. If a plan has significant PC5 funding, contact PPD.

I. Overpayments and Recoupment

Payments to a disabled or formerly disabled participant in excess of any amounts due are treated as overpayments in accordance with Policy **6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments** and will be subject to recoupment as described in Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**.

Examples

1. Application of Disability Maximum Guarantee – Participant Retired under a Non-Disability Provision ([section D.3](#))

A participant retired on February 1, 2002, under the plan's 70/80 retirement, but could have retired under the plan's disability provisions. After PBGC trustees the plan, he demonstrates to PBGC's satisfaction that SSA has determined that he satisfied the SSA disability definition due to a disabling event that occurred on or before his date of retirement. The participant is receiving \$4,000 per month as a straight life annuity. The monthly benefit amount is the same under the 70/80 retirement and disability retirement. The Date of Plan Termination is July 31, 2002. The monthly Maximum Insurance Limit for 2002 is \$3,579.55 at age 65 in the form of a straight life annuity. Since the participant was eligible for a Social Security Disability benefit on or before his date of retirement and met the requirements for a disability retirement under plan provisions, he would receive a benefit from PBGC with the Disability Maximum Guarantee applied. This participant's Disability Maximum Guarantee is \$3,579.55 even if he is younger than age 65 at DOPT.

2. Application of the Special Guarantee Rules for Disabled Participants A– Participant Retired under a Non-Disability Retirement Provision ([section E.3](#))

Assume the same facts as above, but in addition, the participant is receiving a temporary monthly supplement of \$400 that ends at age 62, resulting in a benefit of \$4,400 per month to age 62 and \$4,000 per month thereafter. Since the participant demonstrated he was eligible for a Social Security Disability benefit due to a disabling event that occurred on or before the earlier of (a) his date of retirement or (b) DOPT and met the requirements for a disability retirement under plan provisions, the Accrued-at-Normal Limit is not applied. In addition, the Disability Maximum Guarantee would apply to his benefit. If we assume that the monthly level life annuity is \$4,100, the participant would receive \$3,841.64 $((3,579.55/4,100.00) \times \$4,000)$ per month to age 62, and \$3,492.40 $((3,579.55/4,100.00) \times \$4,000)$ per month thereafter.

3. Survivor Annuity – Participant's Date of Death occurs before Conversion Date ([section H](#))

A married participant retired at age 52 with a plan disability benefit that is an auxiliary benefit that does not provide a survivor benefit. At the plan's DOPT, July 31, 2002, the participant is age 60. Under plan provisions, the disability benefit would have been converted to a normal retirement benefit at age 65 and, at that time, the participant would have to make an election as to the form of benefit. He is receiving \$4,000 per month from the plan and demonstrates to PBGC that he meets the requirements for the Disability Maximum Guarantee. His Disability Maximum Guarantee is \$ 3,579.55, as a straight life annuity.

If he dies at age 61 (before the conversion date of age 65, but after attaining eligibility for an actuarially reduced early retirement benefit), his surviving spouse will receive the plan's qualified pre-retirement survivor annuity. PBGC will calculate the spouse's benefit as follows:

The participant's benefit is converted to a joint-and-survivor annuity, e.g., 50%, with an annuity starting date of the first of the month following the participant's date of death. For this example, assume the participant and the spouse are the same age. If we assume that the form conversion factor for the plan benefit is .9200 and that the early retirement factor for the first of the month following his date of death is .7600, the participant's plan benefit is \$2,796.80 $(\$4,000 \times .9200 \times .7600)$ per month as a joint-and-50% survivor annuity. His surviving spouse's benefit under the plan is a straight life annuity of \$1,398.40 per month $(\$2,796.80 \times .50)$.

The participant's Disability Maximum Guarantee under a joint-and-50% survivor annuity is \$3,221.60 $(\$3,579.55 \times .9000)$ (Disability Maximum Guarantee as a straight life annuity) per month; his surviving spouse's Disability Maximum Guarantee is \$1,610.80 $(\$3,221.60 \times .50)$. Because the surviving spouse's plan benefit (\$1,398.40 per month) is less than her Disability Maximum Guarantee (\$1,610.80), her benefit is not cut by the Disability Maximum Guarantee. Had the regular maximum guarantee applied, the surviving spouse benefit would be limited to \$1,159.78 per month (50% of \$3,221.60 (50% J & S maximum guarantee at age 65) $\times .7200$ (PBGC age reduction factor for a participant age 61)). Note the surviving spouse annuity form options under Policy **5.4-7 Annuity Benefit Forms** and the annuity starting date options under Policy **5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984**.

**4. Continued Entitlement – Participant Ceases to be eligible for a disability benefit conditioned on SSA Disability Eligibility
(*section G*)**

A participant retired on disability on February 1, 2010, in a plan that requires the SSA disability definition be met. The plan is trusteeed on October 1, 2011. The participant's monthly disability amount is \$2,000. PBGC communicates to the participant in the benefit determination that the continued payment of the disability benefit is contingent upon the participant continuing to meet the SSA disability definition. The participant notifies PBGC in May 2013 that he is no longer eligible for SSA disability, and provides an SSA disability cessation date of January 15, 2013. The participant is not yet eligible for an early or normal retirement benefit in May 2013. PBGC terminates payment of the disability benefit as of May 2013 (last payment 5/1/2013) and notifies the participant that he has been overpaid \$8,000 (February, March, April and May 2013 at \$2,000 per month), which will be recouped when he begins to receive a retirement benefit.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_9_1_3rd.htm
(03/30/2011)

Previous Editions

[5.9-1 Disability Benefits 1st Ed. - Outdated](#)

[5.9-1 Disability Benefit 2nd Ed. - Outdated](#)

[Top of Page](#)

5.9-1 Disability Benefits

Edition	4 th Edition
Issue Date	11/07/2019
Transmittal	Transmittal 2020 -01
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions
- D. Guarantee of Disability Benefits
- E. Special Guarantee Rules for Disabled Participants
- F. Priority Category 3 Benefits
- G. Continued Entitlement to Disability-Conditioned Benefits
- H. Benefit Form for Disability Benefits
- I. Overpayments and Recoupment
- J. Auxiliary Disability Benefit Corrections
- K. Non-Auxiliary Disability Benefit Corrections
- Examples

A. Background

Prior versions of this policy established rules that:

- Determine whether a disability benefit is guaranteed by PBGC;
- Apply the Disability Maximum Guarantee (and not applying the Accrued-at-Normal Limit) to disability benefits paid to disabled participants;
- Apply the Disability Maximum Guarantee (and not applying the Accrued-at-Normal Limit) to the benefits of certain disabled participants who are receiving non-disability benefits;
- Clarify that a disabled participant's continued eligibility for a benefit is dependent on the participant's remaining disabled, including:
 - notifying a disabled participant that the benefit is payable only upon continued disabled status (e.g., continued eligibility for Social Security Disability);
 - requiring a disabled participant to periodically certify to PBGC that he is still disabled.
 - Clarify that PBGC offers annuity form elections to certain disabled participants who must choose a form of retirement benefit at conversion date (section H.2); and
 - Clarify the rules that apply to participants in PPA 2006 Bankruptcy Plans who become disabled between the Bankruptcy Petition Date (BPD) and DOPT.

In this 4th edition, PBGC is expanding the policy to do the following:

- Expand the definitions to add clarity within the policy (section C);
- Document how PBGC determines and communicates whether a participant has a pre-DOPT entitlement to a guaranteed disability benefit in the absence of a determination by the prior plan administrator (section D.2);
- Incorporate previously issued policy decisions about Railroad Retirement Board disability determinations in the following policy decision logs which are herein incorporated (Section E):
 - Policy Decision Log 2006-06: Disability Maximum Guaranty Limitation; and
 - Policy Decision Log 2014-05: Disability Exemption from Accrued-At-Normal Limit.
- Address how to rectify errors made by the prior plan administrator (or PBGC) in communicating and/or administering disability benefits (Sections J and K), including:
 - Auxiliary disability benefit corrections, incorporating and superseding the guidance in previously issued Policy Decision Log 2012-02: Disability Failure to Convert; and
 - Non-auxiliary disability benefit corrections.

B. Scope and Effective Date

This policy statement applies to disabled and formerly disabled participants in PBGC-trusteed plans and is effective upon issuance. Most of the rules contained herein have been effective for many years; however, the revisions in **Sections D.2.b.** and **G** are effective for plans with a DOTR on or after 3/30/2011, or which have a valuation completed on or after January 1, 2012.

This policy provides guidance for the treatment of disability benefits provided in the pension plan. Disability benefits provided outside of the pension plan — for example, in a separate disability plan — are not payable by PBGC. In addition, the Special Guarantee Rules for Disabled Participants (**Section E**) are applicable only if the pension plan provides a disability benefit.

C. Definitions

1. **Auxiliary Disability Benefit** - A benefit payable upon the participant's disability, which does not reduce the benefit payable at normal (or early) retirement, known as the conversion date. The disability benefit paid through the conversion date is a temporary benefit, payable until the participant reaches his or her conversion date and is eligible for retirement benefits. Auxiliary disability benefits are defined by 26 C.F.R. § 1.401(a)-20 Q&A 10(c). The normal Joint and Survivor Annuity rules for a married participant must be satisfied as of the conversion date to a retirement benefit. Auxiliary benefits are often paid without a benefit election, in the amount that would be payable as a straight-life annuity. However, some plans will permit a participant to elect a form for the auxiliary benefit.

For example: a plan may provide that a participant who satisfies the plan's eligibility requirements for a disability benefit may begin receiving benefits as early as age 55.

This early commencement does not reduce the benefit that is payable at normal retirement. This is an auxiliary benefit.

2. **Bankruptcy Petition Date (BPD)** - See PBGC's Operating Policy **5.14-1, Benefits in PPA 2006 Bankruptcy Plans**.
3. **Conversion Date** - the date at which an auxiliary benefit ends, and a retirement benefit begins. This is typically the plan's normal retirement date. A determination that a plan's auxiliary disability ends or converts as of a date earlier than the normal retirement date (e.g. early retirement) requires OGC concurrence, referred through ASK PPD.
4. **Disability Maximum Guarantee** - the Retirement Protection Act of 1994 (RPA) eliminated the reduction for ages less than 65 in the maximum guarantee limit for certain benefits paid to disabled participants. The higher maximum guarantee limit is referred to as the "Disability Maximum Guarantee" and applies in plans with Termination Initiation Dates on or after December 8, 1994, to participants who meet the conditions described in **Sections E.2 and E.3**.
5. **Non-Auxiliary Disability Benefit** - a benefit payable upon the participant's disability, which reduces the benefit payable at normal (or early) retirement. A non-auxiliary benefit is a type of retirement benefit and does not convert into a retirement benefit at a later date. The normal Joint and Survivor Annuity rules for a married participant must be satisfied as of the ASD of the non-auxiliary disability benefit.

For example, a plan may provide that a participant who satisfies the plan's eligibility requirements for a disability benefit may begin receiving benefits as early as age 55 for the life of the participant. The benefit is actuarially reduced for early commencement. This is a non-auxiliary benefit.
6. **PPA 2006 Bankruptcy Plan** - See PBGC's Operating Policy **5.14-1, Benefits in PPA 2006 Bankruptcy Plans**.
7. **Special Guarantee Rules for Disabled Participants:** There are two special rules that may apply in determining the guaranteed benefit for a disabled participant. Together, these two rules are referred to as the Special Guarantee Rules for Disabled Participants.
 - a. The first rule is that the Accrued-at-Normal (AAN) Limit is **not applied** to the participant's benefit if the requirements in **Section D.1.a.** of this policy are satisfied.
 - b. The second rule is that the Disability Maximum Guarantee, as described above is **applied**.
8. **Termination Initiation Date ("TID")** - See PBGC's Operating Policy 6.7-2 DUEC Recovery Amounts.

D. Guarantee of Disability Benefits

For a disability benefit to be guaranteed, it must be a guaranteeable benefit, as described in **Section D.1**, and the participant must be entitled to the benefit on or before DOPT, as described in **Section D.2**.

1. Guaranteeability of Disability Benefits

- a. **General Rule** - Under PBGC's regulation on Guaranteed Benefits (29 CFR part 4022), an annuity benefit that is payable under plan terms on account of the total and permanent disability of a participant that is expected to last for the lifetime of the participant is a guaranteeable benefit (§ 4022.6(a)) unless the plan standard for determining disability falls under the exception described in **Section D.1.b** below. PBGC guarantees a disability benefit for a participant only if the plan provides a disability benefit.

In addition to guaranteeing disability benefits when a plan disability standard is the same as the Social Security Administration disability standard, PBGC will generally guarantee disability benefits under a plan standard that either is reasonably similar to the Social Security Administration disability standard (i.e., one that defines disability as inability to engage in any substantial gainful activity) or is a typical occupational-disability standard (i.e., one that requires only that the participant be unable to perform the duties of his particular job or, sometimes, "similar" jobs).

- b. **Exception** – PBGC will require a Social Security Administration or Railroad Retirement Board disability determination where PBGC determines (with PPD's concurrence) that a plan's standards for determining total and permanent disability:
 - i. are unreasonable either as written or as administered, for example the standard for disability is unreasonably low or in cases where the plan standards were applied arbitrarily or not according to plan procedures; or
 - ii. were modified in anticipation of plan termination.

2. Participant Entitlement to a Disability Benefit

- a. **Initial Entitlement determined by Plan** For a disability benefit to be guaranteeable, the pension plan must provide a disability benefit and a participant's disability must have begun, or be attributable to a disabling event that occurred, on or before the plan's DOPT.
 - i. **Plan determined participant entitled to a disability benefit** If a participant was determined by the plan administrator to be eligible for the plan's disability benefit and properly in pay status on or before the plan's DOPT, the benefit is guaranteeable. If a participant had satisfied all of the plan's conditions for receipt of a disability benefit on or before the plan's DOPT, but the benefit was not in pay status on DOPT because the participant either did not apply or was in a waiting period required under the plan, or because of administrative delay, the benefit is also

guaranteeable, provided PBGC has evidence that the plan's conditions were met and a disability entitlement determination made by the plan.

- ii. **Plan determined participant not entitled to a disability benefit** If a participant made a pre-DOPT claim for a disability benefit that was denied by the plan administrator, and after DOPT the participant makes a new claim for a disability benefit with PBGC, PBGC may evaluate and determine disability benefit entitlement. Contact PPD for concurrence if such a claim is made.
- b. **Initial Entitlement determined by PBGC** If a participant did not make a claim for a disability benefit with the plan administrator, or if a participant did make a claim for a disability benefit on which the plan administrator did not make a determination, PBGC will evaluate and determine eligibility.
 - i. **Determining participant's disability** - PBGC will apply the plan's disability provisions relating to eligibility requirements other than the definition of disability. In all disability benefit eligibility determinations performed by PBGC, PBGC will require a Social Security Administration disability eligibility determination or a Railroad Retirement Board's disability eligibility determination as evidence that the participant is totally and permanently disabled. The plan's definition of disabled will be disregarded to the extent that the plan's disability standard is **not** a determination by the Social Security Administration of disability eligibility. (PBGC does not have a "Plan Committee" that will examine medical evidence, nor does it employ physicians to conduct physical exams in order to make or review independent medical evidence when SSA disability eligibility is not the standard used by the plan.) The Social Security disability eligibility determination provides an "onset date" which is the "disabling event" date. The onset date must be on or before the plan's DOPT. If a plan's disability provisions include disability "exceptions", e.g. disability attributable to commission of a crime or drug addiction, PBGC will include the plan's disability exclusions in making its determination.
 - ii. **Determining applicability of other disability benefit provisions** In addition, PBGC may identify a disability plan provision as an administrative requirement rather than a basic plan requirement. PBGC always follows basic plan requirements (such as required age, years of service or participation, employment at a specific location or job category) but generally does not require a participant's satisfaction of administrative requirements. Examples of administrative requirements include application by the participant for a disability benefit; or placement of the participant into a certain leave category by the employer. Contact PPD for concurrence if a plan's disability benefit provision appears to be an administrative requirement.

- c. **Continued Entitlement** As further described in **Section G**, PBGC will require a disabled participant to periodically certify that he or she remains disabled to:
 - i. Continue receiving payment of the disability benefit, or
 - ii. Continue having the Special Guarantee Rules for Disabled Participants apply to his benefit (see **Section E**) in the case of a participant receiving a non-disability benefit (as described in **Section E.6**).
 - d. **Medical Evidence** In some instances, before PBGC commences payment of a disability benefit or as a condition for continued entitlement to a disability benefit, PBGC in its discretion may require a participant to:
 - i. Submit to an examination or provide other proof of disability; or
 - ii. Provide proof of continued disability
- See also **Section G**.
3. **PPA 2006 Bankruptcy Plans** For a disability benefit to be guaranteeable in a PPA 2006 Bankruptcy Plan, the disability must have begun, or be attributable to a disabling event that occurred, on or before the plan sponsor's bankruptcy petition date (BPD) (see Policy 5.14-1, Benefits in PPA 2006 Bankruptcy Plans, **section D.3**). Although PBGC determines its guarantee of disability benefits using the BPD, eligibility for the disability benefit and therefore entry into pay status depends on the conditions that were satisfied under the plan on or before DOPT (see Policy 5.14-1, Benefits in PPA 2006 Bankruptcy Plans, **section D.3**).

E. Special Guarantee Rules for Disabled Participants

1. **Requirements for Not Applying the Accrued-at-Normal (“AAN”) Limitation to Benefits Paid to Disabled Participants** - The Accrued-at-Normal limitation is not applied where the participant meets the requirements under **Section D.2** above for entitlement to the plan's disability benefit on or before DOPT (or BPD, when applicable) and -
 - a. The participant retired under the plan's *disability benefit* (e.g. permanent incapacity retirement); or
 - b. The participant retired under a *non-disability type of retirement* (e.g., reduced or unreduced early retirement, 70/80, 30-year), and PBGC is able to determine that either one of the following determinations was made with respect to the participant effective as of the date of the non-disability retirement;
 - i. The Social Security Administration has determined that he or she satisfied the definition of disability under Title II or XVI of the Social Security Act and the regulations thereunder (SSA disability eligibility determination); or

- ii. The Railroad Retirement Board (RRB) has determined that he or she is eligible to receive a disability benefit from RRB.
2. **Requirements for the Disability Maximum Guarantee** - The Disability Maximum Guarantee applies where a participant meets the requirements under **Section D.2** above for entitlement to the plan's disability benefit on or before DOPT (or BPD, when applicable) and -
- a. The plan's Termination Initiation Date was on or after December 8, 1994;
 - b. The participant retired under *any type of retirement* (e.g., permanent incapacity retirement, early reduced or unreduced, 70/80, 30-year); and
 - c. PBGC is able to determine that the Social Security Administration has determined that the participant satisfied the SSA disability definition on or before the earlier of the date of retirement or DOPT (or BPD, when applicable). A Railroad Retirement Board disability determination does not suffice for this treatment.
3. **Continuation of Disability Maximum Guarantee** – The Disability Maximum Guarantee continues to apply if the plan disability benefit converts under the plan's terms to a retirement benefit, unless the participant no longer meets the SSA disability definition.
4. **Cessation of Disability Maximum Guarantee** – The Disability Maximum Guarantee ceases to apply if the participant no longer satisfies the SSA disability definition or the plan's disability requirements. A participant receiving a disability benefit may be eligible for a different benefit from the plan under the plan's terms for a normal or early retirement benefit, which would be subject to the PBGC's normal guarantee limitations. **See Section G.**
5. **PPA 2006 Bankruptcy Plans** – For PPA 2006 Bankruptcy Plans, PBGC will calculate and apply the Disability Maximum Guarantee based on the participant's age on BPD (not DOPT) (see Policy 5.14-1, Benefits in PPA 2006 Bankruptcy Plans, **Section D.4.b**).
6. **Calculation Rules When Disabled Participant Retired Under Non-Disability Provision of Plan**
- a. For a disabled participant who retired under a non-disability plan provision (i.e., reduced or unreduced early retirement) but who satisfied the requirements under **Section E.1 and E.2**, the amount the participant will receive will be the greater of:
 - i. The benefit that he or she would have received had the participant retired under the disability provisions of the plan, after PBGC applies the Special Guarantee Rules for Disabled Participants, and PBGC applies the appropriate adjustment for the form of benefit elected at early retirement; or
 - ii. The benefit under the non-disability retirement type elected at date of retirement (after PBGC applies "normal" guarantee rules, i.e. not the Special Guarantee Rules for Disabled Participants.)

- b. Continued entitlement to the greater amount (a "disability conditioned amount") determined in **a.i. above**, will be based on the participant's continuing to meet the plan's disability requirements and continuing to be determined eligible for disability benefits by the Social Security Administration, as further described in **Section G**. The participant's non-disability retirement application including the form of benefit election elected remains valid.

F. Priority Category 3 Benefits

1. This Section F is effective for participants who receive a benefit determination on or after August 20, 2003.
2. The disability benefit of a participant whose disability benefit was, or could have been, in pay status on the date three years before DOPT (or, in the case of a PPA 2006 Bankruptcy Plan, on the date three years before BPD – see Policy **5.14-1, Benefits in PPA 2006 Bankruptcy Plans**), is assigned to Priority Category 3 for purposes of asset allocation. PBGC will look to plan provisions to determine if a participant who was in a waiting period on the date three years before DOPT (or BPD, when applicable) has a benefit assigned to Priority Category 3. If the plan provides that participants receive payments retroactive to a date that is on or before the beginning of the three-year period, then participants who are in a waiting period three years before DOPT/BPD will have a disability benefit assigned to Priority Category 3. However, if the plan provides that disability benefits do not begin until the end of the waiting period, then participants who are in a waiting period three years before DOPT/BPD will not have a disability benefit assigned to Priority Category 3.

G. Continued Entitlement to Disability Benefits and Disability-Conditioned Amounts

1. **Notice to Participants.** Continued payment of a disability benefit or disability-conditioned amount to which the participant is entitled as of DOPT (or BPD, where applicable) is contingent on the participant's continuing to meet the same conditions (**Section D.2.c**). In its Benefit Determination, PBGC will notify a participant with a disability benefit or a disability-conditioned amount that:
 - a. The disability benefit or for a non-disability benefit, the disability-conditioned amount is conditioned upon the participant's remaining disabled and the benefit will be terminated or reduced if the participant's disability status changes;
 - b. The participant will be required to periodically certify to his continued disability status; and
 - c. The participant is responsible for repaying any overpayments that occur after a change in disability status.
2. **Certification of Continued Entitlement to Disability Benefits.** PBGC will periodically request that a participant receiving a disability benefit or disability-conditioned amount certify as to his continued disability status. PBGC will provide a reasonable amount of

time for the participant to respond and certify that the disability continues, or, if it has ceased, the disability cessation date. If the participant does not certify to continuing disability, PBGC will discontinue the disability benefit as described in Section G.3 or reduce the disability-conditioned amount as described in Section G.4. PBGC will generally rely on a participant's certification that he or she remains disabled. However, PBGC may also require a disabled participant to submit to an examination or provide other proof to demonstrate continued disability.

- a. **Continued entitlement to the disability benefit under a plan**
 - i. **Plan Disability Requires SSA Disability Eligibility.** A disabled participant determined eligible by SSA for disability must certify that he or she has remained eligible for SSA disability, when requested by PBGC. A participant who has been determined by SSA to no longer be eligible for SSA disability standard ceases to be eligible for the plan's disability benefit as of the SSA disability cessation date.
 - ii. **Plan Disability Does Not Require SSA Disability Eligibility.** A disabled participant must certify that he remains disabled under the plan's provisions, when requested by PBGC. A participant who ceases to meet the plan's disability provisions ceases to be eligible for the plan's disability benefit as of the disability cessation date.
 - b. **Continued entitlement to the Special Guarantee Rules for Disabled Participants for participants who are receiving disability benefits under the plan.**
 - i. **Accrued-at-Normal (AAN) Limitation.** A participant whose benefit is exempt from the AAN limitation due to his disability status must certify that he remains disabled under the plan's provisions, when requested by PBGC.
 - ii. **Disability Maximum Guarantee.** A participant whose benefit is affected by the Disability Maximum Guarantee must certify that he continues to meet the plan's disability requirements and the SSA disability definition, when requested by PBGC.
 - c. **Continued entitlement to the Special Guarantee Rules for Disabled Participants for participants who are receiving a non-disability benefit under the plan.** A participant whose benefit is affected by the Special Guarantee Rules for Disabled Participants must certify that he continues to be determined eligible by SSA for disability, when requested by PBGC.
3. **Cessation of Disability Benefits.** If PBGC finds that a participant receiving a disability benefit is no longer disabled under the plan's standards, regardless of whether the plan's

standard requires a determination of SSA disability eligibility (see **Section G.1.a** and **b**), PBGC will:

- a. Discontinue payment of the disability benefit,
 - b. Determine whether the participant has a current or future entitlement to a non-disability benefit (retirement benefit) under the plan. The participant may apply for the retirement benefit when he or she becomes eligible for such benefit. And
 - c. Take other appropriate action based on the participant's Benefit Determination status.
 - i. If the participant has not received a Benefit Determination, PBGC will provide an estimate of the non-disability benefit entitlement and of overpayments and (future) recoupment, as appropriate. Or
 - ii. If the participant has already received a Benefit Determination, PBGC will issue a new Benefit Determination describing the non-disability benefit entitlement and any overpayments and recoupment, as appropriate. (See **Section I.**)
4. **Cessation of application of the Special Guarantee Rules for Disabled Participants for Participants Retired Under Non-Disability Provisions**
- a. **Benefit Adjustment** If PBGC learns that a participant who is receiving a non-disability benefit that is increased by the Special Guarantee Rules for Disabled Participants no longer meets the requirements for such Special Guarantee Rules, PBGC will recalculate the benefit payable without applying the Special Guarantee Rules. For example,
 - i. If the Disability Maximum Guarantee was applied to the benefit and resulted in an increase to the benefit amount otherwise payable, but the participant is no longer determined eligible by SSA for a disability benefit, PBGC will apply the regular Maximum Guarantee Limit for non-disabled participants determined as of the date as of which the participant was found by the SSA to no longer be eligible for a disability benefit and adjust benefits accordingly.
 - ii. If not applying the Accrued at Normal (AAN) limit to the participant's benefit resulted in an increase in the benefit amount otherwise payable, but the participant no longer meets the plan's disability definition, PBGC will recalculate the benefit including the AAN limit and adjust benefits accordingly.
 - b. **Notice of Benefit Adjustment**

- i. If the participant has not yet received a Benefit Determination, PBGC will provide an estimate of the participant's benefit entitlement (without the Special Guarantee Rules for Disabled Participants), showing overpayments and (future) recoupment as appropriate and adjust the estimated benefit.
- ii. If the participant previously received a Benefit Determination reflecting the benefit determined contingent upon the participant's continued SSA disability eligibility, PBGC will issue a revised Benefit Determination reflecting the change in circumstances, the new benefit entitlement, overpayments, and recoupment, as appropriate. (See **Section I**) and adjust the benefit.
- iii. If the participant previously received a Benefit Determination that did not address the disability benefit and its contingent nature, consult with PPD to determine whether and what type of BD may be appropriate.

H. Benefit Form for Disability Benefits

1. General

The survivor benefit payable upon the death of a participant who was receiving a disability benefit depends on the plan provisions and whether the disability benefit is an Auxiliary Disability Benefit or a Non-Auxiliary Disability Benefit. Auxiliary disability benefits are often automatically payable in a form (ex. SLA) that does not provide survivor benefits. Instead, the plan QPSA is payable to the surviving spouse of a participant who dies while receiving such a benefit, i.e., before conversion date. If a plan's auxiliary disability benefit provisions appear to provide survivor benefits, contact PPD. A non-auxiliary disability benefit does not have a conversion date and the QJSA requirements apply at the time of disability retirement. Therefore, survivor benefits payable in the event of the death of a participant receiving a non-auxiliary disability benefit will be based on the benefit form paid to/elected by the participant with spousal consent if the QJSA is waived.

If a married participant receiving a disability benefit died after benefit conversion, a QJSA would be payable unless the participant (with spousal consent) had elected a different benefit form at conversion. When disability benefits are non-auxiliary benefits, the normal benefit form is required to be a QJSA because the participant is deemed to have retired as soon as he began receiving the disability benefit, there is no conversion date later to a retirement benefit.

See PBGC's Operating Policy **5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984**, and PBGC Policy **5.4-7 Annuity Benefit Forms** for detailed rules on survivor benefits.

2. Participant Form Elections at Conversion Date

In a plan where the disability benefit is an auxiliary benefit, PBGC will offer a benefit form election when the benefit converts to a retirement benefit. See Policy **5.4-7, Annuity Benefit Forms**. See **Section J** if either the plan or PBGC failed to convert the benefit correctly or at the appropriate time.

3. Application of Disability Maximum Guarantee to Survivor Benefits

When a disabled participant dies who was receiving a disability benefit or non-disability benefit that met the requirements for application of the Disability Maximum Guarantee (**Section D.2**), the Disability Maximum Guarantee, rather than the regular maximum guarantee limit, continues to apply to any survivor benefits. The Disability Maximum Guarantee will **not** apply to a survivor benefit where the participant no longer met the conditions for the Disability Maximum Guarantee at date of death or where the participant's death is before DOPT.

- a. **Example:** A disabled participant dies while receiving an auxiliary disability benefit, and his spouse is eligible for the plan's QPSA, the Disability Maximum Guarantee will be applied, rather than the regular maximum guarantee limit. If the auxiliary disability benefit form provides survivor benefits, contact PPD.
- b. **Example:** A disabled participant dies while receiving a non-disability benefit that meets the requirements for application of the Disability Maximum Guarantee, the Disability Maximum Guarantee will be applied to any survivor benefits payable under the participant's benefit form.

4. PPA 2006 Bankruptcy Plans

In the case of a participant whose disability benefit entitlement date occurred after BPD, and on or before DOPT, PBGC will calculate the benefit in accordance with Policy 5.14-1, Benefits in PPA 2006 Bankruptcy Plans, **Section D.3.b**. If the disability benefit was an auxiliary benefit, PBGC will offer an annuity election form for the recalculated non-disability benefit as soon as possible after trusteeship. If a plan has significant PC5 funding, contact PPD.

I. Overpayments and Recoupment

Payments to a disabled or formerly disabled participant in excess of any amounts due are treated as overpayments in accordance with Policy 6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments and will be subject to recoupment as described in Policy 6.4-1 Repayment of **Benefit Overpayments through Recoupment, Recovery, and Administrative Correction**.

J. Auxiliary Disability Benefit corrections

- 1. Auxiliary Disability Benefits** – when a participant receiving an auxiliary disability benefit reaches his or her conversion date, the disability benefit converts to the applicable retirement benefit. The retirement benefit is *not reduced by any disability benefit payments made before the conversion date*.

- a. **Typical Form of Auxiliary Disability Benefit** - An auxiliary disability benefit provision often provides a single form of benefit (typically an SLA) to all participants, regardless of marital status at disability ASD. An auxiliary disability benefit's normal form rarely provides survivor benefits or optional form of benefit selection. For death benefits, the plan QPSA is payable to the surviving spouse of a participant who dies before the conversion date.
 - b. **Atypical Form of Auxiliary Disability Benefits** - An auxiliary disability provision will rarely provide participants a normal form of benefit that includes a survivor benefit or allow for election of an optional form of benefit. If a participant receiving an auxiliary disability benefit dies prior to the conversion date and was paid in an optional form of benefit that includes a survivor benefit, contact PPD.
2. **Auxiliary Disability Benefit administered incorrectly** - At conversion date the participant should apply for retirement benefits in the same manner as any other participant who is eligible for retirement including the opportunity to elect an optional form of benefit (FOB), with spousal consent if married. Occasionally, OBA will determine that a plan or OBA administered an auxiliary disability benefit incorrectly. Once OBA uncovers mistakes for one or more participants, OBA will take steps to correct the auxiliary disability benefit(s). Corrections will be based on the processing errors and whether the participant is alive or deceased (DOD if deceased) and marital status at disability retirement date and currently and whether the participant has reached his or her conversion date.
- a. **Correcting a form of benefit erroneously elected at disability retirement date** – If the plan's disability provisions are to automatically pay participants in a prescribed FOB (ex. SLA) and the plan or PBGC erroneously offered the participant optional FOBs and the participant elected a FOB other than the plan's normal disability benefit form, the benefit amount needs to be adjusted/corrected to the correct amount and FOB effective as of the disability ASD. OBA will notify the participant of the amount and FOB error and adjust the benefit as soon as possible, effective as of the disability ASD through the conversion date.
 - i. Note, this FOB correction most likely creates a net underpayment to be reimbursed by PBGC following ***Policy 6.3-1, Underpayment Reimbursement and Interest Payments***. Contact PPD if this adjustment results in an overpayment.
 - b. **Pre-conversion date benefit adjustment corrections** - When the FOB error is discovered prior to the participant's conversion date, the benefit will be adjusted to the correct disability retirement FOB retroactively effective as of the disability ASD. A retirement benefit application from the participant is not needed until the conversion date.
 - c. **Post-conversion date correction** - In many plans, the disability benefit is equal to the accrued benefit unreduced for early commencement; therefore, the

participant's disability benefit amount is the same as the normal retirement benefit amount, prior to any reductions for an FOB election. At conversion date the participant should have applied for retirement in the same manner as any other participant who is eligible for retirement. When an auxiliary disability benefit does end at the conversion date and participant continues to receive a benefit in the same amount, rather than being notified of his or her eligibility to apply for a retirement benefit, OBA acts to correct as soon as practicable. OBA will contact the participant to notify them of the processing error and to determine the marital status and spousal information. OBA will determine marital status looking at marital status as of the conversion date (retirement ASD) and currently (retirement "application date"). Marital status at the disability ASD is not relevant. For participants with different marital status at the two dates PBGC will treat the participant as follows for benefit administration purposes (i.e. determining marital status for optional form availability under **Policy 5.4-7, Annuity Benefit Forms**):

- i. No ASD Spouse – participant married at application date: treat participant as single
- ii. ASD spouse – spouse deceased at application date: treat participant as single
- iii. ASD spouse – now divorced from participant: treat participant as married to ASD spouse
- iv. QDRO situation is referred to QDRO coordinator for guidance
- v. ASD spouse – still married to participant, currently unlocatable: follow unlocatable spouse guidance in **Policy 5.7-5 Spousal Consent**.

3. Application Process to correct Failure to Convert, post-conversion date - PBGC will notify the participant that a retirement application is required and will provide the participant with a PBGC retirement application and calculation as of his or her conversion date and advise the participant that the application must be returned within 180 days or the benefit will be terminated.

- a. If the participant fails to return the application within the prescribed timeframe, then the auxiliary disability benefit will be terminated, pending receipt of a completed retirement application including FOB election. The ASD will still be the conversion date, that does not change.
 - b. When a completed retirement application is received, depending on the FOB elected and whether the application is returned timely, the benefit will be adjusted and/or reinstated, if the application was not received timely.
- 4. Benefit adjustments** – After a participant's benefit is adjusted and/or reinstated under the above scenarios, PBGC will determine whether there is a net underpayment or net

overpayment to be reimbursed or recouped following 6.4-3, Computation and Netting of Post-DOPT Overpayments and Underpayments, 6.3-1 Underpayment Reimbursement and Interest Payments and 6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery.

K. Non-Auxiliary Disability Benefit corrections

1. **Non-Auxiliary Disability Benefits** – A non-auxiliary disability benefit is a permanent retirement benefit payable due to disability. It is not a temporary benefit that converts to a retirement benefit when a participant reaches his or her conversion date.
 - a. The non-auxiliary disability retirement benefit is payable in normal forms, married or single, with optional forms as allowed by the plan, when the initial disability entitlement is made by the Plan. When the initial entitlement is made by PBGC, the participant is offered optional forms, following 5.4-7 Annuity Benefit Forms. Once the participant begins to receive their non-auxiliary disability retirement benefit, the benefit form continues through NRD, there is no conversion date where the benefit changes to a retirement benefit and the participant chooses a (new) form of benefit.
 - b. Normal spousal consent requirements apply to the waiver of a QJSA at the non-auxiliary disability retirement date. Survivor benefits are payable based on the benefit form elected at the disability retirement date.
2. **Non-Auxiliary Disability Benefit administered incorrectly** - Occasionally, OBA will determine that a plan or OBA administered a non-auxiliary disability benefit incorrectly. Once OBA discovers a mistake for one or more participants, OBA will take steps to correct the disability benefit(s) and put participants in the position they should have had if the mistake(s) had not occurred. Corrections will be based on: the processing errors; marital status at the disability retirement ASD and currently; and, whether the participant is alive or deceased. Typically, the associated errors may include not offering optional form election at the non-auxiliary disability retirement date with the benefit simply being paid in an SLA or other automatic form, regardless of the participant's marital status. Also, the benefit may not have been actuarially reduced for the early commencement. Errors associated with incorrect administration of non-auxiliary disability retirement benefits usually result in a net overpayment to the participant.
 - a. **Participant is alive.** The participant should receive corrective communications and be notified that he/she must choose an optional FOB which will be retroactively effective as of the disability retirement annuity starting date (ASD), or his benefit will be adjusted retroactively to the plan's normal form, based on his marital status as follows:
 - i. No disability ASD Spouse (single) – participant married at application date: treat participant as single

- ii. Disability ASD spouse (married) – spouse deceased at application date : treat participant as single
 - iii. Disability ASD spouse (married) – still married at application date: treat participant as married.
 - iv. Disability ASD spouse (married) – still married to participant, currently unlocatable: follow unlocatable spouse guidance in ***Policy 5.7-5 Spousal Consent***.
 - v. Disability ASD spouse (married) – spouse now divorced from participant: treat participant as married to ASD spouse
 - vi. QDRO situation is referred to QDRO coordinator for guidance
- b. **Participant is deceased.** Plan administration errors may include giving the participant retirement applications and processing benefit form elections effective as of the NRD rather than the disability retirement ASD. If benefit form election were provided to the participant incorrectly as of NRD (or other mistaken conversion date) refer these situations to PPD for guidance. Otherwise, handle as follows:
- i. If the participant was married at disability ASD, generally the survivor benefit from the plan's QJSA is payable to surviving spouse, unless there was an incorrect "conversion date" election made by the participant and spouse that provided for an optional J&S form of benefit with the surviving spouse as the beneficiary, and the optional form provides a survivor annuity of 50-100%, in which case the surviving spouse will receive the elected annuity form as the QPSA.
 - ii. If the participant was single at disability ASD and was paid an SLA, no survivor benefits are payable, regardless of whether the participant married after the disability ASD.
 - iii. If the participant was single at disability retirement ASD and later married there are no surviving spouse death benefits.
3. **Benefit adjustments** – After a participant's benefit is adjusted or reinstated under the above scenarios, PBGC will determine whether there is a net underpayment or net overpayment to be reimbursed or recouped following 6.4-3, Computation and Netting of Post-DOPT Overpayments and Underpayments, 6.3-1 Underpayment Reimbursement and Interest Payments and 6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery.
-

Examples

1. Application of Disability Maximum Guarantee – Participant Retired under Early Retirement Provision (*Section D.3*)

A participant retired on February 1, 2002, under the plan's 70/80 retirement, but could have retired under the plan's disability provisions. After PBGC trustees the plan, he demonstrates to PBGC's satisfaction that SSA has determined him eligible for disability with an onset date on or before his date of retirement. The participant is receiving \$4,000 per month as a straight life annuity. The monthly benefit amount is the same under the 70/80 retirement and disability retirement. The Date of Plan Termination is July 31, 2002. The monthly Maximum Insurance Limit for 2002 is \$3,579.55 at age 65 in the form of a straight life annuity. Since the participant was determined eligible for a Social Security Disability benefit on or before his date of retirement and met the requirements for a disability retirement under plan provisions, he would receive a benefit from PBGC with the Disability Maximum Guarantee applied. This participant's Disability Maximum Guarantee is \$3,579.55 even if he is younger than age 65 at DOPT.

2. Application of the Special Guarantee Rules for Disabled Participants A–Participant Retired under an, Early Retirement Provision (*Section E.3*)

Assume the same facts as above, but in addition, the participant is receiving a temporary monthly supplement of \$400 that ends at age 62, resulting in a benefit of \$4,400 per month to age 62 and \$4,000 per month thereafter. Since the participant demonstrated he was eligible for a Social Security Disability benefit with an onset date on or before the earlier of (a) his date of retirement or (b) DOPT and met the requirements for a disability retirement under plan provisions, the Accrued-at-Normal Limit is not applied. In addition, the Disability Maximum Guarantee would apply to his benefit. If we assume that the monthly level life annuity is \$4,100, the participant would receive \$3,841.64 $((3,579.55/4,100.00) \times \$4,400)$ per month to age 62, and \$3,492.40 $((3,579.55/4,100.00) \times \$4,000)$ per month thereafter.

3. Survivor Annuity – Auxiliary Disability Benefit - Participant's Date of Death occurs before Conversion Date (*Section H*)

A married participant retired at age 52 with a plan disability benefit that is an auxiliary benefit that does not provide a survivor benefit (e.g. SLA). At the plan's DOPT, July 31, 2002, the participant is age 60. Under plan provisions, the disability benefit would have been converted to a normal retirement benefit at age 65 and, at that time, the QJSA would have been payable unless the participant elected another form of benefit with spousal consent to the QJSA waiver. He is receiving \$4,000 per month from the plan and demonstrates to PBGC that he meets the requirements for the Disability Maximum Guarantee. His Disability Maximum Guarantee is \$ 3,579.55, as a straight life annuity.

If he dies at age 61 (before the conversion date of age 65, but after attaining eligibility for an actuarially reduced early retirement benefit), his surviving spouse will receive the plan's qualified pre-retirement survivor annuity. PBGC will calculate the spouse's benefit as follows:

The participant's benefit is converted to a joint-and-survivor annuity, e.g., 50%, with an annuity starting date of the first of the month following the participant's date of death. For this example, assume the participant and the spouse are the same age. If we assume that the form conversion factor for the plan benefit is .9200 and that the early retirement factor for the first of the month following his date of death is .7600, the participant's plan benefit is \$2,796.80 ($\$4,000 \times .9200 \times .7600$) per month as a joint-and-50% survivor annuity. His surviving spouse's benefit under the plan is a straight life annuity of \$1,398.40 per month ($\$2,796.80 \times .50$).

The participant's Disability Maximum Guarantee under a joint-and-50% survivor annuity is \$3,221.60 ($\$3,579.55$ (Disability Maximum Guarantee as a straight life annuity) $\times .9000$ (PBGC form conversion factor)) per month; his surviving spouse's Disability Maximum Guarantee is \$1,610.80 ($\$3221.60 \times .50$). Because the surviving spouse's plan benefit (\$1,398.40 per month) is less than her Disability Maximum Guarantee (\$1,610.80), her benefit is not cut by the Disability Maximum Guarantee. Had the regular maximum guarantee applied, the surviving spouse benefit would be limited to \$1,159.78 per month (50% of \$3,221.60 (50% J & S maximum guarantee at age 65) $\times .7200$ (PBGC age reduction factor for a participant age 61)). Note the surviving spouse annuity form options under Policy **5.4-7 Annuity Benefit Forms** and the annuity starting date options under Policy **5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984**.

4. **Continued Entitlement – Participant Ceases to be eligible for a disability benefit conditioned on SSA Disability Eligibility (Section G)**

A participant retired on disability on February 1, 2010, in a plan that requires a determination of SSA disability eligibility. The plan is trusteeed on October 1, 2011. The participant's monthly disability amount is \$2,000. PBGC communicates to the participant in the benefit determination that the continued payment of the disability benefit is contingent upon the participant continuing to be eligible SSA disability. The participant notifies PBGC in May 2013 that SSA determined him no longer eligible for SSA disability and provides an SSA disability cessation date of January 15, 2013. The participant is not yet eligible for an early or normal retirement benefit in May 2013. PBGC terminates payment of the disability benefit as of May 2013 (last payment 5/1/2013) and notifies the participant that he has been overpaid \$8,000 (February, March, April and May 2013 at \$2,000 per month), which will be recouped when he begins to receive a retirement benefit.

Policy 5.9-1 Disability Benefits, 4th Ed.		
Concurrence	Initials	Date
OBA/ASTD/ASD: Scott Young, Director	SYA	10/3/19
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	LS	10/2/19
OBA/PSD/CSD: Lisa Lee, Division Manager	LBL	10/2/2019
OBA/PSD: Jennifer Messina, Director	JM	10/3/19
OGC: Joseph Krettek, Assistant General Counsel	JMK	10/2/19
Endorsements		
General Counsel: Judith R. Starr	JRS	11/6/19
Chief Financial Officer: Patricia Kelly	PK	11/6/19
Approval		
Chief of Benefits Administration: David Foley	DF	11/11/19
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on Transmittal 2020-01.</i>		

5.10-1 Benefit Liabilities in Priority Category 6

Edition	1st Edition
Issue Date	07/26/1996
Transmittal	Transmittal 39
Contact	ASK PPD

In this policy

- A. Background
- B. Purpose
- C. Scope
- D. Definitions
- E. Benefit Liabilities
- F. Type of Benefit
- G. Rules for Plan Amendments Reducing Benefits

A. Background

The Pension Protection Act of 1987 ([▶ PPA](#)) amended [▶ Title IV](#) of the Employee Retirement Income Security Act of 1974 ([▶ ERISA](#)) to increase certain obligations relating to terminations of single-employer plans. PPA introduced the term "[▶ benefit liabilities](#)" to describe the total obligations under a plan¹. PPA tied the definition of benefit liabilities to the meaning of "liabilities" under section 401(a)(2) of the Internal Revenue Code.

Note 1: For Title IV purposes, all benefit liabilities must be included in priority categories one through six of ERISA section 4044(a).

After PPA, a plan cannot terminate in a standard termination unless the plan has sufficient assets to provide all benefit liabilities. In a distress or involuntary termination, a contributing sponsor and all members of its controlled group are jointly and severally liable to the PBGC for the total amount, as of the [▶ termination date](#), of [▶ unfunded benefit liabilities](#) (UBL). The PBGC must pay [▶ participants](#) in distress and involuntary terminations a portion² of the plan's unfunded nonguaranteed benefits, which is dependent on the value of benefit liabilities.

Note 2: This portion is determined by multiplying the amount of a plan's unfunded nonguaranteed benefits by a ratio of the value of PBGC's recoveries on UBL claims to the amount of the UBL claims. In general, the ratio for a large plan is computed using the actual data for that plan. For small plans, the ratio is a rolling five-year average of PBGC's recovery experience.

B. Purpose

The purpose of this [▶ policy statement](#) is to provide rules as to the types of benefits included in the term "[▶ benefit liabilities](#)" in order to process [▶ PPA](#) plan terminations. As of the date of this policy statement, the [▶ IRS](#) had not issued post-PPA guidance on benefit liabilities. If the IRS issues written guidance dealing with one or more provisions of this policy statement, the PBGC will review this policy statement in light of such guidance.

C. Scope

This [▶ policy](#) applies to determinations of [▶ benefit liabilities](#) in [▶ PPA](#) plans.

D. Definitions

1. **Benefit liabilities** mean, the liabilities for benefits of [▶ participants](#) and their [▶ beneficiaries](#) under the plan (within the meaning of section 401(a)(2) of the Code).
2. **Code** means the Internal Revenue Code of 1986, as amended.
3. **Nonforfeitable** means, with respect to a plan, a benefit for which, as of the [▶ termination date](#), a participant has satisfied the conditions for entitlement under the plan or the requirements of [▶ ERISA](#) (other than submission of a formal application, retirement, completion of a required waiting period, or death in the case of a benefit that returns all or a portion of a

participant's accumulated ▶mandatory employee contributions upon the participant's death), whether or not the benefit may subsequently be reduced or suspended by a plan amendment, an occurrence of any condition, or operation of ERISA or the Code. (See ERISA section 4001(a)(8) and 29 CFR § 2613.6.)

4. **Optional form of benefit** means, generally, a distribution form that is available under the plan that differs from the normal form of benefit for a participant with respect to one or more features relating to the distribution form, e.g., the payment schedule, timing or commencement. (See 26 CFR § 1.411(d)-4, Q&A 1(b).)

5. **PPA plan** means a plan whose termination initiation date is after December 17, 1987. The termination initiation date is --

- a. for a standard termination under ERISA section 4041(b), the last date on which any notice of intent to terminate is issued to any affected party;
- b. for a distress termination under ERISA section 4041(c), the last date on which any notice of intent to terminate is issued to any affected party other than the PBGC; and
- c. for an involuntary termination under ERISA section 4042, the date on which the PBGC issues a notice of determination that the plan will be involuntarily terminated (or, in the absence of such a notice, the date on which the PBGC's Executive Director, or the Executive Director's designee, authorizes the initiation of proceedings to terminate the plan under ERISA § 4042).

6. **Termination date** means the date determined in accordance with ERISA section 4048.

E. Benefit Liabilities

The liability for any benefit provided under the terms of a plan as of the ▶termination date³ is a ▶benefit liability unless the plan specifically provides that the conditions for the benefit must be satisfied before plan termination or that the benefit will not be paid after plan termination. A plan amendment may eliminate a benefit liability other than a section 411(d)(6)-protected benefit (see **section G.2**). If a plan amendment eliminates or reduces a section 411(d)(6)-protected benefit, the provision of the amendment that eliminated or reduced the section 411(d)(6)-protected benefit shall be disregarded, and the benefit treated as if it were a benefit under the terms of the plan in effect on the termination date.

Note 3: Benefit accruals end no later than the termination date. However, certain contingencies may be satisfied after plan termination.

A favorable determination letter issued by the ▶IRS on plan termination is *prima facie* evidence, in accordance with ▶ERISA section 3001(d), of initial compliance with the rules on benefit liabilities. Thus, for a plan with a favorable letter, ▶OBA should ordinarily presume that a benefit eliminated or reduced by a plan amendment is not a section 411(d)(6)-protected benefit. However, if, in reviewing a plan, OBA has reason to believe that the amendment eliminated or reduced a section 411(d)(6)-protected benefit, OBA should consult ▶CPRD and ▶OGC through appropriate OBA channels.

F. Type of Benefit

Benefits that are nonforfeitable are in the first five priority categories under ▶ERISA section 4044(a). Benefits that are not nonforfeitable (*i.e.*, forfeitable) are in ▶priority category 6 (PC6). The following are examples of ▶benefit liabilities for benefits in PC6.

1. Benefits Contingent on Future Age or Service.

The value of a benefit for which eligibility is based on attainment of a specified age or completion of years of credited service⁴ for a ▶participant who had *not* attained the necessary age or completed the necessary service as of the ▶termination date is a benefit liability in PC6. This includes early retirement supplements or subsidies contingent on future age and service, whether or not such benefits are protected under Code section 411(d)(6). (See **section G.2**.)

Note 4: To become entitled to a benefit contingent on post-termination service, the participant must satisfy the conditions for credited service under the plan. This would not be possible if the "employer" under the plan (or other entity for which employment counts toward credited service under the plan) ceased to exist.

2. Benefits Contingent on a Future Event.

The value of a benefit for which eligibility is based in whole or in part on the occurrence of a future event (*e.g.*, plant shutdown, disability or death) is a benefit liability in PC6. This includes event-contingent early retirement supplements or subsidies, whether or not such benefits are protected under Code section 411(d)(6). (See **section G.2**.)

3. Optional Forms of Benefits.

For a nonvested participant, the entire value of the most valuable optional form⁵ is a benefit liability in PC6. For a partially-vested participant who had not elected a form of benefit as of the termination date, the value of the benefit liability in PC6 is the difference between the value of the most valuable optional form under the plan and the value of the plan's automatic form⁶, multiplied by the percent of the benefit that is not vested⁷.

Note 5: The most valuable optional form is determined using plan factors and valued at PBGC rates (in accordance with 29 CFR Part 2619).

Note 6: The automatic form of benefit is the form that is automatically paid under plan terms to a participant who has made no election regarding benefit form.

Note 7: For a partially-vested participant, this difference between the most valuable form and the automatic form is computed by subtracting the value of the automatic form (calculated using plan factors and valued using PBGC rates in accordance with 29 CFR Part 2619) from the value of the optional form (also calculated using plan factors and valued using PBGC rates). This difference is multiplied by one minus the vested percentage to determine the value of the PC6 benefit. The remainder is in ▶ PC5 (as is the difference between the most valuable form and the automatic form for fully vested participants who had not elected a benefit form as of the termination date).

4. QPSA. [reserved]

G. Rules for Plan Amendments Reducing Benefits

1. General Rule.

▶ ERISA § 204(g) and Code section 411(d)(6) prohibit plan amendments that eliminate or reduce ▶ accrued benefits.

2. Benefits protected under Code section 411(d)(6)

Code section 411(d)(6) generally protects accrued benefits, ▶ early retirement benefits and retirement-type subsidies, and optional forms of benefits. (See 26 CFR § 1.411(d)-4.)

Note 8: Retirement-type subsidy means, generally, a subsidy that continues past the plan's ▶ normal retirement age. (N.B.: The ▶ IRS has not yet defined retirement-type subsidy.)

3. Benefits not protected under Code section 411(d)(6)

In general, Code section 411(d)(6) does not protect ancillary benefits. Ancillary benefits include Social Security supplements⁹ (other than qualified Social Security supplements¹⁰), ▶ disability benefits not in excess of a qualified disability benefit¹¹, ancillary life insurance and health insurance benefits, ▶ pre-retirement death benefits under a ▶ defined benefit plan, and other similar benefits. (See 26 CFR § 1.401(a)(4)-4(e)(2).)

Note 9: Social security supplement means, generally, a plan benefit for plan ▶ participants which (i) commences and terminates before the age when participants are entitled to old-age insurance benefits, unreduced on account of age, under Title II of the Social Security Act, and (ii) does not exceed such old-age insurance benefit. (See 26 CFR § 1.411(a)- 7(c)(4)(ii).)

Note 10: Qualified Social Security supplement (QSUPP) means, generally, a Social Security supplement that is treated as protected under Code section 411(d)(6) as a result of special nondiscrimination rules. For a Social Security supplement to be a QSUPP, the plan must specifically provide that it is treated as an early retirement benefit protected under Code section 411(d)(6). (See 26 CFR § 1.401(a)(4)-12.)

Note 11: Qualified disability benefit means a disability benefit provided by a plan which does not exceed the benefit which would be provided for the participant if the participant separated from service at normal retirement. (See Code section 411(a)(9).)

4. Special Rule for QPSA.

A ▶ qualified pre-retirement survivor annuity (QPSA)¹² is not a section 411(d)(6)-protected benefit. However, the QPSA is required by law and may not be eliminated. The portion of the QPSA in excess of the minimum required QPSA (related to the

survivor portion of the QJSA¹³) may be reduced by plan amendment to the level of the minimum required QPSA. (See 26 CFR § 1.401(a)-20.)

Note 12: Qualified pre-retirement survivor annuity (QPSA) means, generally, a survivor annuity for the life of the surviving spouse of the participant if the payments to the surviving spouse are not less than the amount which would be payable as a survivor annuity under the plan's QJSA and the earliest period for which the surviving spouse may receive a payment under the QPSA is not later than the month in which the participant would have attained the earliest retirement age under the plan. (See Code section 417(c)(1).)

Note 13: Qualified joint and survivor annuity (QJSA) means, generally, an annuity for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent (and is not greater than 100 percent) of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and which is the actuarial equivalent of a single annuity for the life of the participant. (See 26 CFR § 1.401(a)-11.)

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_10_1_1st.htm
(07/26/1996)

[Top of Page](#)

5.11-1 Calculation of Priority Category 2 Benefits

Edition	2nd Edition
Issue Date	08/30/2012
Transmittal	Transmittal 2012-07
Contact	ASK PPD
Related Links	5.11-2 Payment of Priority Category 2 Benefits

In this policy

- A. Background
 - B. Scope and Effective Date
 - C. Definitions
 - D. General Rules
 - E. Calculation of Accumulated Mandatory Employee Contributions
 - F. Calculation of Employee-derived Benefit
 - G. Determination of Employer-derived Benefit
 - H. Calculation of Death Benefits Attributable to Mandatory Employee Contributions
 - I. Residual Accumulated Mandatory Employee Contributions
- [Appendix A: Summary of IRC §411\(c\) and §417\(e\)\(3\) Provisions](#)
- [Appendix B: Legislative Background](#)
- [Appendix C: Interest Rates and Conversion Factors](#)

A. Background

In a pension plan with **mandatory employee contributions** (MEC), a participant's **accrued benefit** is allocated between an employee-derived benefit and an employer-derived benefit. Section 411(c) of the **Internal Revenue Code** (IRC) prescribes this allocation. Section 411(c)(2)(B) specifies that **accumulated mandatory employee contributions** (AMEC) must be converted to an annuity using an interest rate which would be used by the plan under IRC §417(e)(3). For a summary of IRC §411(c) and IRC §417(e)(3) provisions, see [Appendix A](#).

29 CFR PT4044 prescribes the rules that PBGC follows in calculating and valuing a participant's accrued benefit derived from MEC. The interest and mortality assumptions required for PBGC's valuation of the employee-derived annuity and the **pre-retirement death benefit** derived from AMEC are different from those provided under IRC §417(e)(3). As a result, the combined value of the employee-derived benefit and the pre-retirement death benefit as of DOPT may not be equal to the AMEC as of DOPT.

In a PBGC-trusteed plan, the accrued benefit derived from MEC, whether to be paid as an annuity with a pre-retirement death benefit or as a **lump sum**, is a **priority category 2** (PC2) benefit. AMEC as of DOPT are only guaranteeable up to the combined value of the employee-derived annuity and the pre-retirement death benefit. Therefore, the combined value of the employee-derived annuity and the pre-retirement death benefit is the **basic-type benefit** in PC2. If AMEC at DOPT exceed the combined value of the employee-derived annuity and the pre-retirement death benefit, whether PC2 includes the value of the nonbasic-type benefit depends on whether the AMEC are withdrawn.

The **Pension Protection Act of 2006** (PPA 2006) changed the interest and mortality assumptions under IRC §417(e)(3) that plans must use in converting AMEC to an employee-derived benefit. For a legislative history of the applicable rules for converting AMEC to an employee-derived benefit, see [Appendix B](#).

B. Scope and Effective Date

This policy provides the rules under which **PC2** benefits are calculated for the purposes of valuing and paying benefits when a trusteed plan has **mandatory employee contributions**. With this edition of the policy, PBGC:

- Removes the rules on the payment of PC2 benefits that were included in the previous edition of this policy and are now located in PBGC Policy [5.11-2 Payment of Priority Category 2 Benefits](#),
- Clarifies its method for calculating an **employee-derived benefit** when a plan's provisions comply (or substantially comply) with IRC §411(c)(2)(B),

- Eliminates use of the "default rule" described in the previous edition of this policy that applied when a plan's provisions did not comply with IRC §411(c)(2)(B), and instead, provides for conforming plan provisions only to the extent necessary to bring them into compliance (or substantially into compliance) with IRC §411(c)(2)(B);
- Updates its rules to incorporate the interest and mortality assumptions in IRC §417(e)(3) as amended under ▶ PPA 2006; and
- Establishes PBGC's method for calculating ▶ accumulated mandatory employee contributions as of the ▶ annuity starting date for plans that provide a ▶ modified cash refund.

This policy is effective upon issuance.

C. Definitions

As used in this policy:

1. **Accumulated mandatory employee contributions** (AMEC) means the sum of ▶ mandatory employee contributions (MEC) and interest credited on those contributions as of the determination date.
2. **Determination date** means the earliest of 1) the date AMEC are withdrawn, 2) the ▶ annuity starting date (ASD), or 3) the DOPT. The ▶ IRC and Internal Revenue regulations describe the determination date as the date a distribution of MEC or AMEC is made as a withdrawal or as an annuity. However, for PBGC purposes, 29 CFR §4044.12 limits the determination date to no later than DOPT.

There may be more than one determination date, for instance, if the plan erred in calculating AMEC and correction of the error results in residual AMEC, as described in section **I. Residual Accumulated Mandatory Employee Contributions**.

Example 1: Determination Dates

Participant	Withdrawal Date	ASD	DOPT	Determination Date
Participant A: • Withdrew AMEC before DOPT. • Retired before DOPT.	05/01/2009	07/01/2010	09/01/2012	Withdrawal Date: 05/01/2009
Participant B: • Did not withdraw AMEC. • Retired before DOPT.	N/A	07/01/2010	09/01/2012	ASD: 07/01/2010
Participant C: • Withdrew AMEC before DOPT. • Did not retire before DOPT.	05/01/2009	N/A	09/01/2012	Withdrawal Date: 05/01/2009
Participant D: • Did not withdraw AMEC • Did not retire before DOPT	N/A	N/A	09/01/2012	DOPT: 09/01/2012

3. **Employee-derived benefit** means the portion of the ▶ accrued benefit derived from AMEC. The employee-derived benefit may be less than, greater than, or equal to the accrued benefit calculated using the plan's benefit formula. The minimum vesting provisions in ▶ ERISA and the IRC provide that a participant is always 100% vested in his or her employee-derived benefit.
4. **Employer-derived benefit** means the portion of the accrued benefit, calculated using the plan's benefit formula, in excess of the employee-derived benefit. If the amount of the employer-derived benefit is greater than or equal to the accrued benefit, calculated using the plan's benefit formula, an employer-derived benefit is not payable (i.e., the amount of the employer-derived benefit is zero).

5. **Mandatory employee contributions** (MEC) means ►employee contributions that are required as a condition of employment with the plan sponsor, participation in the plan, or obtaining benefits under the plan attributable to employer contributions. MEC are the balance of the contributions without interest.
6. **§411(c)(2) interest rate(s)** means the interest rate(s) under §411(c)(2)(C) used to credit interest on MEC until the determination date. For the appropriate §411(c)(2) interest rates, see **Appendix C**.

D. General Rules

In calculating and valuing benefits in a plan with MEC, PBGC applies the following rules:

1. Allocation of Accrued Benefit Between Employee-derived and Employer-derived Benefits

In allocating a participant's ►accrued benefit between an ►employee-derived benefit and an ►employer-derived benefit, PBGC follows plan provisions and IRC §411(c) as provided in this policy.

Note that as used in this policy, references to IRC §411(c) generally include IRC §411(c)(1), §§411(c)(2)(B)-(D), §411(c)(3), §417(e)(3), and other relevant Internal Revenue guidance.

2. PBGC Acceptance of Plan Provisions and Administration

PBGC generally assumes, absent evidence to the contrary, that a plan's provisions for accumulating MEC and calculating the employee-derived and employer-derived benefits comply with IRC §411(c) and that the plan was correctly administered in accordance with those provisions.

- a. **Plan calculations.** PBGC generally accepts the plan administrator's calculation of ►AMEC prior to DOPT and the calculation of the employee-derived and employer-derived benefits for a pre-DOPT retiree, unless convincing evidence demonstrates that the plan administrator did not correctly calculate benefits in accordance with plan provisions, IRC §411(c), and/or as described in section **F.2. Acceptable Variance with IRC §411(c)(2)(B)**.
- b. **PBGC correction of plan errors.** PBGC corrects an erroneous accumulation of MEC and/or calculation of the employee-derived and employer-derived benefits in accordance with plan provisions, IRC §411(c), and as provided in this policy.

Note: Correction of an error under the provisions in this policy may result in residual AMEC, as described in section **I. Residual Accumulated Mandatory Employee Contributions**.

3. Withdrawal of AMEC

A plan may permit a participant (or other individual) to withdraw all or part of the participant's AMEC in a single installment or series of installments. If all of the AMEC are withdrawn as of the determination date, only the employer-derived benefit, if any, is due. Under 29 CFR §4044.12, the amount of a benefit that is a benefit in ►PC2 depends on whether the AMEC are withdrawn or paid as an annuity.

- a. **Withdrawal before DOPT.** If all of the AMEC were withdrawn before DOPT, there is no benefit in PC2.
- b. **Withdrawal after DOPT.** PBGC may permit withdrawal of AMEC as of DOPT in a single installment under PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**. If the AMEC are withdrawn, the value of the benefit in PC2 is the amount of the AMEC as of DOPT.
- c. **AMEC not withdrawn.** If the plan does not permit withdrawal of AMEC or the AMEC are not withdrawn as of the ►annuity starting date, the benefit in PC2 consists only of the employee-provided annuity and the ►pre-retirement death benefit.
- d. **Valuation assumptions.** For valuation purposes, PBGC determines the benefit in PC2 based on an actual election to withdraw the AMEC or to receive the AMEC as an annuity, as previously described in this section 3.

If an election has not been made, PBGC establishes assumptions as to whether to treat the AMEC as having been withdrawn as of DOPT based on the facts and circumstances of the case.

4. Application of PBGC Limitations on Guaranteed Benefits.

PBGC applies its ►limitations on guaranteed benefits to an accrued benefit without regard to the allocation of the benefit between the employee-derived benefit and employer-derived benefit.

5. Plan Amended to Become Noncontributory

PBGC recognizes a valid plan amendment that allows AMEC to be withdrawn without a reduction in the accrued benefit, calculated under the plan's benefit formula. The amendment is treated as a benefit increase for ▶ phase-in purposes.

If a participant did not withdraw AMEC before DOPT under the provision described in the above paragraph, PBGC will offer the participant the option to withdraw the AMEC as provided in PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**. If the AMEC are not withdrawn, PBGC will pay an employee-derived benefit, calculated as provided in this policy, in addition to the accrued benefit provided under the plan's benefit formula.

E. Calculation of Accumulated Mandatory Employee Contributions

PBGC must compute ▶ AMEC, for example, to determine:

- The amount of AMEC at DOPT that may be withdrawn in a single installment when permitted under PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**,
- A participant's ▶ employee-derived benefit, or
- The amount of the post-death retirement death benefit, if any, payable under a ▶ modified cash refund.

PBGC calculates AMEC as follows:

1. Plan Accumulation of Mandatory Employee Contributions (AMEC)

- a. **Pre-DOPT calculation of AMEC.** PBGC generally accepts the amount of AMEC last calculated under plan provisions by the plan administrator prior to DOPT unless convincing evidence demonstrates that plan provisions did not correctly provide for the calculation of AMEC or the plan otherwise erred in calculating the AMEC.
- b. **Corrections.** If PBGC concludes that the plan erred in calculating AMEC, PBGC will correct the accumulation of the ▶ MEC using the appropriate §411(c)(2) interest rate(s). For the appropriate §411(c)(2) interest rates, see **Appendix C**.

Note: Correction of an error in the calculation of AMEC may result in residual AMEC, as described in section **I. Residual Accumulated Employee Contributions**.

2. PBGC Interest Accumulation on Mandatory Employee Contributions

When applicable, PBGC further accumulates the AMEC beginning with the date the plan last accumulated the AMEC until the determination date using the appropriate §411(c)(2) interest rate(s). For the appropriate §411(c)(2) interest rates, see **Appendix C**.

3. Reduction for Prior Withdrawal of AMEC

PBGC reduces the amount of the AMEC by the amount of any previous withdrawal of AMEC, whether made before or after DOPT, including the interest that would have been credited on the withdrawal had that withdrawal not been made.

Note: If a participant elects to withdraw AMEC, when permitted under PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**, the amount of the withdrawal is calculated as provided in this section E. and as otherwise provided in section **I. Amount of Withdrawal Payment or Other Single-Sum Payment of AMEC**, of PBGC Policy **5.11-2**.

F. Calculation of Employee-derived Benefit

The method PBGC uses in computing the ▶ employee-derived benefit depends on whether the plan's interest and mortality assumptions, used to convert ▶ AMEC to an employee-derived benefit, comply (or substantially comply) with IRC §411(c)(2)(B).

- Under sections F.1. and F.2., below, if the determination date is before the first day of the first plan year beginning on or after January 1, 2008, follow the provisions in PBGC Policy **5.11-1 Calculation and Payment of Priority Category 2 Benefits in PBGC Trusteed Plan**, 1st Edition.
- IRC §417(e)(3) requires that the ▶ present value of a benefit derived from AMEC be no less than the present value calculated using the §417(e)(3) interest and mortality assumptions. A plan can provide for use of interest and mortality assumptions that are more generous than those under §417(e)(3) (although most do not). The following rules are premised on interest and mortality assumptions that are not more generous than those provided under §417(e)(3). If a plan's interest and mortality assumptions are more generous than those provided under §417(e)(3), contact ▶ PPD.

1. Plan Provisions Comply with IRC §411(c)(2)(B)

If PBGC concludes that the plan's provisions comply with IRC §411(c)(2)(B), PBGC calculates the employee-derived benefit using the plan's interest and mortality assumptions in effect as of the determination date, as follows:

- a. AMEC is calculated until the determination date as provided in **section E**.
- b. The AMEC at the determination date is then converted to a ► straight life annuity (SLA) at ► normal retirement date (NRD) by dividing the AMEC by a deferred ► present value factor (PVF) determined using the plan's §417(e)(3) interest rate with no mortality during the deferral period and the applicable mortality under §417(e)(3) thereafter. For applicable §417(e)(3) interest and mortality assumptions, see **Appendix C**.

Note that the applicable mortality under §417(e)(3) is projected to the ► annuity starting date.

- c. The resulting SLA is converted to the benefit payable at the actual or expected annuity starting date (ASD) and applicable benefit form using the plan's early or late retirement factors and form conversion factors.

Example 2: The plan terminated on January 1, 2011. A participant was age 55 at DOPT. The participant has not withdrawn his/her AMEC. The plan's ► normal retirement age (NRA) is 65 and the participant has a NRD of January 1, 2021. The plan year is January 1 – December 31 (a calendar year). The plan provides that:

- 1) Interest is accumulated on the MEC using the §411(c)(2) interest rates until the determination date.
- 2) The AMEC is then converted to an SLA at NRD using the plan's interest and mortality assumptions under §417(e)(3) as of the determination date.
- 3) The ► stability period is the calendar year, and the ► lookback month is the second month preceding the first day of the stability period.

PBGC concludes that the plan's interest and mortality assumptions comply with IRC §411(c)(2)(B). PBGC calculates the participant's employee-derived benefit as follows:

- (1) Following the provisions in **section E**, PBGC calculates that the participant had AMEC of \$24,000 as of DOPT.
- (2) The participant's NRD is 10 years after DOPT; therefore, PBGC uses the 10-year deferred PVF calculated using the plan's applicable §417(e)(3) segment rates, with no mortality applied during the deferral period, and applicable mortality under §417(e)(3) thereafter.
- (3) The applicable segment rates based on the determination date, in this case DOPT, and the plan year, stability period, and lookback month are the November 2010 rates for the 2011 plan year:
 - 2.16% for the first segment (for payments within the first 5 years after DOPT),
 - 4.77% for the second segment (for payments in the next 15 years), and
 - 6.05% for the third segment (for all payments thereafter).
- (4) Using the above mortality and interest rates, PBGC calculates a 10-year deferred PVF of 7.0180.
- (5) To determine the monthly employee-derived annuity, PBGC divides the AMEC of \$24,000 by the PVF of 7.0180 (multiplied by 12 months).

$$\begin{aligned} \$24,000 / (7.0180 \times 12 \text{ months}) &= \\ \$284.98/\text{month} &\text{ in the form of an SLA at NRD} \end{aligned}$$

2. Acceptable Variances with IRC §411(c)

A plan's method for converting AMEC to the employee-derived benefit may vary from the method described in IRC §411(c)(2)(B). The method under §411(c)(2)(B) requires the AMEC to be converted to an SLA at NRD. Some plans convert to the employee-provided benefit in a form other than an SLA and/or at a time other than NRD.

PBGC treats a plan as substantially complying with §411(c)(2)(B) if the plan's interest and mortality assumptions otherwise comply with §417(e)(3) and the plan consistently calculated employee-derived benefits following the plan's methodology. PBGC calculates an employee-derived benefit in accordance with a plan's methodology in the following situations.

- a. The plan's interest and mortality assumptions comply with §417(e)(3) and are used to convert directly to another form at NRD or to convert to either the SLA or another form at the elected ASD, instead of converting the AMEC to an SLA at NRD and applying the plan's early or late retirement factors and/or benefit form conversion factor.

For instance, PBGC would treat a plan as substantially complying with §411(c)(2)(B) if the plan's automatic form for unmarried participants is a 10-year ►certain and continuous annuity (10C&C) and the plan used a deferred PVF for a 10C&C (calculated in accordance with §417(e)(3)) to calculate participants' benefits as a 10C&C.

Example 3: The plan terminated on January 1, 2011. The participant was age 55 as of DOPT. The participant has not withdrawn his/her AMEC. The participant is not married and the plan's automatic form for an unmarried participant is a 10C&C. The plan's NRA is 65, and the participant's NRD is January 1, 2021. The plan year is a calendar year. The plan's stability period is a calendar year, and the lookback month is the second month preceding the first day of the stability period.

- (1) Following the provisions in **section E**, PBGC calculates that the participant had AMEC of \$24,000 as of DOPT.
- (2) Following the plan's methodology, PBGC calculates a PVF of 7.2768 for a 10C&C as of the participant's NRD.
- (3) To determine the employee-derived annuity, PBGC divides the AMEC by the PVF of 7.2768 (multiplied by 12 months).

$$\begin{aligned}\$24,000 / (7.2768 \times 12 \text{ months}) = \\ \$274.85/\text{month in the form of a 10C&C at NRD}\end{aligned}$$

b. Based on a facts and circumstances evaluation of the plan's provisions and practice, PBGC determines that the plan substantially complies with IRC §411(c)(2).

3. Plan Provisions Do Not Comply with IRC §411(c)(2)(B)

If a plan's provisions do not comply or do not substantially comply with §411(c)(2)(B) as described above in section **F.1.** or **F.2.** (e.g., the plan uses incorrect §417(e)(3) interest and/or mortality assumptions for a given determination date), PBGC conforms the plan's provisions only to the extent necessary to bring them into compliance with §411(c)(2)(B) and calculates the employee-derived benefit, as described in section **F.1.**, or when applicable, section **F.2.** For the applicable §417(e)(3) interest and mortality assumptions, see **Appendix C**.

For instance, if a plan continued to use the pre-►PPA 2006 interest and mortality assumptions (e.g., the 30-year treasury rate and GAR 94) for determination dates on or after the first day of the first plan year beginning on or after January 1, 2008, PBGC would calculate the benefit using the applicable §417(e) interest and mortality, as revised under PPA 2006.

The default rule in section F.B. of PBGC Policy **5.11-1 Calculation and Payment of Priority Category 2 Benefits in PBGC Trusteed Plan** (1st Edition) no longer applies, regardless of the determination date or the DOPT.

G. Determination of Employer-derived Benefit

The ►employer-derived benefit, if any, is assigned to ►priority category 3 through ►priority category 6, as applicable.

1. Forfeiture of Employer-Provided Benefit

A plan may provide that the employer-derived benefit is forfeited if the participant withdraws all of his or her ►AMEC and is less than 50% vested in the employer-derived benefit as of the date of the withdrawal. PBGC honors this provision.

2. Calculation of Employer-Derived Benefit

PBGC calculates the employer-derived benefit as provided in IRC §411(c)(1) (see **Appendix A**). It is the difference between the ►accrued benefit calculated using the plan's benefit formula and the ►employee-derived benefit calculated as otherwise provided in this policy without reduction of the AMEC for any pre- or post-DOPT withdrawal of the AMEC.

Example 4: The participant has an accrued benefit of \$500.00/month (calculated using the plan's benefit formula) in the form of a ►straight life annuity (SLA) at ►normal retirement date (NRD). The employee-derived annuity is \$284.98/month in the form of an SLA at NRD, as calculated under **section F**. To determine the employer-derived benefit, PBGC subtracts the employee-derived benefit from the accrued benefit:

$$\$500.00 - \$284.98 = \$215.02 \text{ per month as an SLA at NRD.}$$

H. Calculation of Death Benefits Attributable to Mandatory Employee Contributions

1. Pre-Retirement Death Benefits

PBGC pays ▶ pre-retirement death benefits derived from ▶ AMEC as provided in **section G. Pre-Retirement Death Benefits** of PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**. For purposes of determining the amount of a pre-retirement death benefit derived from ▶ MEC, PBGC calculates the AMEC, the ▶ employee-derived benefit and the ▶ employer-derived benefit as provided in this policy.

2. Post-Retirement Death Benefits

- a. **Post-retirement death benefit payable under plan provisions.** PBGC pays ▶ post-retirement death benefits derived from AMEC as provided in **section H. Post-Retirement Death Benefits** of PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**. The type and amount of the post-retirement death benefit, if any, is based on the deceased payee's annuity benefit form. For purposes of determining the amount of a post-retirement death benefit, if any, derived from AMEC, PBGC calculates the AMEC, the employee-derived benefit, and the employer-derived benefit as provided in this policy.
- b. **Modified cash refund.** If a participant's benefit form is a ▶ modified cash refund (MCR) or the plan provides an MCR feature, for purposes of determining the balance of AMEC, if any, remaining as of the participant's date of death:
 - 1) PBGC further accumulates the AMEC as of DOPT to the participant's ▶ annuity starting date (ASD) using the plan's §417(e)(3) segment rate that applies as of the participant's normal retirement date (NRD).
 - 2) The total of the benefits paid or due prior to the participant's death are then subtracted from the AMEC as of the ASD.

Note: Although plans must provide a pre-retirement death benefit derived from the AMEC, they need not provide such a post-retirement death benefit. For additional guidance, see **section H. Post-Retirement Death Benefits** of PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**.

Example 5: DOPT was January 1, 2011. The participant's NRD was January 1, 2021. The participant retired on January 1, 2020 and elected an MCR. As of DOPT, the participant had AMEC of \$24,000. The monthly benefit calculated under the plan's benefit formula was \$490.00/month.

The participant died on December 31, 2024 after receiving payments for 60 months (January 1, 2020 - December 1, 2024). The participant's AMEC as of his ASD must be calculated to determine if the lump-sum death benefit provided under the MCR is payable, and if so, the amount. The ▶ stability period is the calendar year, and the ▶ lookback month is the second month preceding the first day of the stability period.

- (1) The AMEC as of DOPT is accumulated to the ASD using the segment rate in effect as of the participant's NRD, January 1, 2021.
- (2) Since the NRD occurs in the second segment, PBGC uses the second segment rate, 4.77%, to accumulate the AMEC to the ASD.
- (3) The AMEC as of DOPT accumulated to the ASD (9 years after DOPT) are $\$24,000 \times (1 + 0.0477)^9 = \$24,000 \times 1.5210 = \$36,504$.
- (4) Payments to the participant totaled \$29,400 ($\490×60 months) as of the date of death.
- (5) The lump-sum death benefit payable under the MCR is \$7,104 ($\$36,504 - \$29,400$).

I. Residual Accumulated Mandatory Employee Contributions

Residual AMEC means a remaining balance of ▶ AMEC as of a later determination date after AMEC have been withdrawn or benefits are in pay status. Residual AMEC may result, for example, because an incorrect 411(c)(2) interest rate was used to accumulate interest on the ▶ MEC.

1. Determination Date

When a participant has residual AMEC, there is more than one determination date.

Example 6

In this case, the participant:	Initial Withdrawal Date	Annuity Starting Date	DOPT	Determination Dates

<ul style="list-style-type: none"> Withdrew AMEC before DOPT. Retired before DOPT. Has residual AMEC as of DOPT. 	12/01/2009	03/01/2010	04/01/2010	Withdrawal Date: 12/01/2009 DOPT: 04/01/2010
---	------------	------------	------------	---

2. Additional Benefit in Priority Category 2

If the participant has ► residual AMEC as of DOPT, the participant may have a benefit in ► PC2 despite having previously withdrawn the AMEC.

- If the participant has residual AMEC as of DOPT, the amount of the ► employee-derived benefit will be calculated following the rules in **section F**.
- The benefit in PC2 will be established, as provided under section **D.3.** of this policy, depending on whether the residual AMEC is paid in a single sum or paid as an annuity. Residual AMEC are paid as provided in **section F.4, Residual AMEC**, of PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**.

Appendix A: Summary of IRC §411(c) and §417(e)(3) Provisions

IRC §411(c) prescribes the rules for crediting interest on ► mandatory employee contributions and converting those accumulated contributions (► AMEC) to an annuity. IRC §417(e)(3) prescribes the minimum interest rates and mortality that must be applied in converting AMEC to an annuity.

§411(c)	Allocation of accrued benefits between employer and employee contributions
§411(c)(1)	Accrued benefit derived from employer contributions. The excess, if any, of the ► accrued benefit over the accrued benefit derived from ► employee contributions.
§411(c)(2)(B)	Accrued benefit derived from employee contributions. The amount equal to the participant's accumulated contributions converted to an annual benefit commencing at ► normal retirement age (NRA),* using an interest rate under the plan (as of the determination date) that complies with IRC §417(e)(3). For the applicable interest rates (and mortality tables) under IRC §417(e)(3), see Appendix C . <p>*PBGC uses ► normal retirement date (NRD).</p> <p>Note: § 411(c)(2)(A) applies to plans that are not defined benefit plans.</p>
§411(c)(2)(C)	Definition of accumulated contributions. Accumulated contributions means the total of <ul style="list-style-type: none"> — i. all mandatory contributions made by the participant, ii. interest (if any) under the plan until the date that the rate of 120 percent of the Federal mid-term rate became effective, and iii. interest on the sum of the amounts determined under (i) and (ii) compounded annually— <ul style="list-style-type: none"> I. at the rate of 120 percent of the Federal mid-term rate until the determination date, and II. at the interest rate which would be used under the plan under §417(e)(3) (as of the determination date) for the period beginning with the determination date and ending on the date the participant attains NRA.* <p>For the appropriate interest rates and effective dates, see Appendix C.</p> <p>*PBGC uses NRD.</p>
§411(c)(2)(D)	Adjustments to conversion factors. The Secretary of the Treasury may adjust by regulation the conversion factor described in § 411(c)(2)(B) as deemed necessary.
§411(c)(3)	Actuarial adjustment. If the accrued benefit is to be determined as commencing at other than at NRA* or if the employee-derived benefit is to be calculated as other than an

	annual benefit in the form of a ►single life annuity** commencing at NRA, the accrued benefit or the employee-derived benefit must be the actuarial equivalent of the benefit calculated under §411(c)(1) or §411(c)(2).
	*PBGC uses NRD.
	**PBGC uses ►straight life annuity.
§417(e)(3)	Determination of present value
§417(e)(3)(A)	In general. The ►present value of a benefit cannot be less than the present value calculated using the mortality tables under §417(e)(3)(B) and the interest rates under §417(e)(3)(C) and (D).

Appendix B: Legislative Background

►ERISA and the ►IRC prescribe the rules for crediting interest on ►MEC and calculating the ►employee-derived benefit and ►employer-derived benefit. The following legislation amended the interest rates used to accumulate the MEC and conversion factors used to convert ►AMEC to the employee-derived benefit.

The IRC citations used below reference the sections of the IRC in effect under the described legislation.

In this Appendix

- A. Employment Retirement Security Act (ERISA)
- B. Omnibus Budget Reconciliation Act of 1987 (OBRA '87)
- C. Omnibus Budget Reconciliation Act of 1989 (OBRA '89)
- D. General Agreement on Tariffs and Trade (GATT)
- E. Pension Protection Act of 2006 (PPA 2006)

A. Employment Retirement Security Act (ERISA)

►ERISA, enacted September 2, 1974, added §411(c) to the IRC. Section 411(c) provided for the crediting of interest on ►MEC and the conversion of ►AMEC to a ►single-life annuity at ►normal retirement age (NRA).

- For plans not in existence on January 1, 1974, IRC §411(c) applied to plan years beginning after September 2, 1974.
- For plans in existence on January 1, 1974, IRC §411(c) applied to plan years beginning after December 31, 1975.
- 1. Before §411(c) became effective, interest, if any, was credited on MEC at the rate provided under the plan until the date provided under the plan.
- 2. Beginning with the first plan year that IRC §411(c) was effective, interest under IRC §411(c) had to be credited to MEC at 5% per year until the participant's NRA.
- 3. If the 5% interest rate resulted in an ►employee-derived benefit that exceeded the participant's ►accrued benefit, the interest rate was limited to the rate that would result in the employee-derived benefit being equal to the participant's accrued benefit. However, in no event, could the employee-derived benefit be less than the annuity that would be provided by the participant's MEC without interest.
- 4. ERISA also specified a factor of 10%, for converting the AMEC to a single-life annuity at NRA, specified as age 65. Benefits payable in other annuity benefit forms and/or at other ages had to be actuarially equivalent to the single-life annuity at age 65.

B. Omnibus Budget Reconciliation Act of 1987 (OBRA '87)

OBRA '87 was effective for plan years beginning after December 31, 1987.

1. The interest rate at which ►MEC were accumulated for plan years prior to ►normal retirement age was changed to 120% of the applicable Federal mid-term rate.
2. The ERISA exception that allowed a lower interest rate to be credited to avoid providing an ►employee-derived benefit that exceeded the participant's ►accrued benefit continued to apply.

3. The 10% conversion factor prescribed under ERISA was not changed.

C. Omnibus Budget Reconciliation Act of 1989 (OBRA '89)

OBRA '89 was effective for plan years beginning after December 31, 1987.

1. OBRA '89 retroactively changed the interest rate used to credit interest on ▶ AMEC from the determination date to ▶ normal retirement age to the interest rate that would be used under the plan to calculate the ▶ present value of ▶ accrued benefits under IRC §417(e) (the '417(e) rate'). Prior to GATT, the §417(e)(3) interest rate was the rate used by PBGC to calculate the ▶ lump-sum value of a benefit.
2. The interest rate used to credit interest before the determination date remained 120% of the applicable Federal mid-term rate.
3. The interest rate used to convert AMEC to an annuity changed from 10%, as prescribed under ERISA, to the §417(e) interest rate.
4. The ERISA exception that had allowed a lower interest rate to be credited to avoid providing an ▶ employee-derived benefit that exceeded the participant's accrued benefit was eliminated.

D. General Agreement on Tariffs and Trade (GATT)

The changes under GATT generally were effective for plan years beginning after December 31, 1994. However, for plans in effect before December 8, 1994, employers could delay the effective date until the first day of the first plan year beginning after December 31, 1999.

1. The §417(e)(3) interest rate changed from the rate used by PBGC to value ▶ lump sums to the annual rate of interest on 30-year Treasury securities for the month before the date of distribution or as provided under IRS regulations. To prevent monthly changes in interest rates, IRS regulations permitted the use of a ▶ stability period and ▶ lookback month to stabilize the interest rate.
2. The interest rate used to credit interest before the determination date remained 120% of the applicable Federal mid-term rate.
3. A mortality table was specified under IRC §417(e)(3) for calculating minimum ▶ present values.
 - For determination dates on and after December 31, 2002, or earlier if required by plan amendment, the applicable mortality table is 94 GAR (see Rev. Rul. 2001-62).
 - Before 94 GAR became applicable, the applicable mortality table was 83 GAM (see Rev. Rul. 95-6).

E. Pension Protection Act of 2006 (PPA 2006)

Effective for plan years beginning after December 31, 2007, PPA 2006 changed IRC §417(e)(3) as follows:

1. The applicable mortality table changed to mortality tables, modified as appropriate by the Secretary of the Treasury, based on the mortality tables specified for the plan year under IRC §430(h)(3)(A), the RP-2000 Mortality Tables (projected and blended).
2. The applicable interest rate was changed to three segment rates based on the corporate bond yield curve, where the:
 - First segment rate applies to payments on or before 5 years.
 - Second segment rate applies to payments after 5 years and on or before 20 years.
 - Third segment rate applies to payments after 20 years.

The plan or calendar year, ▶ stability period, and ▶ lookback month are used to determine the applicable §417(e)(3) segment rates.

3. The interest rate used to credit interest before the determination date, established under OBRA 87, remains 120% of the applicable Federal mid-term rate.

Appendix C: Interest Rates and Conversion Factors

Pre-ERISA

Effective:

- Plan not in existence on 01/01/1974: Plan years beginning before 09/03/1974.
- Plan in existence on 01/01/1974: Plan years beginning before 01/01/1976.

Pre-§411(c)(2) Interest Rate: The rate under plan provisions, if any, until the date specified under the plan.

§417(e)(3) Interest Rate: N/A

Conversion Factor(s)/Methodology: The factors or methodology provided under the plan.

ERISA

Effective:

- Plan not in existence on 01/01/1974: Plan years beginning on or after 09/03/1974.
- Plan in existence on 01/01/1974: Plan years beginning on or after 01/01/1976.

§411(c)(2) Interest Rate: 5% compounded annually through ► [normal retirement date](#) (NRD).

If this rate provided an ► [employee-derived benefit](#) in excess of the ► [accrued benefit](#) under the plan's benefit formula, a lower rate could be used to provide an employee-derived benefit that was equal to the accrued benefit. However, the employee-derived benefit could not be less than that provided by the ► [MEC](#) without interest.

§417(e)(3) Interest Rate: N/A

Conversion Factor: 10% factor to convert AMEC to a ► [straight life annuity](#) (SLA) at age 65.

OBRA 87/89

Effective: Plan years beginning on or after 01/01/1988.

§411(c)(2) Interest Rate: 120% of the applicable Federal mid-term rate compounded annually until the determination date.

§417(e)(3) Interest Rate: The rate used by PBGC to calculate the ► [lump-sum value](#) of a benefit, beginning on the determination date and ending on NRD.

Conversion Factor: §417(e)(3) interest rate and the mortality table provided under the plan.

GATT

Applicable Period: Plan years beginning on or after 01/01/1995.

Exception: If plan was in effect before 12/08/1984, the plan sponsor could delay the effective date until the plan year beginning on or after 01/01/2000.

§411(c)(2) Interest Rate: 120% of the applicable Federal mid-term rate compounded annually until the determination date.

§417(e)(3) Interest Rate: Annual rate on 30-year Treasury securities, beginning on the determination date and ending on NRD.

Conversion Factor:

- §417(e)(3) interest rate based on the ► [lookback month](#) and ► [stability period](#) provided under the plan.
- Mortality table for calculating minimum present values:
 - 94 GAR (IRS Rev. Rul. 2001-62) for determination dates on and after 12/31/2002 or earlier if required under a plan amendment.
 - 83 GAM (IRS Rev. Rul. 95-6) before 94 GAR became applicable.

PPA 2006

Effective: Plan years beginning on or after 01/01/2008.

§411(c)(2) Interest Rate: 120% of the applicable Federal mid-term rate compounded annually until the determination date.

§417(e)(3) Interest Rate: Beginning on the determination date and ending on NRD, the three segment rates based on the corporate bond yield curve, where the:

- 1st segment applies to payments on or before 5 years.
- 2nd segment applies to payments after 5 years and on or before 20 years.
- 3rd segment applies to payments after 20 years.

Conversion Factor:*

- §417(e)(3) interest rate based on the lookback month and stability period provided under the plan.
- RP-2000 Mortality Tables (projected and blended).

*Rather than separately accumulating AMEC from the determination date through NRD and then converting this AMEC to the employee-derived benefit, PBGC includes this interest accumulation in its conversion factor (see [section F.1.](#)).

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_11_1_2nd.htm
(08/30/2012)

Previous Editions

[5.11-1 Calculation of Priority Category 2 Benefits under OBRA '87/'89 in PBGC-Trusteed Plans 1st Ed. - Outdated](#)

[5.11-1 Calculation of Priority Category 2 Benefits under OBRA '87/'89 in PBGC-Trusteed Plans 2nd Ed. - Outdated](#)

[5.11-1 Calculation and Payment of Priority Category 2 Benefits in PBGC Trusteed Plans 1st Ed. - Outdated](#)

[Top of Page](#)

5.11-2 Payment of Priority Category 2 Benefits

Edition	2nd Edition
Issue Date	03/28/2013
Transmittal	Transmittal 2013-05
Contact	ASK PPD
Related Links	5.11-1 Calculation of Priority Category 2 Benefits Transmittal 2013-02 Small Benefit Payments (Outdated)

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions
- D. Requirements for Withdrawal of AMEC
- E. Election to Withdraw AMEC
- F. Consequences of Election
- G. Pre-Retirement Death Benefits
- H. Post-Retirement Death Benefits
- I. Amount of Withdrawal Payment or Other Single-Sum Payment of AMEC

A. Background

Mandatory ► employee contributions (MEC) are contributions that are required as a condition of employment with the plan sponsor, participation in the plan, or obtaining benefits under the plan attributable to employer contributions. Accumulated mandatory employee contributions (AMEC) are MEC credited with interest at a specified date (the ‘determination date’ as described in § 411(c) of the ► Code). In a plan with MEC, a participant’s ► accrued benefit is allocated between employee and employer contributions. The employee-derived benefit is provided by the participant’s AMEC. The employer-derived benefit is the amount of the participant’s accrued benefit provided under the plan’s benefit formula in excess of the employee-derived benefit. Occasionally, the AMEC exceed the value of the accrued benefit provided under the plan’s benefit formula and an employer-derived benefit is not payable.

In a PBGC-trusted plan, the portion of a participant’s benefit derived from his or her AMEC as of DOPT is a ► priority category 2 (PC2) benefit. At a minimum, the AMEC provide an employee-derived benefit and a ► pre-retirement death benefit that returns the AMEC upon the death of the participant. Some plans provide that participants may withdraw their AMEC. If all of the AMEC are withdrawn, the participant is due only the employer-derived benefit, unless the plan provides otherwise. PBGC’s regulation at 29 CFR § 4022.7(b) (2) permits PBGC to return AMEC at DOPT in a single installment if certain conditions are met.

B. Scope and Effective Date

This policy provides the rules under which PBGC pays a ► PC2 benefit and specifically addresses:

1. conditions permitting withdrawal of ►AMEC,
2. elections to withdraw AMEC,
3. the consequences of withdrawing AMEC,
4. pre- and post-retirement death benefits derived from AMEC, and
5. calculation of the payment that returns AMEC in a single sum to a participant or other eligible individual.

Under the first edition of this policy, PBGC permitted a ► de minimis benefit that included AMEC to be paid without an application as provided in PBGC Policy **5.4-10 Small Benefit Payments**. Policy 5.4-10 is being deleted and Policy 5.11-2 is being revised to eliminate this provision.

PBGC Policy 5.11-2 applies to participants and other eligible individuals (a surviving spouse, other beneficiary or ► alternate payee under a ► QDRO) in a PBGC-trusted plan who are entitled to a PC2 benefit and the participant’s full AMEC have not been withdrawn or benefits have not been put into pay status, as provided under prior policy. It is effective upon issuance.

C. Definitions

For the purposes of this policy:

1. **Mandatory employee contributions (MEC)** means ►employee contributions that are required as a condition of employment with the plan sponsor, participation in the plan, or obtaining benefits under the plan attributable to employer contributions. ►MEC are the balance of the contributions without interest.
2. **Accumulated mandatory employee contributions (AMEC)** means the sum of the MEC and interest credited on the MEC at a specified date, the determination date. The determination date may be: 1) the withdrawal date if before DOPT; 2) a participant's or beneficiary's annuity starting date, which may be before or after DOPT; and/or 3) DOPT.
AMEC are calculated as provided in PBGC Policy **5.11-1 Calculation of Priority Category 2 Benefits**. Note that AMEC do not include interest payable under PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments**.
3. **Residual AMEC** means a remaining balance of ►AMEC after all of the AMEC have previously been withdrawn or benefits have been placed into pay status, typically resulting from an error in accumulating interest on MEC (e.g., an incorrect interest rate was used).
4. **Employee-derived benefit** means the portion of the ►accrued benefit derived from AMEC. The AMEC as of the annuity starting date is used to calculate the ►employee-derived benefit. The employee-derived benefit is calculated as provided in PBGC Policy **5.11-1 Calculation of Priority Category 2 Benefits** and may be less than, more than, or equal to the benefit calculated using the plan's benefit formula. The minimum vesting provisions in ►ERISA and the ►Code provide that a participant is always 100% vested in his or her employee-derived benefit.
5. **Employer-derived benefit** means the portion of the accrued benefit, calculated using the plan's benefit formula, in excess of the employee-derived benefit. If all of the AMEC are withdrawn, the participant is due only the ►employer-derived benefit, unless plan provisions provide otherwise. If the amount of the employee-derived benefit is more than the plan benefit, calculated using the plan's benefit formula, an employer-derived benefit is not payable (i.e., the amount of the employer-derived benefit is zero). The employer-derived benefit is calculated as provided in PBGC Policy **5.11-1 Calculation of Priority Category 2 Benefits**.
6. **Plan benefit** means the vested accrued benefit payable if AMEC are not withdrawn. It is the sum of the employee-derived benefit and employer-derived benefit. The plan benefit generally is equal to the benefit calculated using the plan's benefit formula; however, it will be more if the employee-derived benefit exceeds the benefit calculated using the plan's benefit formula. In this situation, the plan benefit will consist of only the employee-derived benefit. For purposes of this policy, the plan benefit is a guaranteed benefit and thus payable by PBGC unless specified otherwise.
7. **Modified cash refund (MCR)** means a type of cash refund annuity under which, if a participant or beneficiary dies before receiving pension payments equal to the AMEC at the ►annuity starting date, the balance of the AMEC at the payee's date of death is paid in a single sum to a beneficiary determined under PBGC Policy **8.6-1 Payments to Beneficiaries**. Plans may also be described as having a MCR feature or providing benefit forms that include a MCR feature, such as an ►SLA with a MCR or a ►QJSA with a MCR.

D. Requirements for Withdrawal of AMEC

1. PBGC permits the withdrawal of a participant's balance of ►AMEC at DOPT in a single sum if all of the following apply:
 - a. PBGC concludes that there is a balance of AMEC at DOPT to be withdrawn (for the applicable rules on residual AMEC, see **section F.4. Residual AMEC**);
 - b. plan provisions permit the withdrawal of AMEC at some future date, for example, upon termination of employment or at retirement;
 - c. ►PC2 is fully funded by the 4044 and 4022(c) ►asset allocations (if PC2 is not fully funded by the 4044 and 4022(c) asset allocations, PBGC will permit withdrawals if the AMEC do not exceed the value of the ►guaranteed benefit plus any 4022(c) allocation that is payable to the participant or other eligible individual. If the asset allocations and/or the value of guaranteed benefits have not become final, PBGC will estimate them using the best available information at the time first makes its determination of whether withdrawal of AMEC is permissible. In all other cases, PBGC will determine if and to what extent AMEC may be withdrawn based on the facts and circumstances of the case); and
 - d. the benefit has never been in pay status or the benefit was placed into pay status by PBGC and the participant or other eligible individual was not given the opportunity to withdraw the AMEC by PBGC as provided in this or prior policy.

PBGC will not give a payee who was put into pay status by the plan administrator the option of withdrawing the AMEC after payments have begun.

2. **Working Retirement.** If withdrawal of AMEC is permitted as provided in [section D.1.](#), PBGC permits withdrawal of AMEC by a participant who continues to work for the DOPT employer, as provided in PBGC Policy [5.2-2 Working Retirement](#).
3. **Exception to §436(d) limitation.** ► [Section 436\(d\)](#) of the ► [Code](#) prohibits payment of certain benefits in a lump sum, including a withdrawal of AMEC, if the plan's funding is below a specified threshold. However, 26 CFR § 1.436-1(a)(3)(ii)(B) permits payments that would otherwise be limited under §436(d) if paid pursuant to termination of the plan. In accordance with that provision, PBGC will permit a withdrawal of AMEC otherwise permitted under this policy even if a ► [§436\(d\) limitation](#) was applicable as of DOPT and will disregard any contrary plan provision. For additional guidance on section 436(d) of the Code, see PBGC Policy [5.14-2 §436 Benefit Limitations Under PPA 2006](#).

E. Election to Withdraw AMEC

PBGC permits withdrawal of ► [AMEC](#) as soon as practicable after the DOTR and PBGC determines that withdrawal of the AMEC is permissible as provided in [section D](#).

1. **Notification.** PBGC will notify a participant or other individual who is eligible to withdraw AMEC of the option to withdraw the AMEC and will provide general information as to the consequences of withdrawing AMEC so that an informed decision regarding withdrawal can be made.
2. **Period to withdraw.** PBGC permits a withdrawal of AMEC any time before retirement benefits commence. If AMEC have not been withdrawn before a participant or other eligible individual applies for annuity benefits, PBGC will provide an opportunity to withdraw the AMEC at that time.
3. **Election period.** An election period of no less than 60 days after the expected receipt date of the election form by the participant or other eligible individual will be provided.
4. **Full withdrawal.** An election to withdraw will be honored only if it is for the balance of the AMEC; a request for a partial withdrawal of the AMEC will not be honored.
5. **De minimis benefit.** If the ► [plan benefit](#) is a ► [de minimis benefit](#), PBGC will pay the benefit in either a ► [lump-sum distribution](#) or as an annuity as provided in PBGC Policy [5.4-9 Lump-Sum Benefit Payments](#). The participant or other individual will not be permitted to withdraw only the AMEC.
6. **Spousal Consent.** Spousal consent is not required to pay a de minimis benefit that includes AMEC in a lump-sum distribution. If the plan benefit is a ► [non-de minimis benefit](#), spousal consent is required to withdraw the AMEC, regardless of the amount of the AMEC. The rules on spousal consent described in PBGC Policy [5.7-5 Spousal Consent \(Qualified Joint and Survivor Annuities\)](#) apply.
7. **Pre-trusteeship election.** PBGC generally will honor a valid election to withdraw AMEC made under the plan received before DOTR.
8. **Permitted change in election.** PBGC permits a change in an election as follows:
 - a. **Before retirement.** For elections to withdraw AMEC made before retirement (i.e., the applicant is not eligible to retire or is not applying for annuity benefits), PBGC permits a change in an election if it is received before the withdrawal payment date.
 - b. **At or after retirement.** For elections made by individuals who are applying for benefits (including those who made a valid election under the plan before DOTR) or those already in pay status to the extent provided in [section D.1.d.](#), PBGC permits a change in an election only if it is received during the election period and subject to the following.
 - 1) the election period will not be extended due to a request to change the election, and
 - 2) PBGC will make payment according to the last election received on or before the expiration of the election period; or
 - 3) if an election has not been received by the end of the election period, PBGC will pay the plan benefit only as an annuity.
 - c. **Election under prior policy.** If a participant elected to not withdraw his or her AMEC, as provided under prior policy, and benefits have not been placed into pay status, PBGC will permit the participant to change the election, as otherwise provided in [section E.8](#).

F. Consequences of Election

- 1. Plan provisions on forfeiture of employer-derived benefit.** Plans may provide that ► [employer-derived benefits](#) are forfeited if ► [AMEC](#) are withdrawn and the participant was less than 50% vested in the employer-derived benefit on the withdrawal date. PBGC honors such a forfeiture provision.
- 2. AMEC withdrawn.** If AMEC are withdrawn, PBGC pays the employer-derived benefit that is due in accordance with PBGC's policies on the payment of annuities (e.g., PBGC Policy [5.2-4 Annuity Starting Dates](#), PBGC Policy [5.4-7 Annuity Benefit Forms](#), etc.) or, if appropriate, as a residual ► [lump-sum distribution](#) as provided in PBGC Policy [5.4-9 Lump-Sum Benefit Payments](#).

Example 1- Election to Withdraw AMEC: A participant had AMEC of \$10,000 as of DOPT and asks about withdrawing the AMEC before reaching his or her earliest PBGC retirement date. PBGC concludes that withdrawal of the AMEC is permitted. PBGC calculates the participant's ► [plan benefit](#) as \$750/month in the form of an SLA at normal retirement date of which \$120/month is the ► [employee-derived benefit](#) and \$630/month is the employer-derived benefit. If the participant withdraws the AMEC, PBGC will pay only the employer-derived benefit of \$630/month as an annuity, reduced for early retirement and benefit form, if appropriate, when the participant retires.

- 3. AMEC not withdrawn.** If AMEC are not withdrawn, PBGC pays the plan benefit in accordance with PBGC's policies on the payment of annuities (e.g., PBGC Policy [5.2-4 Annuity Starting Dates](#), PBGC Policy [5.4-7 Annuity Benefit Forms](#), etc.) or, if appropriate, in a lump-sum distribution as provided in PBGC Policy [5.4-9 Lump-Sum Benefit Payments](#) (and as previously described in [section E.5](#)).

Example 2 – Election Not to Withdraw AMEC: Same facts as Example 1 except, that if the participant does not withdraw the AMEC, PBGC will pay the plan benefit of \$750 as an annuity, reduced for early retirement and benefit form, if appropriate, when the participant retires.

- 4. Residual AMEC.** PBGC may determine that ► [residual AMEC](#) remain at DOPT, and as a result the employee-derived benefit provided by the participant's AMEC increases. Despite this increase, the ► [plan benefit](#) typically does not change. However, in rare instances, the plan benefit may increase because the corrected employee-derived benefit exceeds the benefit calculated using the plan's benefit formula. PBGC will pay residual AMEC and/or adjust the benefit as follows:

- Annuity in pay status.** If annuity benefits are in pay status, PBGC will increase the employee-derived benefit and decrease the employer-derived benefit by the amount of the change in the employee-derived benefit. Withdrawal of the residual AMEC will not be offered.

Example 3 - No Increase in Plan Benefit: A participant retired before DOPT. The plan calculated the participant's benefit, using the plan's benefit formula, as \$1,100/month at age 65 in the form of a ► [QJSA](#). The participant's AMEC were withdrawn prior to retirement.

- The plan calculated the employee-derived benefit as \$180/month and the employer-derived benefit as \$920/month (\$1,100 - \$180), and was paying the participant the employer-derived benefit of \$920/month when PBGC trusteeed the plan.
- PBGC concludes that the plan correctly calculated the benefit of \$1,100/month at age 65 in the form of a QJSA, using the plan's benefit formula. However, the plan used an incorrect interest rate to accumulate the MEC, and therefore, miscalculated the employee-derived benefit.
- PBGC determines that the employee-derived benefit is \$200/month and the employer-derived benefit is \$900 (\$1,100 - \$200) at age 65 in the form of a QJSA.
- The employee-derived benefit will increase by \$20 (\$200 - \$180), and the employer-derived benefit will decrease by \$20 (\$920 - \$900).

The plan benefit payable to the participant will not change because the corrected employee-derived benefit does not exceed the benefit calculated using the plan's benefit formula. PBGC will continue to pay the participant \$920/month (\$20 + \$900).

Example 4 - Increase in Plan Benefit: A participant retired before DOPT. The plan calculated the participant's benefit, using the plan's benefit formula, as \$1,450/month at age 65 in the form of an ► [SLA](#). The participant's AMEC were withdrawn prior to retirement.

- The plan calculated the employee-derived benefit as \$1,400/month and the employer-derived benefit as \$50/month (\$1,450 - \$1,400), and was paying the participant the employer-derived benefit of \$50/month when PBGC trusteeed the plan.

- PBGC concludes that the plan correctly calculated the benefit of \$1,450/month at age 65 in the form of an SLA, using the plan's benefit formula. However, the plan used an incorrect interest rate in accumulating the MEC, and therefore, miscalculated the employee-derived benefit.
- PBGC determines that the employee-derived benefit is \$1,500 at age 65 in the form of an SLA.

Because the employee-derived benefit increased and is now more than the benefit calculated using the plan's benefit formula ($\$1,500 > \$1,450$), an employer-derived benefit is no longer due. PBGC will increase the participant's payments from \$50/month to \$100/month ($\$1,500 - \$1,400$).

Note: Under the plan's calculation, the participants would not have ►PC2 benefits because all of the AMEC had been withdrawn. However, upon correction of the benefit by PBGC, the participants have PC2 benefits. For additional guidance, see PBGC Policy **5.11-1 Calculation of Priority Category 2 Benefits**.

5. Annuity not in pay status or not payable. If the AMEC were previously withdrawn and annuity benefits are not in pay status or are not payable (e.g., the participant's employer-derived benefit is not guaranteed), the residual AMEC will be paid only in a single sum. If future benefits are payable, the employer-derived benefit will also be adjusted.

Example 5 - No Increase in Plan Benefit: Participants A and B are in different plans. Each had AMEC of \$4,000, which they both withdrew shortly before DOPT. Each also had a benefit, calculated using their plans' benefit formulas of \$125/month of which, the employee-derived benefit was \$25 and the employer-derived benefit was \$100 (\$125-\$25). Participant A was fully vested in the employer-derived benefit, and therefore, was due the employer-derived benefit of \$100 at retirement.

Participant B was not vested in the employer-derived benefit, and therefore, was not due any additional benefits.

- After the plans were trusteeed, PBGC concluded that the plans correctly calculated the participants' benefits using their plans' benefit formulas. However, the plans used incorrect interest rates to accumulate the MEC, and therefore, miscalculated the employee-derived benefits.
- PBGC determines that each participant has residual AMEC of \$160 at DOPT. As a result, the employee-derived benefit increases to \$26 and the employer-derived benefit decreases to \$99 (\$125 - \$26).

PBGC will pay the residual AMEC as follows:

- Participant A will be paid the residual AMEC of \$160 in a single sum and is due the employer-derived benefit of \$99 as an annuity.
- Participant B will be paid the residual AMEC of \$160 in a lump-sum distribution and is not due any additional benefits.

Example 6 - Increase in Plan Benefit: Participants C and D are in different plans. Each had AMEC of \$8,000, which they both withdrew shortly before DOPT. Each had a benefit, calculated using their plans' benefit formulas of \$125 of which, the employee-derived benefit was \$120 and the employer-derived benefit was \$5. Participant C was fully vested in the employer-derived benefit, and therefore, was due the employer-derived benefit of \$5 at retirement. Participant D was not vested in the employer-derived benefit, and therefore, was not due any additional benefits.

- After the plans were trusteeed, PBGC concludes that each plan correctly calculated the participants' benefits, using their plans' benefit formulas. However, both plans used incorrect interest rates to accumulate the MEC, and therefore, miscalculated the employee-derived benefits.
- PBGC determines that each participant has residual AMEC of \$320 at DOPT. As a result, the employee-derived benefit increased to \$126.
- Because the employee-derived benefit exceeds the benefit calculated using the plans' benefit formulas ($\$126 > \125), an employer-derived benefit is not payable, and Participant C is no longer due an employer-derived benefit.

PBGC will pay both participants their residual AMEC only in a lump-sum distribution.

G. Pre-Retirement Death Benefits

PBGC pays ►pre-retirement death benefits derived from ►AMEC at DOPT, as follows:

1. **Election to withdraw.** If a participant, with spousal consent if required, or other eligible individual elected to withdraw the AMEC, but died before the AMEC was paid, PBGC treats the AMEC as a payment owed to a deceased payee and pays it in a single sum to the payee's beneficiary as provided in PBGC Policy **8.6-1 Payments to Beneficiaries**.

Note: that in this situation, a surviving spouse is only due the ► QPSA provided by the ► employer-derived benefit. The spouse is due the AMEC only if he or she is also the beneficiary determined under PBGC Policy **8.6-1**. The AMEC is payable only in a single sum; a QPSA provided by the ► employee-derived benefit is not payable.

2. **No election to withdraw.** If a participant or other individual dies without electing to withdraw the AMEC or after making an election under prior policy to not withdraw the AMEC, payment of the AMEC will depend on whether a QPSA or similar ► PSA is due a surviving spouse.
 - a. **QPSA or similar PSA due.** If the surviving spouse of a deceased participant is due a QPSA or similar PSA as provided in PBGC Policy **5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984** or PBGC Policy **5.7-3 Survivor Annuities – Pre-REA Terminations**, the spouse may elect either to: 1) withdraw the AMEC as otherwise provided in this policy and receive the QPSA provided by the employer-derived benefit, or 2) receive the QPSA provided by the plan benefit.
 - b. **QPSA or similar PSA is not due.** If a QPSA or similar PSA is not due, for example, the participant was not married or the decedent is a beneficiary, PBGC treats the AMEC as a payment owed to a deceased payee and pays it in a single sum to the payee's beneficiary as provided in PBGC Policy **8.6-1 Payments to Beneficiaries**.

H. Post-Retirement Death Benefits

PBGC pays ► post-retirement death benefits derived from ► AMEC as follows:

1. **Election to withdraw.** If a payee who validly elected to withdraw his or her AMEC at DOPT dies before receiving the AMEC, PBGC treats the AMEC as a payment owed to the deceased payee and pays it in a single sum to his or her beneficiary as provided in PBGC Policy **8.6-1 Payments to Beneficiaries**. If continuing annuity payments are due, as described in PBGC Policy 8.6-1, only the continuing annuity payment provided by the ► employer-derived benefit is payable.
2. **Election not to withdraw AMEC.** If AMEC are not withdrawn, a balance of AMEC may be payable when a payee dies. Plans with MEC frequently provide benefit forms, such as a ► modified cash refund (MCR), that pay any remaining AMEC in a single sum upon the death of a payee.

When a payee dies and AMEC were not withdrawn, PBGC pays the survivor benefit and/or death benefit provided by the benefit form elected by the deceased participant or beneficiary.

Note that a payee who did not make an election to withdraw AMEC, as provided under prior policy, is treated as having elected to have not withdrawn the AMEC.

Example 7 - SLA with MCR Elected: A participant had AMEC of \$23,000 as of DOPT that the participant was eligible to withdraw. The plan's automatic benefit form for unmarried participants was an SLA if the AMEC were withdrawn and an MCR if the AMEC were not withdrawn. AMEC of \$25,000 at the ► annuity starting date was used to calculate the ► employee-derived benefit. The employer-derived benefit in the form of the SLA after withdrawal of the AMEC was \$400, and the plan benefit in the form of the MCR was \$500.

The participant did not withdraw the AMEC and elected the MCR. The participant died after receiving payments for 26 months. The participant received ► plan benefits totaling \$13,000 (\$500 x 26). As provided by the MCR, the AMEC as of the annuity starting date, \$25,000, is also used to determine the remaining AMEC payable to the participant's beneficiary. PBGC will pay AMEC of \$12,000 (\$25,000- \$13,000) plus interest as provided under PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments**, beginning with the first month that the death benefit is due, to the participant's beneficiary determined under PBGC Policy **8.6-1 Payments to Beneficiaries**.

Note that only the AMEC at DOPT is subject to withdrawal by the participant; however, as provided by an MCR the participant's benefit and the amount of the death benefit is calculated using the AMEC as of the ASD.

Example 8 - SLA Elected: A married participant had AMEC at DOPT of \$23,000 that the participant was eligible to withdraw. The plan's automatic form for married participants was a ► QJSA and an SLA for unmarried participants. AMEC of \$25,000 at the annuity starting date was used to calculate the employee-derived benefit. The SLA was \$525 if the AMEC were not withdrawn and \$400 if withdrawn. The QJSA was \$476 if the AMEC were not withdrawn and \$364 if withdrawn.

The participant elected the SLA with spousal consent and did not withdraw the AMEC. The participant died 5/15/2010 after receiving 26 payments of \$525. The May 1, 2010 payment was the last payment due.

3. **Election Not Provided.** If an eligible payee was placed into pay status by PBGC without having been given the option of withdrawing the AMEC at DOPT, as provided under this or prior policy, and then dies, PBGC's treatment of the AMEC depends

on whether continuing annuity payments are due after the payee's death.

a. **Continuing annuity payments due.** If continuing annuity payments are due, the contingent annuitant may elect to:

- Withdraw any remaining AMEC and receive only the survivor benefit provided by the employer-derived benefit, or
- Not withdraw the AMEC and receive the continuing annuity payment provided by the plan benefit.

b. **Continuing annuity payments are not due.** If continuing annuity payments are not due, PBGC treats any remaining AMEC as a payment owed to the deceased payee and pays the AMEC in a single sum to the payee's beneficiary, as provided in PBGC Policy [8.6-1 Payments to Beneficiaries](#).

For guidance on continuing annuity payments, see PBGC Policy [8.6-1 Payments to Beneficiaries](#). For guidance on calculating death benefits attributable to MEC, see [section H. Calculation of Death Benefits Attributable to Mandatory Employee Contributions](#) in PBGC Policy [5.11-1 Calculation of Priority Category 2 Benefits](#).

I. Amount of Withdrawal Payment or Other Single-Sum Payment of AMEC

PBGC generally calculates the amount of a withdrawal or other single-sum payment of ▶AMEC as follows:

1. **Accumulation of MEC.** PBGC accumulates the ▶MEC with interest at DOPT as provided in PBGC Policy [5.11-1 Calculation of Priority Category 2 Benefits](#).
2. **Reduction for prior withdrawals paid in a single sum.** PBGC will reduce the amount of AMEC calculated as provided above by the amount of prior withdrawals of AMEC (whether paid before or after DOPT). The reduction will include the interest that would have been credited on the prior withdrawal if that withdrawal had not been paid.
3. **Set-off for annuity payments made after DOPT upon withdrawal of AMEC.** If a participant and/or other individual in pay status elects to withdraw AMEC, as provided in this policy, and the benefit in pay status includes the ▶employee-derived benefit, PBGC will reduce the amount of the AMEC at DOPT by the amount of the set-off. The set-off amount is the sum of the employee-derived annuity payments paid after DOPT until the payment date of the withdrawal, generally the same date that the benefit in pay status is reduced to the amount of any employer-derived benefit, which is payable.
4. **Interest.** Interest is payable on the amount of AMEC or residual AMEC as calculated above, as provided in PBGC Policy [6.3-1 Underpayment Reimbursement and Interest Payments](#).

Note that the amount of AMEC payable in a single sum due to a post-retirement death of a payee after benefits are in pay status is calculated in accordance with the payee's benefit form, such as an ▶MCR. Interest as provided in PBGC Policy [6.3-1 Underpayment Reimbursement and Interest Payments](#) is generally added beginning with the first month that the death benefit is payable.

Example 9 – Post-retirement Withdrawal of AMEC: PBGC placed a participant into pay status with an estimated plan benefit of \$600/month of which \$200/month is the employee-derived benefit and \$400/month is the employer-derived benefit. The participant had AMEC of \$25,000 as of DOPT.

PBGC later finds that the participant should have been given the option of withdrawing the AMEC before being placed into pay status and gives the participant the option of withdrawing the AMEC. The participant elects to withdraw the AMEC and receive only the employer-derived benefit of \$400/month. Benefit payments had been made for six months at the time that the AMEC was paid and the monthly payment was reduced from \$600 to \$400.

- The setoff amount was \$1,200 (6 months X \$200).
- The amount of the AMEC at DOPT after setoff was \$23,800 (\$25,000 - \$1,200).
- Post-DOPT interest of \$300 was calculated on the balance of the AMEC at DOPT, \$23,800, as provided in PBGC Policy [6.3-1 Underpayment Reimbursement and Interest Payments](#).
- The participant was paid a withdrawal amount of \$24,100 (\$23,800 + \$300).

[5.11-1 Calculation and Payment of Priority Category 2 Benefits in PBGC Trusteed Plans 1st Ed. - Outdated](#)

[5.11-1 Calculation of Priority Category 2 Benefits under OBRA '87/'89 in PBGC-Trusteed Plans 1st Ed. - Outdated](#)

[5.11-1 Calculation of Priority Category 2 Benefits under OBRA '87/'89 in PBGC-Trusteed Plans 2nd Ed. - Outdated](#)

[5.11-2 Payment of Priority Category 2 Benefits 1st Ed. - Outdated](#)

[Top of Page](#)

5.12-1 Cash Balance Plans - Valuing and Paying Benefits

Edition	1st Edition
Issue Date	10/24/2000
Transmittal	Transmittal 67
Contact	ASK PPD

In this policy

- A. Purpose
- B. Scope
- C. Background
- D. Benefit Valuations
- E. Annuity Payments
- F. De Minimis Lump-Sum Payments

A. Purpose

PBGC has recently trusteeed a number of ▶ cash balance plans. In general, PBGC will treat these plans the same as any other ▶ defined benefit plan. However, cash balance plans have certain features that create unique, new issues for PBGC. On July 6, 2000, PBGC published a request for comments on these issues in the **Federal Register**. Comments have been received from several parties, and PBGC is studying those comments. PBGC may issue rules on these issues in the future.

In the meantime, PBGC must process cash balance plans. This operating policy is intended to provide PBGC staff with guidance on how to process these plans before PBGC develops final rules.

B. Scope

This ▶ policy states the special rules that PBGC will apply to cash balance plans with respect to:

- valuing benefits for purposes of employer liability, section 4044 asset allocation, and section 4022(c) determinations,
- determining the annuity that the participant will receive, and
- determining whether the participant is eligible for a ▶ de minimis lump-sum payment and, if so, the amount of that payment.

This policy deals only with cash balance plans. Hybrids other than cash balance plans, such as pension equity plans, raise different issues than cash balance plans. Those hybrids should be referred to ▶ PPD for consultation with ▶ CPRD and ▶ OGC.

This policy applies to all cash balance plans that terminate in a distress or involuntary termination, regardless of whether ▶ DOPT or trusteeship precedes the policy's issuance. Although the policy is principally directed at plans trusteeed by PBGC, PBGC will also apply the policy to non-trusteeed plans as appropriate. Any questions on the applicability of this policy to non-trusteeed plans should be referred to PPD for consultation with CPRD and OGC.

C. Background

1. Description of Ongoing Cash Balance Plans

A cash balance plan is a defined benefit pension plan. However, unlike most defined benefit plans that describe the ▶ participant's benefit in terms of the participant's annuity at ▶ normal retirement age, a cash balance plan generally will define the participant's benefit by reference to the amount of a hypothetical account balance. A typical cash balance plan provides that each year the plan will credit a participant's hypothetical account balance with a pay credit (*i.e.*, a percentage of the participant's pay for the year) and an interest credit (*i.e.*, the hypothetical earnings on the account balance). The plan must specify both the pay credit and the interest credit. The cash balance plan also must specify the conversion factor that the plan will use to determine the annuity from the account balance. (The annuity conversion factor can be a single number, can be shown in a table, or can be derived from specified interest and mortality assumptions.)

Participants in ongoing cash balance plans who separate from employment generally have the right to receive their benefits in annuity form, although they typically choose (with ▶ spousal consent) to receive their benefits in lump sum form. In most cases, the plan defines the lump sum amount as no less than the hypothetical account balance. While cash balance plans

generally are designed to pay only the hypothetical account balance, they may have to pay more in some cases in order to avoid an impermissible forfeiture under Code section 417(e) and ►ERISA section 205.

Under Code section 417(e) and ERISA section 205, the amount of a lump-sum may not be less than the present value of the participant's normal retirement annuity, using either plan factors or the applicable interest rate and mortality table of Code section 417(e) (currently, the yield on 30-year Treasuries and GAM-83 mortality), whichever produces the greater value. To determine this present value in a cash balance plan, the plan must project the hypothetical account balance using the interest credit up to the participant's ►normal retirement date, convert that amount to an annuity, and then discount the annuity back to the calculation date using the yield on 30-year Treasuries and GAM-83 mortality (or plan factors if the plan factors would provide a greater present value.) However, when PBGC calculates the ►DOPT present value of *de minimis* lump-sums in a trustee plan, it substitutes the PBGC lump-sum assumptions for the plan/Code section 417(e) assumptions to determine the amount of the lump-sum. In either case, because the interest credit may be greater than the discount interest rate, the present value of the annuity may be greater than the hypothetical account balance.

Many plans, however, simply pay a lump-sum in an amount equal to the hypothetical account balance. The IRS has said that doing so complies with the Code and ERISA (*i.e.*, nonforfeitarility is not violated) if the interest credit meets certain requirements. The IRS set forth the permissible values for the interest credit in Notice 96-8 (1996-1 C.B. 359), summarized in the table below at D.B.2. Plans that satisfy Notice 96-8 may pay a lump-sum equal to the hypothetical account balance, regardless of whether a greater amount would otherwise be required under Code section 417(e) and ERISA section 205.

2. PBGC's Issues for Trusteed Cash Balance Plans

When a cash balance plan terminates in a distress or involuntary termination, PBGC must perform its plan valuation and make its benefit determinations as it does for a traditional defined benefit plan. PBGC uses the plan's interest credit and annuity conversion factors to make benefit determinations. If the plan's interest credit and annuity conversion factors are fixed or if the plan provides a method for converting variable factors to fixed rates ("fixing" the variable factors), the plan presents fewer special valuation or payment issues. However, PBGC faces unique issues when it must perform a plan valuation or calculate a *de minimis* lump-sum as of DOPT for a plan that lacks a fixed index or a method for fixing a variable index.

D. Benefit Valuations

1. General

This paragraph IV. deals with how to perform the valuation as of ►DOPT. See paragraphs E. and F. for explanations of how to calculate benefits that will be paid to ►participants. Note that there may be a difference between the valuation liability for a participant and the amount PBGC will pay to the participant as a ►lump-sum.

In order to value a participant's benefit, PBGC must calculate the value, as of DOPT, of the participant's annuity commencing at ►expected retirement age (XRA). To determine the participant's annuity, PBGC must project the participant's hypothetical account balance using the plan's interest credit from DOPT to the participant's XRA, then convert that projected balance to an annuity using the plan's annuity conversion factors. PBGC must then determine the value of the annuity. To do this, PBGC must discount the annuity to DOPT using PBGC's interest and mortality assumptions under the valuation regulation (for annuities or lump-sums, as appropriate).

The XRA is calculated by reference to a plan's earliest retirement age. Many cash balance plans allow elective lump-sums (and hence must provide immediate annuities) at any age. A participant's earliest "retirement age" is not simply his or her current age merely because the participant can receive an immediate annuity. Rather, PBGC will determine the earliest retirement age in a cash balance plan as in any other plan.

In valuing benefits for cash balance plans, PBGC will follow its general valuation rules for trustee plans, supplemented by the following guidance.

2. Projecting the Account Balance

a. Fixed Interest Credit

If the plan document specifies a fixed interest credit, PBGC will use that rate to credit the participant's hypothetical account balance. PBGC will follow plan procedures as to the frequency of interest crediting and the conversion of annual rates into rates for crediting more frequently than annually.

b. Variable Interest Credit Based on a 96-8 Index.

The following chart shows Standard Indices and their Associated Margins as set forth in IRS Notice 96-8

Notice 96-8 Standard Index	Associated Margin
The discount rate on	
3-month Treasury Bills	175 basis points
6-month Treasury Bills or 12- month Treasury Bills	150 basis points
The yield on	
1-year Treasury Constant Maturities	100 basis points
2-year Treasury Constant Maturities or 3-year Treasury Constant Maturities	50 basis points
5-year Treasury Constant Maturities or 7-year Treasury Constant Maturities	25 basis points
10-year Treasury Constant Maturities or any longer period Treasury Constant Maturities	0 basis points
Annual rate of change of the Consumer Price Index	3 percentage points

If the plan document specifies a variable interest credit that is based on an index that is specified in IRS Notice 96-8 (see above) — either with no plan margin or with a plan margin that is constant (regardless of whether it is outside the Associated Margin specified in IRS Notice 96-8) — PBGC will fix the variable interest credit as follows:

Start with the average of the annual yields for 30-year Treasury constant maturities ("30-year Treasuries") for the month specified in the plan and —

- i. decrease it by the "Associated Margin" (for variations from 30-year Treasuries) for the variable index the plan uses, as set forth in IRS Notice 96-8 (see above), and
- ii. increase or decrease it by any plan margin (e.g., in a plan that defines the interest credit as the yield on 1-year Treasury constant maturities + 50 basis points, the plan margin would be "+ 50 basis points").

PBGC will follow plan procedures as to the frequency of interest crediting and the conversion of annual rates into rates for crediting more frequently than annually.

The average of the annual yields on 30-year Treasury constant maturities is published monthly in Federal Reserve release G.13 and is available on the Internet at www.stls.frb.org/fred/data/irates/gs30.

Example

Assume that a calendar year plan credits interest annually on December 31 and specifies the interest credit for a given calendar year as "the yield on 1 year Treasury constant maturities for the July preceding the beginning of the year, plus 50 basis points." If DOPT is September 2, 2000, and the average of the annual yields for 30-year Treasuries for July 1999 is 5.98%, PBGC will use an interest credit of 5.48%, calculated as follows:

5.98%	July 1999 average for 30-year Treasuries;
- 1.00%	Associated Margin for 1-year Treasuries (IRS Notice 96-8);
<u>+ 0.50%</u>	plan margin (50 basis points);
5.48%	PBGC interest credit.

c. Variable Interest Credit Not Based on a 96-8 Index

If the plan contains a variable interest credit that is not based on a Standard Index included in Notice 96-8, or that is based on such an index with a plan margin that is variable, the plan should be referred to [PPD](#) for consultation with [CPRD](#) and [OGC](#).

d. No Interest Credit Specified

If the plan does not specify an interest credit and there is no guidance provided by plan practice, PBGC will credit each participant's hypothetical account balance with interest from DOPT to XRA using the average of the annual yields for 30-year Treasuries for the calendar month prior to the month of plan termination.

3. Converting Projected Account Balance to Monthly Annuity Benefit

PBGC will follow plan procedures (supplemented by the following guidance) to convert an account balance to a monthly annuity. If plan procedures involve use of interest or mortality assumptions that are variable, PBGC will determine an annuity conversion factor based on the interest and mortality assumptions outlined below. If plan procedures call for converting an account balance to a monthly annuity using a variable element not discussed below, the case should be referred to PPD for consultation with CPRD and OGC.

a. Interest Rate for Annuity Conversion

PBGC will apply rules similar to those specified above in D.B. (for fixing or imputing the value of the interest credit) in situations in which the annuity conversion factor is dependent on an interest rate.

b. Mortality Table for Annuity Conversion

i. Fixed Mortality Table

If the plan document specifies a fixed mortality table, PBGC will convert each participant's hypothetical account balance using the fixed table.

ii. Variable Mortality Table

If the plan specifies a variable mortality table, PBGC will convert each participant's hypothetical account balance using the table that would apply to an annuity starting on DOPT. If the specified mortality table includes a projection scale, the plan should be referred to PPD for consultation with CPRD and OGC.

iii. No Mortality Table Specified

If the plan does not specify either a fixed or variable mortality table and there is no guidance provided by plan practice, PBGC will convert each participant's hypothetical account balance using the Code section 417(e) mortality table that would apply to an annuity starting on DOPT.

E. Annuity Payments

1. In General

PBGC will follow plan provisions, to the extent those provisions exist, in determining the annuity PBGC will pay. PBGC will credit actual interest under a fixed or variable index until the [► participant's ► annuity starting date](#) and will convert the hypothetical account balance at that point using the plan's annuity conversion factors.

2. Crediting Interest to the Account Balance

a. Fixed or Variable Interest Credit Specified

PBGC will credit each participant's hypothetical account balance with interest using the actual interest credit specified in the plan. PBGC will follow plan procedures as to the frequency of interest crediting and the conversion of annual rates into rates for crediting more frequently than annually.

b. No Interest Credit Specified

If the plan does not specify the interest credit and there is no guidance provided by plan practice, PBGC will credit each participant's hypothetical account balance with interest once a year on the last day of the plan year. The interest credit will be the average of the annual yields on 30-year Treasuries for the third calendar month preceding the month containing the first day of the plan year.

For example, assume a plan year begins on March 15. Interest for the year March 15, 2001, through March 14, 2002, would be credited on March 14, 2002, using the average of the annual yields on 30-year Treasuries for December 2000 (the third calendar month preceding March 15, 2001).

PBGC will credit a fractional year's interest from the beginning of a plan year to a participant's benefit commencement date. For example, assume a participant in the plan from the preceding example will retire with benefits commencing on June 1, 2001. His or her account as of March 15, 2001, would be credited with interest for the period March 15 through June 1, 2001.

c. Index No Longer Exists (or Exists Only in a Substantially Modified Form)

If the plan uses a variable index for either the interest credit or annuity conversion factor and the index does not exist for part or all of the relevant period (or no longer exists in the same form), the case should be referred to [► PPD](#)

for consultation with ►CPRD and ►OGC.

3. Converting the Accumulated Account Balance to a Monthly Annuity Benefit

PBGC will convert each participant's account balance to an annuity using the interest and mortality conversion rates specified in the plan document. If the plan does not specify conversion rates and there is no guidance provided by plan practice, PBGC will convert each participant's account balance using the average of the annual yields on 30-year Treasuries for the third calendar month prior to the beginning of the plan year in which the participant's annuity starting date occurs and the Code section 417(e) mortality rates applicable to the participant's annuity starting date.

4. Annuity Payment Date

PBGC will begin to pay participants their annuity benefits no earlier than the time when they would have been able to commence payments consistent with PBGC's rules for other plans. In the case of a plan that converts to a cash balance plan, if a participant would have been eligible for an early retirement benefit under the old plan provisions, then that early retirement date applies for purposes of the entire benefit. If it is not clear when benefits can commence, the plan should be referred to PPD for consultation with CPRD and OGC.

F. De Minimis Lump-Sum Payments

1. In General

The following guidance supplements PBGC's regulation dealing with payment of *de minimis* benefits (*i.e.*, \$5,000 or less). Note that the amount of the benefit paid will not affect the valuation of benefits.

2. To Determine Whether the Benefit Is De Minimis

PBGC will calculate both (1) the present value at ►DOPT (determined using PBGC's ►lump-sum valuation factors) of the ►participant's monthly ►termination benefit commencing at ►XRA and (2) the hypothetical account balance at DOPT to the extent payable under ►Title IV of ►ERISA. If either (1) or (2) is \$5,000 or less, PBGC may pay a lump-sum, subject to **section F.3**.

A participant's termination benefit is the guaranteed benefit, plus any additional benefits to which plan assets are allocated, plus any 4022(c) benefit.

3. Spousal Consent

If the hypothetical account balance at DOPT to the extent payable under Title IV of ERISA (*i.e.*, **section F.2.(2)**) is \$5,000 or less, but the present value at DOPT (determined using PBGC's lump-sum valuation factors) of the participant's monthly termination benefit commencing at XRA (*i.e.*, **section F.2.(1)**) exceeds \$5,000, PBGC will require ►spousal consent before paying the benefit as a lump-sum.

If PBGC pays an estimated lump-sum based on a hypothetical account balance (*i.e.*, an estimate of **section F.2.(2)**) of \$5,000 or less, but anticipates that the present value (using PBGC factors) of the monthly termination benefit (*i.e.*, an estimate of **section F.2.(1)**) might exceed \$5,000, PBGC will require spousal consent for payment of the estimated lump-sum.

4. To Determine the Amount of the De Minimis Lump-Sum Benefit Payable

If, under **section F.2**, the participant is eligible for a lump-sum payment and the participant does not elect an annuity, PBGC will (subject to the spousal consent rules in **section F.3**) pay the greater of (1) the present value at DOPT (determined using PBGC's lump-sum valuation factors) of the participant's monthly termination benefit commencing at XRA (*i.e.*, **section F.2.(1)**) or **section F.2.(2)** the hypothetical account balance at DOPT to the extent payable under Title IV of ERISA (*i.e.*, **section F.2.(2)**), whether or not such amount exceeds \$5,000.

5. Scope of Paragraph F

The rules in this paragraph F. apply to two types of cash balance plans — those that have always used a cash balance formula and those that have replaced a traditional formula with respect to all service with a cash balance formula for all service. This includes plans that set up an opening cash balance account when the plan is amended and provide the greater of the cash balance benefit or a grandfathered benefit based on the traditional formula.

Other plans freeze the traditional formula with respect to service up to a certain date (the "A" formula) and use a cash balance formula (starting with a zero account balance) for service after that date (the "B" formula). Any plan with such an "A + B" formula should be referred to ►PPD for consultation with ►CPRD and ►OGC.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_12_1_1st.htm
(10/24/2000)

[Top of Page](#)

5.12-2 Statutory Hybrid Plans - Valuing and Paying Benefits

Edition	1st Edition
Issue Date	03/26/2010
Transmittal	Transmittal 2010-04
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions
- D. 3-Year Vesting
- E. PPA 2006 Termination Rules on Adding Interest Credits, Converting to an Annuity and Calculating the Accrued Benefit
- F. PBGC Default Rules
- G. Increases Subject to Phase-In
- H. Priority Category 3 Benefits
- I. Lump Sum Payments
- Appendix

A. Background

In the ►Pension Protection Act of 2006 (“PPA 2006”) which became law on August 17, 2006, Congress addressed certain issues relating to cash balance and other “statutory hybrid” plans. The changes made by PPA 2006 include:

- Requiring plans to provide that, upon plan termination, any variable interest rate (e.g., the rate on 30-year Treasury bonds) used by the plan to credit interest to ►participants’ hypothetical accounts or to convert account balances to annuities will be averaged upon plan termination;
- Establishing a 3-year vesting requirement for participants in a statutory hybrid plan; and,
- Allowing lump sums to be paid based only on a participant’s hypothetical account balance.

IRS has proposed regulations that would implement the rules under PPA 2006 for ongoing and terminated cash balance plans and other statutory hybrid plans. PBGC will soon propose regulations of its own. These rules will have a significant impact on how PBGC administers statutory hybrid plans. First, variable rates will become “fixed rates” upon plan termination, i.e., PBGC will convert variable rates using an average of the rates used under the plan for the 5-year period before plan termination. Second, in determining and paying *de minimis* ►lump sums, PBGC generally will use only the amount of the participant’s account balance at plan termination, instead of comparing the account balance to the present value of the annuity. Last, PBGC’s proposed regulations will provide default rules for plans not in compliance with the PPA 2006 rules.

This interim policy provides guidance on implementing the PPA 2006 changes insofar as they affect PBGC valuation and payment of benefits under terminated cash balance and other statutory hybrid plans.

B. Scope and Effective Date

This ►policy applies to cash balance and other statutory hybrid plans that are subject to the ►PPA 2006 statutory ►hybrid plan rules. For most terminated cash balance plans, this means ►DOPT was during or after the plan year that begins on or after 1/1/2008. This policy also applies to any plan created as, or converted to, a statutory hybrid plan on or after 6/29/2005.

For collectively bargained plans that terminate after 1/1/2008 but before the beginning of the 2010 plan year, contact ►PPD.

For cash balance plans that are not subject to PPA 2006 statutory hybrid plan rules, see PBGC Policy **5.12-1 Cash Balance Plans – Valuing and Paying Benefits**. Since that policy does not cover pension equity plans, see PPD for pre-PPA pension equity plans.

This policy is effective on an interim basis.

C. Definitions

Statutory Hybrid Plan means a defined benefit plan that contains a statutory hybrid formula, i.e., a lump sum-based formula (or formula with a similar effect) as described under Treasury regulations. A lump sum-based formula means a formula under the terms of which the accumulated benefit of a ► participant is expressed as the balance of a hypothetical account maintained for the participant (e.g., a cash balance plan), or as the current value of the accumulated percentage of the participant's final average compensation (e.g., a pension equity plan), and includes a formula under which the accrued benefit is calculated as the actuarial equivalent of such a hypothetical account balance or accumulated percentage.

Variable rate means a rate of interest that is adjusted at least annually under the plan based on an instrument or index that has a floating interest rate, yield, or rate of return, and that otherwise satisfies the requirements of section 204(b)(5) of the Employee Retirement Income Security Act ("ERISA") and section 411(b)(5) of the Internal Revenue Code ("Code") and regulations thereunder. PBGC will also treat as variable rates:

- Rates that are based on the greater of two or more different interest crediting rates, e.g., a fixed rate and a variable rate;
- Rates that were not the same fixed rate **during the entire 5-year period** ending on DOPT, e.g., 4.75% fixed for two years and 5% fixed for three years before ► DOPT.

Account Balance means the balance of a hypothetical account maintained for the participant that includes pay credits and interest credits (a cash balance formula) accumulated through a particular date (e.g., DOPT); the current value of an accumulated percentage of the participant's final average compensation (a pension equity formula); or a similar amount.

Third Segment Rate means the interest rate specified under section 430(h)(2)(C)(iii) of the Code describing the rate of interest on long-term investment grade corporate bonds.

Whipsaw Lump Sum means a lump sum defined under the terms of the plan as equal to the greater of (1) the value of the hypothetical account balance, or a similar amount, and (2) present value of the annuity benefit, in general, using interest and mortality under section 417(e) of the Code.

D. 3-Year Vesting

Under the ► PPA 2006 rules, plans using a statutory ► hybrid plan formula are generally subject to a 3-year vesting requirement, i.e., if any portion of the ► participant's accrued benefit is determined under such a formula, the plan must provide that the participant has a nonforfeitable right to 100% of the accrued benefit if the participant has 3 or more years of service.

This requirement applies to the participant's entire accrued benefit under the defined benefit plan, even if only a portion of the benefit is determined under a statutory hybrid benefit formula, e.g., one portion of the benefit is determined under a traditional defined benefit formula and another portion under a cash balance formula, or a traditional defined benefit plan has been converted to a cash balance plan under an A + B formula.

This requirement also applies if a participant is entitled to the greater of two benefits under a plan, one of which is determined under a statutory hybrid benefit formula, even if the statutory hybrid benefit formula produces a smaller benefit than the other formulas. It further applies where there is a statutory hybrid formula along with a benefit offset among formulas under the plan, or a benefit determined as the greater of a protected benefit under section 411(d)(6) of the Code or another benefit amount.

PBGC will apply the 3-year vesting requirement (regardless of whether the plan was amended to incorporate this requirement) to participants with at least 1 hour of service during or after the 2008 plan year in statutory hybrid plans that were in existence on 6/29/2005 (even if the plan was not a statutory hybrid plan on that date), and to all participants in statutory hybrid plans created on or after 6/29/2005.

E. PPA 2006 Termination Rules on Adding Interest Credits, Converting to an Annuity and Calculating the Accrued Benefit

1. **Benefits to Which the PPA 2006 Termination Rules Apply.** Generally, the ► PPA 2006 termination rules (i.e., PPA 2006 and regulations thereunder) are used to determine benefits with ► annuity starting dates after the plan's ► DOPT. A special rule, however, applies to an **involuntary termination with a retroactive termination date**, i.e., where DOPT is on or before the date of the Notice of Determination ("NOD"). In these cases, PBGC will generally not change the interest crediting rates or conversion factors used by the plan administrator to determine benefits (i.e., under plan provisions that apply absent a termination) for benefits with annuity starting dates after DOPT but on or before the date of the NOD. The same rule applies to a ► participant who submits a completed application for benefits during this period.

In a **distress termination**, the PPA 2006 termination rules apply to benefits with annuity starting dates after the proposed DOPT. PBGC generally will not change the interest crediting rate or the conversion interest rate/mortality table used by the plan administrator after the proposed DOPT, except in the following cases:

- a. **Distress Termination Where the Plan Fails to Apply PPA 2006 Termination Rules as of DOPT.** If the plan administrator fails to apply the average interest crediting rate or required conversion factors for annuity starting dates after the proposed termination date, PBGC will re-determine the benefits using the PPA 2006 termination rules.
- b. **Distress Termination Where DOPT is Moved to a Later Date.** If the plan administrator applies the PPA 2006 termination rules for annuity starting dates after the proposed termination date, but the final DOPT is moved to a later date (e.g., a distress termination is delayed or becomes an involuntary termination with a later DOPT), PBGC will re-calculate the benefits using the interest crediting rates or conversion factors that apply under the plan absent a termination, for benefits with annuity starting dates through the final DOPT. (If a distress termination becomes an involuntary termination but DOPT remains the same, the benefits are not re-calculated.)

2. Requirements of the PPA 2006 Termination Rules: General Rule. When crediting interest to the account balance and determining the monthly annuity benefit, PBGC will follow plan provisions that comply with the PPA 2006 termination rules as described in [section E.2](#) below. To the extent the plan's provisions do not comply with the PPA 2006 termination rules, PBGC will generally use the default rules described in [section F](#) below.

a. **Interest Credits.** A statutory hybrid plan must provide interest credits at rates specified under the plan. Upon termination of the plan, interest credits generally must continue to be added to the participant's hypothetical account until the participant begins to receive benefits.

1) Variable Rate. Many plans use a variable rate to determine the plan's interest crediting rate (e.g., indices based on yields on Treasury bonds plus associated margins). The PPA 2006 termination rules provide that, if the interest crediting rate used to determine the participant's account balance has been a variable rate during interest crediting periods in the 5-year period ending on DOPT, the plan must determine a fixed rate equal to a 5-year average of the rates of interest used under the plan to apply to periods after DOPT (see [section E.2.a\(2\)](#) and [section E.2.a\(3\)](#) below). For purposes of the averaging rules, a variable rate includes any rate that was not the same fixed rate during the applicable interest crediting periods, and interest credits based on the greater of 2 or more rates (e.g., a fixed rate and a variable rate).

2) Determination of 5-Year Average. Notwithstanding [section E.2.a\(3\)](#) below, the 5-year average must be based on the arithmetic average of the interest crediting rates used under the plan during an interest crediting period for which the interest crediting date was within 5 years of DOPT, adjusted if necessary to an annual basis. See also [section F.1](#) below.

Example E-1. A statutory hybrid plan credits interest annually on December 31, and the plan's DOPT is 6/30/2013. The plan's average interest crediting rate would include the rates applied under the plan on the following interest crediting dates: 12/31/2012, 12/31/2011, 12/31/2010, 12/31/2009 and 12/31/2008.

3) Rates of return. If the interest crediting rate used by the plan is a variable rate based on the rate of return on plan assets or a diversified fund, the average rate must be determined by replacing such rate in any interest crediting period with the third segment rate (the long-term investment grade corporate bond rate) for the last calendar month ending before the beginning of the interest crediting period.

b. **Annuity Conversion.** A statutory hybrid plan must provide an interest rate and mortality table (or factor) used for converting the participant's hypothetical account balance into a benefit payable as an annuity.

1) Variable rate. The PPA 2006 termination rules provide that the interest rate and mortality table specified under the plan as of DOPT must be used to determine a participant's annuity benefit payable after DOPT. If the plan uses a variable-interest conversion rate (or a fixed-interest conversion rate that changed) on the date of any rate change within the 5-year period ending on DOPT, the plan must determine a fixed rate equal to a 5-year average of the rates of interest used under the plan.

2) Determination of 5-Year Average. The PPA 2006 termination rules provide that a determination of the average interest rate must be based on the arithmetic average of the interest rates that applied under the plan during periods for which the date of each rate change was within 5 years of DOPT.

Example E-2. The conversion interest rate for a statutory hybrid plan is determined annually on January 1, based on the applicable interest rate under section 417(e)(3) of the Code. The plan's DOPT is June 30, 2013. The plan's average rate would include the rates on the date of each rate change that occurred between 6/30/2008 and 6/30/2013. See also [section F.3](#) below.

3) Mortality table. The PPA 2006 termination rules provide that, if the mortality table specified by the plan is one that incorporates automatic updates for expected improvements in mortality experience (e.g., the applicable mortality table under section 417(e)(3) of the Code), benefits must be determined based on the mortality table as of DOPT taking into account future adjustments for expected mortality improvement through the annuity starting date.

F. PBGC Default Rules

To the extent the plan's provisions do not satisfy the requirements of the ►PPA 2006 termination rules, or the plan fails to specify provisions necessary to implement the statutory and regulatory requirements, PBGC will apply the rules of this section.

1. Averaging Interest Rates. If the methodology for averaging variable interest rates upon plan termination conflicts with **section E.2.a(2)** or **section E.2.b(2)**, or if the plan's rules on averaging are unclear or unspecified, PBGC will use the 5-year arithmetic average of interest rates under the plan in effect for the applicable 5-year period preceding ►DOPT.

- a. **DOPT within 5 Years of PPA 2006 Effective Date.** For purposes of the interest crediting rate and annuity conversion rate, 5-year average includes rates in effect prior to the effective date of PPA 2006, i.e., rates during interest crediting periods for which the interest crediting date was prior to the PPA 2006 effective date.
- b. **Statutory Hybrid Formula in Existence for Less Than 5 Years as of DOPT.** If the statutory hybrid plan or formula has been in existence for less than five years as of DOPT, PBGC will calculate the arithmetic average of the interest rates used during the period the statutory hybrid benefit formula was in effect. If the interest rates are unclear or not specified, see **section F.2.b** below.

Example F-1. A statutory hybrid plan was created on 10/15/2006 and used an interest crediting rate that varied on an annual basis, with credits on 12/31. Pay credits are added to the account balance beginning 12/31/2006 and interest credits on 12/31/2007. The plan year is the calendar year. DOPT is 5/15/2009. The average rate for interest credits provided after DOPT will be the arithmetic average of the interest crediting rates in effect for 12/31/2007 and 12/31/2008.

2. Interest Crediting Rates

- a. **Partial Periods.** If the plan did not add interest credits for partial periods, PBGC will nonetheless add partial **interest credits** on a pro-rated basis through the relevant calculation date, including ►Normal Retirement Date ("NRD"), ►Expected Retirement Date ("XRD"), DOPT, Bankruptcy Petition Date ("BPD"), and the beginning of the 3-year period ending on DOPT ("►DOPT-3") or ending on ►BPD ("BPD-3"), but will follow plan rules with regard to **pay credits**. (For ►PC3 calculations, see **section H** below.) If the plan prorated for partial periods, however, PBGC will use the plan's basis for prorating interest and pay credits. This section applies to both annuities and ►lump sums.
- b. **Unclear or Unspecified Rates.** If the plan is unclear with respect to (or did not specify) the interest crediting rates, PBGC will add interest credits to the account balance at the rate equal to the 5-year average of 30-year Treasury Constant Maturity rates in effect for the calendar month of DOPT and the same calendar month for each of the preceding four years.

Example F-2. The DOPT of a statutory hybrid plan is 7/10/2009. Plan provisions do not specify an interest crediting rate. PBGC will set the interest crediting rate equal to the arithmetic average of the 30-year Treasury Constant Maturity rates in effect for July 2009, July 2008, July 2007, July 2006 and July 2005.

- c. **Rates Based on a Rate of Return.** If, for any interest crediting period within the 5-year period before DOPT, the plan's rate for crediting interest to the account balance is based on a rate of return (or a variable rate that can never be in excess of such a rate of return) on plan assets or a diversified investment fund, PBGC will replace the plan's rate for that period with the third segment rate when calculating a 5-year average.

When the plan's interest crediting rate is replaced by the third segment rate for purposes of the 5-year average, PBGC will use the third segment rate for the last calendar month that ended before the beginning of the interest crediting period. In addition, PBGC will generally follow plan terms with respect to adjusting the third segment rates for maximums and minimums, but will not adjust the third segment rate for other reductions specified under the plan.

Example F-3. A statutory hybrid plan specifies an interest crediting rate equal to the greater of the rate of the return on plan assets less 1% and 4%. For purposes of the 5- year average, PBGC will use an interest crediting rate equal to the greater of the third segment rate and 4%.

3. Annuity Conversion

- a. **Unclear or Unspecified Interest Rates.** If the plan is unclear with regard to (or did not specify) the interest rates used for annuity conversions, PBGC will convert the ►participant's account balance to an annuity by using the interest rate

equal to the 5-year arithmetic average of 30-year Treasury Constant Maturity rates in effect for the calendar month of DOPT and the same calendar month for each of the preceding 4 years.

- b. **Unclear or Unspecified Mortality Table.** If the plan is unclear with regard to (or did not specify) the mortality table for annuity conversions, PBGC will convert the account balance to an annuity by using the mortality table provided in section 417(e)(3) of the Code that would apply if the annuity starting date were DOPT (without projection for mortality improvements through the annuity starting date).

Example F-4. The DOPT of a statutory hybrid plan is 7/15/2009. The plan provisions do not specify a mortality table for converting the account balance to an annuity. PBGC will use the 2009 mortality table from section 417(e)(3) of the Code (without projection).

- c. **417(e)(3) and Other Segment Rates.** PPA 2006 allows statutory hybrid plans to convert the participant's account balance to an annuity using the rates under section 417(e)(3) of the Code where the 1st segment covers payments made during the first 5 years, the 2nd segment for the next 15 years and the 3rd segment for subsequent years. For plans specifying the use of segment interest rates, PBGC will determine separately the 5-year arithmetic average of each segment.

Example F-5. The DOPT of a statutory hybrid plan is 7/15/2009. The plan offered an **immediate annuity** on an immediate annuity conversion basis. For annuity conversions, the plan refers to section 417(e)(3) of the Code. The plan uses a stability period of one year and look back definition of two months.

To determine the interest rates for annuity conversion factors after DOPT, PBGC will use a 5-year arithmetic average. This average will be calculated from the 30-year Treasury securities rates for November 2004 (4.89%), 2005 (4.73%) and 2006 (4.69%); and the minimum present value segment rates for November 2007 (4.60%, 4.82%, 4.91%) and November 2008 (5.24%, 5.69%, 5.37%). For post-DOPT annuity conversions, PBGC will use the following 5-year arithmetic averages: 4.83% [= (4.89% + 4.73% + 4.69% + 4.60% + 5.24%) / 5] for the 1st segment (years 0-5), 4.96% [= (4.89% + 4.73% + 4.69% + 4.82% + 5.69%) / 5] for the 2nd segment (years 5-20) and 4.92% [= (4.89% + 4.73% + 4.69% + 4.91% + 5.37%) / 5] for the 3rd segment (years 20 and later).

- 1) Immediate Conversion Formula.** Unless the plan provisions specify otherwise, for plans with **immediate annuity** conversion the annuity conversion factor will be calculated with the segment rates beginning **on the annuity starting date** so that the rates of the 1st segment are effective starting at the annuity starting date, i.e., the 1st segment applies for the first 5 years after the annuity starting date, 2nd segment for the next 15 years and 3rd segment thereafter.

Example F-6. The facts are the same as in the Example F.5 above. The participant's annuity starting date is in 2030. For an **immediate-basis annuity**, the annuity conversion factor will use all three segments for the interest rate because the 1st segment begins at the annuity starting date.

- 2) Projected Annuity Formula.** Unless the plan provisions specify otherwise, for **projected annuity** conversions the annuity conversion factor will be calculated with the segment rates beginning **at DOPT** so that rates of the 1st segment are effective starting at DOPT, e.g., only the 3rd segment applies if the account balance is projected more than 20 years after DOPT. For PC3 benefits see **section H** below.

Example F-7. The facts are the same as in Example F-5 above. The participant's annuity starting date is in 2030. For a **projected-basis annuity**, the annuity conversion factor will use only the 3rd segment for the interest rate because the 1st segment begins at DOPT and the annuity starting date is 21 years after DOPT.

- d. **Automatically Updated Mortality Tables.** If the plan specifies a mortality table as of DOPT that is updated automatically in future years to reflect expected improvements in mortality experience (e.g., the applicable mortality table provided under section 417(e)(3) of the Code), PBGC will determine benefits payable under the plan based on the mortality table as of DOPT incorporating future adjustments for expected mortality improvements, but only through the applicable annuity starting date.

Example F-8. The facts are the same as in Example F.5 above. A participant's NRD is in 2040 and the annuity starting date in 2030. Regardless of whether the benefit is an immediate-basis or projected-basis annuity, the mortality table for the annuity conversion factor (i.e., 417(e)(3) of the Code) will be the 2009 mortality table projected to 2030.

G. Increases Subject to Phase-In

1. **Increases Subject to Phase-In.** The following are examples of benefit increases that are subject to PBGC's **► phase-in limitation:**

- a. Changes in the basis, timing, or method of the interest crediting or annuity conversion rates;
- b. Changes from one fixed interest crediting rate to another fixed interest crediting rate;
- c. Changes from one variable index to another variable index;
- d. Changes from a fixed rate basis to a variable rate basis (or vice versa);
- e. Changes from one fixed mortality table to another fixed mortality table, or from a fixed mortality table to a mortality table that updates automatically for expected improvements in mortality experience (or vice versa).

2. Increases Not Subject to Phase-In. The following are examples of benefit increases that are not subject to PBGC's phase-in limitation:

- a. A change in the vesting schedule to 3-year cliff vesting for statutory [► hybrid plan](#) participants in accordance with the [► PPA 2006](#) vesting rules;
- b. A change that is required to comply with the PPA 2006 termination requirements, e.g., a change in the plan's interest rate from a variable rate to an average rate of interest upon plan termination;
- c. A change in the interest crediting rate that is permitted, notwithstanding section 411(d)(6) of the Code, pursuant to Treasury regulations (e.g. a change under certain circumstances to a long-term investment grade corporate bond rate), or during the amendatory period under section 1107 of PPA 2006 (or any extension of the amendatory period granted by the Department of the Treasury);
- d. An automatic future update in a mortality table specified under the plan as of [► DOPT](#) that reflects expected improvements in mortality experience, e.g., the applicable mortality table provided under section 417(e)(3) of the Code;
- e. An adjustment in the interest rate under a specified variable rate index used by the plan, e.g., a change in the yield on 5-year Treasury Constant Maturities from one date to another.

H. Priority Category 3 Benefits

For purposes of assigning plan benefits to [► Priority Category 3](#) (PC3), PBGC will determine the [► participant's](#) account balance as of the PC3 calculation date, i.e., as of the earlier of the (1) [► actual retirement date](#) and (2) [► DOPT-3](#) (or BPD-3 if a [► PPA 2006](#) bankruptcy plan). PBGC will convert the PC3 account balance to an annuity payable at the PC3 calculation date. PBGC's other rules on calculating PC3 benefits still apply, such as excluding benefit increases between [► DOPT-5](#) (or BPD-5 if a PPA 2006 Bankruptcy Plan) and [► DOPT](#). PBGC will calculate the monthly PC3 benefit in statutory hybrid plans generally as follows:

1. Projected Formula. If the benefit formula projects the account balance to [► NRD](#), PBGC will:

- a. Add interest credits to the PC3 account balance up to NRD using the actual interest crediting rate under the plan (not the 5-year average) as of the PC3 calculation date;
- b. Convert the account balance as of NRD to an annuity payable at NRD using the plan's annuity conversion basis (not the 5-year average for interest) as of the PC3 calculation date;
- c. Convert the monthly [► normal retirement benefit](#) to a monthly benefit payable at the PC3 calculation date by using the plan's early retirement and form conversion factors, etc.

2. Immediate Formula. If the benefit is based on immediate annuity conversion factors, PBGC will:

- a. Add interest credits to the PC3 account balance up to the PC3 calculation date using the actual interest crediting rate under the plan as of the PC3 calculation date (not the 5-year average for interest);
- b. Convert the account balance to an immediate annuity by using the plan's annuity conversion basis (not the 5-year average for interest).

3. PC3 Benefits Not to Exceed Plan Benefit. PBGC will not assign to PC3 an amount exceeding the plan benefits under the plan provisions in effect at DOPT. For participants active at DOPT in variable rate plans, this means the benefits PBGC assigns to PC3 cannot exceed the plan benefit payable at XRD under the DOPT plan (using the 5-year average), even if the plan is also a PPA 2006 bankruptcy plan.

4. Partial Interest Credit. For purposes of determining the PC3 account balance, PBGC will add partial interest credits on a prorated basis, even if the plan did not, through NRD (projected formulas) or the PC3 calculation date (immediate formulas) for participants who were not in pay status on or before DOPT. See [section F.2.a](#) above.

5. 417(e)(3) and Other Segment Rates. For projected annuity conversions based on the rate in section 417(e)(3) of the Code or based on other segment rates, PBGC will calculate the annuity conversion factor with the segment rates beginning at DOPT-3 (or BPD-3 if a PPA 2006 bankruptcy plan) so that rates of the first segment are effective starting at DOPT-3 (or BPD-3), e.g., only the 3rd segment applies if the account balance is projected more than 20 years after DOPT-3. See [section F.3.c](#) above.

I. Lump Sum Payments

- 1. Account Balance at DOPT.** PBGC will determine whether a statutory ►hybrid plan benefit is payable as a *de minimis* ►lump sum (the lump sum threshold) and the amount of the lump sum payment by considering—with regard specifically to the lump-sum based formula that generates all or a portion of the statutory hybrid plan benefit (e.g., the “B” portion of an A + B benefit)—only the Account Balance at ►DOPT, to the extent payable under ►Title IV of ►ERISA, in the following situations:
 - a. The plan on or after 8/17/2006 cashed out participants by using only the account balance;
 - b. The plan communicated in writing on or after 8/17/2006 that the amount of the lump sum would be the account balance.
- 2. Present Value of the Annuity and Account Balance at DOPT.** PBGC will determine the lump sum threshold and amount considering both the Account Balance at DOPT and the present value of the annuity per rules under [section F.B](#) and [section F.D](#), respectively, of PBGC Policy [5.12-1 Cash Balance Plans - Valuing and Paying Benefits](#) in the following situations:
 - a. The plan on or after 8/17/2006 cashed out participants by using the Whipsaw Lump Sum;
 - b. The plan communicated on or after 8/17/2006 that the amount of the lump sum would be the Whipsaw Lump Sum;
 - c. Lump sums were never paid to plan participants and the plan did not specify whether lump sums were payable as the account balance or the Whipsaw Lump Sum;
 - d. The situations described in section I.1 above do not apply.

Appendix

Example

The following assumptions are used in this Appendix. Additional assumptions and scenarios are described in [section J.1](#), [section J.2](#), [section J.3](#), [section J.4](#), [section J.5](#) and [section J.6](#) below. All assumptions are gathered together in [section J.7](#).

Statutory Hybrid Plan XYZ	
Plan Type	Cash Balance Plan
Plan Year	Calendar Year
DOPT	6/30/2012
Normal Retirement Age	65
Earliest Retirement Age	55
Plan Benefit	Monthly annuity equal to the greater of an immediate-basis formula and a projected-basis formula
ERF (projected-basis formula)	6% per year
Interest Crediting Rate	Treasury Bond Index (see section J.1 below)
Interest and Pay Crediting Date	12/31 of each year
Interest Credits for Partial Periods	None
Pay Credits for Partial Periods	None
Annuity Conversion Basis	Mortality and Interest from Section 417(e)(3) of the Code
Stability Period	Calendar Year
Look Back Definition	2 months

Mortality Projection	Annuity Starting Date
----------------------	-----------------------

1. Interest Rates and Conversion Factors: Statutory Hybrid Plan

In addition to the assumptions described above:

Interest Crediting Rates before DOPT (all rates are for illustration only)				
Month and Year of Treasury Rate	Plan Year's Interest Credits	Period of Interest Credits	Plan's Interest Crediting Date	Treasury Bond Rate
11/2011	2012	1/1/2012 – 6/30/2012	N/A	6.50%
11/2010	2011	1/1/2011 – 12/31/2011	12/31/2011	6.35%
11/2009	2010	1/1/2010 – 12/31/2010	12/31/2010	6.55%
11/2008	2009	1/1/2009 – 12/31/2009	12/31/2009	4.50%
11/2007	2008	1/1/2008 – 12/31/2008	12/31/2008	5.50%
11/2006	2007	1/1/2007 – 12/31/2007	12/31/2007	6.00%

- a. **Interest Crediting Rate after 6/30/2012.** The interest crediting rate for the account balance after 6/30/2012 (DOPT) is 5.78%, the arithmetic average of the applicable interest crediting rates at interest crediting dates between 6/30/2007 (DOPT-5) and 6/30/2012 (DOPT):

Plan's Interest Crediting Date	Rate	Description of Rate
12/31/2011	6.35%	Interest Crediting Rate for 2011 Plan Year
12/31/2010	6.55%	Interest Crediting Rate for 2010 Plan Year
12/31/2009	4.50%	Interest Crediting Rate for 2009 Plan Year
12/31/2008	5.50%	Interest Crediting Rate for 2008 Plan Year
12/31/2007	6.00%	Interest Crediting Rate for 2007 Plan Year

- b. **Interest Crediting Rate after 12/31/2011 and before 7/1/2012.** According to PBGC policy, interest credits for partial periods are added regardless of plan provisions, so prorated interest credits are added for the partial period after 12/31/2011 and before 7/1/2012 to the account balance at the rate of 6.50%.

- c. **Annuity Conversion Factors.** For Plan XYZ, account balances are converted to an annuity for retirement dates after DOPT by using the following:

1) 5-year arithmetic average based on segment rates for 11/2011, 11/2010, 11/2009, 11/2008 and 11/2007:

Post-DOPT Interest for Annuity Conversion (for illustration only)				
Stability Period	Look-Back Interest Rate	1st Segment	2nd Segment	3rd Segment
1/01/2012-12/31/2012	11/2011	4.90%	4.96%	4.92%
1/01/2011-12/31/2011	11/2010	5.04%	5.01%	5.25%
1/01/2010-12/31/2010	11/2009	5.20%	5.29%	5.69%
1/01/2009-12/31/2009	11/2008	5.24%	5.69%	5.37%
1/01/2008-12/31/2008	11/2007	4.60%	4.82%	4.91%

Arithmetic Average =		5.00%	5.15%	5.23%
-----------------------------	--	-------	-------	-------

- 2) Mortality table as of 6/30/2012 (DOPT) projected to year of the annuity starting date.
- 3) For immediate annuities, the 1st segment begins at the annuity starting date, the 2nd segment begins five years after the annuity starting date and the 3rd segment begins 20 years after the annuity starting date.
- 4) For minimum projected benefits, in general the 1st segment begins at DOPT, the 2nd segment begins five years after DOPT and the 3rd segment begins 20 years after DOPT.

2. Participant A's Monthly Benefits: Statutory Hybrid Plan

In addition to the assumptions described in **section J.1** above:

Participant A	
Date of Birth	10/5/1951
Status on DOPT	Active
XRD	7/1/2012 (first of month after DOPT)
Account Balance on 1/1/2009	\$170,000.00
Account Balance on 1/1/2012	\$210,000.00

Factors for Converting Participant A's Account Balance (for illustration only)								
Name of Factor	Retirement Date	Event	Mortality	Interest	1st Segment	2nd Segment	3rd Segment	Factor
Immediate Annuity Basis								
ACF1	11/01/2016	NRD	LS16	Average	2016	2021	2036	12.2000
ACF2	07/01/2012	XRD	LS12	Average	2012	2017	2032	13.1000
ACF3	07/01/2009	DOPT-3	LS09	Nov 2008	2009	2014	2029	14.1000
Projected Annuity Basis (to NRD)								
PACF1	11/01/2016	NRD	LS16	Average	2012*	2017*	2032*	12.4000
PACF2	07/01/2012	XRD	LS12	Average	2012*	2017*	2032*	12.3000
PACF3	07/01/2009	DOPT-3	LS09	Nov 2008	2009	2014	2029	12.1000

*Based on DOPT (not Annuity Starting Date)

Note: To convert account balances to an annuity payable on 7/1/2009 (DOPT-3), PBGC follows the plan's rules which specify the segment rates and mortality under section 417(e)(3) of the Code. Under these rules, monthly annuity amounts for a 7/1/2009 retirement date are calculated with a look back of November 2008, the 1st segment beginning on July 2009, and mortality projected to 2009.

a. Plan Benefit

- 1) **Plan Benefit at NRD.** Participant A's plan benefit payable at 11/1/2016 (NRD) is \$1,888.43 per month, which equals the greater of the immediate-basis plan formula (\$1,888.43) and the projected-basis plan formula (\$1,857.98):

Immediate-Basis Formula Accruals as of DOPT	
\$210,000.00	Account balance at 1/1/2012

$x (1 + 0.0650)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0578)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0578)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0578)^{10/12}$	2016 Interest Credits until NRD
$\underline{(12.2000 \times 12)}$	ACF1 times 12
\$1,888.43	Immediate-Basis Annuity at NRD

Projected-Basis Formula Accruals as of DOPT	
\$210,000.00	Account balance at 1/1/2012
$x (1 + 0.0650)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0578)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0578)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0578)^{10/12}$	2016 Interest Credits until NRD
$\underline{(12.4000 \times 12)}$	PACF1 times 12
\$1,857.98	Projected-Basis Annuity at NRD

2) **Plan Benefit at XRD.** Participant A's plan benefit payable at 7/1/2012 (XRD) is \$1,386.08 per month, which equals the greater of the immediate-basis plan formula (\$1,378.61) and the projected-basis plan formula (\$1,386.08):

Immediate-Basis Formula Accruals as of DOPT	
\$210,000.00	Account balance at 1/1/2012
$x (1 + 0.0650)^{6/12}$	2012 Interest Credits until DOPT
$\underline{(13.1000 \times 12)}$	ACF2 times 12
\$1,378.61	Immediate-Basis Annuity at XRD

Projected-Basis Formula Accruals as of DOPT	
\$210,000.00	Account balance at 1/1/2012
$x (1 + 0.0650)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0578)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0578)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0578)^{10/12}$	2016 Interest Credits until NRD
$\underline{(12.3000 \times 12)}$	PACF2 times 12
\$1,873.08	Monthly Accumulated Benefit

x 0.7400	ERF at 52 Months Early
\$1,386.08	Projected-Basis Annuity at XRD

- b. **Guaranteed Benefit.** Participant A's guaranteed benefit equals the plan benefit because plan benefits are not subject to PBGC limits.
- c. **PC3 Benefit.** Participant A's PC3 benefit is \$1,027.09 per month, which equals the greater of the immediate-basis plan formula (\$1,027.09) and the projected-basis plan formula (\$925.58):

Immediate-Basis Formula Accruals as of DOPT-3	
\$170,000.00	Account balance at 1/1/2009
$x (1 + 0.0450)^{6/12}$	2009 Interest Credits until DOPT-3
$/(14.1000 \times 12)$	ACF3 times 12
\$1,027.09	Immediate-Basis Annuity for PC3

Projected-Basis formula Accruals as of DOPT-3	
\$170,000.00	Account balance at 1/1/2009
$x (1 + 0.0450)^{6/12}$	2009 Interest Credits until DOPT-3
$x (1 + 0.0450)^{6/12}$	2009 Interest Credits after DOPT-3
$x (1 + 0.0450)^{72/12}$	2010-2015 Interest Credits
$x (1 + 0.0450)^{10/12}$	2016 Interest Credits until NRD
$/(12.1000 \times 12)$	PACF3 times 12
\$1,652.82	Monthly Accumulated Benefit
<u>x 0.5600</u>	ERF at 88 Months Early
\$925.58	Projected-Basis Annuity for PC3

Note: The monthly PC3 benefit cannot exceed the monthly plan benefit payable at 7/1/2012 (XRD) (\$1,386.08).

- d. **PC5 Benefit.** Participant A has no benefits in PC5 because the monthly plan benefit is not affected by PBGC limits.

3. Interest Rates and Conversion Factors: Statutory Hybrid and PPA 2006 Bankruptcy Plan

In addition to the assumptions described in [section J.1](#) and [section J.2](#) above:

Statutory Hybrid Plan XYZ	
Plan Type	PPA 2006 Bankruptcy Plan
Bankruptcy Petition Date (BPD)	10/30/2010

- a. **Interest Crediting Rate after 6/30/2012.** The interest crediting rate for the account balance after 6/30/2012 (DOPT) is 5.78%. See [section J.1.a](#) above.
- b. **Interest Crediting Rate after 10/30/2010 and before 7/1/2012.** Interest credits are added to the account balance between 10/30/2010 (BPD) and 6/30/2012 (DOPT) using the plan's rates (not the 5-year average if the plan uses variable rates), so interest credits after 10/30/2010 and before 1/1/2011 are added to the account balance at the plan's rate of 6.55%, after 12/31/2010 and before 1/1/2012 at the plan's rate of 6.35% and for the partial period after 12/31/2011 and before 7/1/2012 at the rate of 6.50%. See [section J.1.b](#) above.

c. **Annuity Conversion Factors.** Account balances are converted to an annuity for retirement dates after DOPT by using the methodology described in [section J.1.c](#) above.

4. Participant A's Monthly Benefits: Statutory Hybrid and PPA 2006 Bankruptcy Plan

In addition to the assumptions described in [section J.1](#), [section J.2](#) and [section J.3](#) above:

Plan Participant A									
Name of Factor		Retirement Date	Event	Mortality	Interest	1st Segment	2nd Segment	3rd Segment	Factor
Account Balance on 1/1/2007				\$150,000.00					
Account Balance on 1/1/2010				\$180,000.00					
Additional Factors for Converting Participant A's Account Balance (for illustration only)									
Immediate Annuity Basis									
ACF4	11/01/2007	BPD-3	GU94	30-Yr Tr.	N/A	N/A	N/A	N/A	14.5000
Projected Annuity Basis (to NRD)									
PACF4	11/01/2007	BPD-3	GU94	30-Yr Tr.	N/A	N/A	N/A	N/A	11.9000

Note: To convert account balances to an annuity payable on 11/1/2007 (BPD-3), PBGC follows the plan's rules which specify the interest rates and mortality under section 417(e)(3) of the Code. Under these rules, monthly annuity amounts for an 11/1/2007 retirement date are calculated using 30-Year Treasury rates and GAR 94. If the 417(e)(3) interest were a segment rate in this example, the 1st segment for the projected annuity basis would begin 11/1/2007 (BPD-3).

a. Plan Benefit

- 1) **Plan Benefit at NRD.** Participant A's plan benefit payable at 11/1/2016 (NRD) is \$1,888.43 per month. See [section J.2.a\(1\)](#) above.
- 2) **Plan Benefit at XRD.** Participant A's plan benefit payable at 7/1/2012 (XRD) is \$1,386.08 per month. See [section J.2.a\(2\)](#) above.

b. Guaranteed Benefit

- 1) **Guaranteed Benefit at NRD.** Participant A's guaranteed benefit payable at 11/1/2016 (NRD) is \$1,834.20 per month, which equals the greater of the immediate-basis plan formula (\$1,834.20) and the projected-basis plan formula (\$1,804.61):

Immediate-Basis Formula Accruals as of BPD	
\$180,000.00	Account balance at 1/1/2010
$x (1 + 0.0655)^{12/12}$	2010 Interest Credits
$x (1 + 0.0635)^{12/12}$	2011 Interest Credits
$x (1 + 0.0650)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0578)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0578)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0578)^{10/12}$	2016 Interest Credits until NRD

$\angle(12.2000 \times 12)$	ACF1 times 12
\$1,834.20	Immediate-Basis Annuity at NRD

Projected-Basis Formula Accruals as of BPD	
\$180,000.00	Account balance at 1/1/2010
$x (1 + 0.0655)^{12/12}$	2010 Interest Credits
$x (1 + 0.0635)^{12/12}$	2011 Interest Credits
$x (1 + 0.0650)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0578)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0578)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0578)^{10/12}$	2016 Interest Credits until NRD
$\angle(12.4000 \times 12)$	PACF1 times 12
\$1,804.61	Projected-Basis Annuity at NRD

Note: The guaranteed benefit does not include pay credits after 10/30/2010 (BPD). This means that since the plan does not provide pay credits for partial periods, the guaranteed benefit does not include pay credits for the partial period between 01/01/2010 and 10/30/2010 (BPD).

- 2) **Guaranteed Benefit at XRD.** Participant A's guaranteed benefit payable at 7/1/2012 (XRD) is \$1,346.27 per month, which equals the greater of the immediatebasis plan formula (\$1,339.02) and the projected-basis plan formula (\$1,346.27):

Immediate-Basis Formula Accruals as of BPD	
\$180,000.00	Account balance at 1/1/2010
$x (1 + 0.0655)^{12/12}$	2010 Interest Credits
$x (1 + 0.0635)^{12/12}$	2011 Interest Credits
$x (1 + 0.0650)^{6/12}$	2012 Interest Credits until DOPT
$\angle(13.1000 \times 12)$	ACF2 times 12
\$1,339.02	Immediate-Basis Annuity at XRD

Projected-Basis Formula Accruals as of BPD	
\$180,000.00	Account balance at 1/1/2010
$x (1 + 0.0655)^{12/12}$	2010 Interest Credits
$x (1 + 0.0635)^{12/12}$	2011 Interest Credits
$x (1 + 0.0650)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0578)^{6/12}$	2012 Interest Credits after DOPT

$x (1 + 0.0578)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0578)^{10/12}$	2016 Interest Credits until NRD
$\cancel{(12.3000 \times 12)}$	PACF2 times 12
\$1,819.28	Monthly Accumulated Benefit
<u>x 0.7400</u>	ERF at 52 Months Early
\$1,346.27	Projected-Basis Annuity at XRD

Note: The guaranteed benefit does not include pay credits after 10/30/2010 (BPD). This means that since the plan does not provide pay credits for partial periods, the guaranteed benefit does not include pay credits for the partial period between 01/01/2010 and 10/30/2010 (BPD).

- c. **PC3 Benefit.** Participant A's PC3 benefit is \$904.96 per month, which equals the greater of the immediate-basis plan formula (\$904.96) and the projected-basis plan formula (\$856.96):

Immediate-Basis Formula Accruals as of BPD-3	
\$150,000.00	Account balance at 1/1/2007
$x (1 + 0.0600)^{10/12}$	2007 Interest Credits until BPD-3
$\cancel{(14.5000 \times 12)}$	ACF4 times 12
\$904.96	Immediate-Basis Annuity for PC3

Projected-Basis Formula Accruals as of BPD-3	
\$150,000.00	Account balance at 1/1/2007
$x (1 + 0.0600)^{10/12}$	2007 Interest Credits until BPD-3
$x (1 + 0.0600)^{2/12}$	2007 Interest Credits after BPD-3
$x (1 + 0.0600)^{96/12}$	2008-2015 Interest Credits
$x (1 + 0.0600)^{10/12}$	2016 Interest Credits until NRD
$\cancel{(11.9000 \times 12)}$	PACF4 times 12
\$1862.96	Monthly Accumulated Benefit
<u>x 0.4600</u>	ERF at 108 Months Early
\$856.96	Projected-Basis Annuity for PC3

Note: The monthly PC3 benefit cannot exceed the monthly plan benefit payable at 7/1/2012 (XRD) (\$1,386.08).

- d. **PC5 Benefit**

- 1) **PC5 Benefit at NRD.** Participant A's total net PC5 benefit payable at 11/1/2016 (NRD) is \$54.23 per month, which equals the plan benefit (\$1,888.43) less the guaranteed benefit (\$1,834.20).
- 2) **PC5 Benefit at XRD.** Participant A's total net PC5 benefit payable at 7/1/2012 (XRD) is \$39.81 per month, which equals the plan benefit (\$1,386.08) less the guaranteed benefit (\$1,346.27).

5. Interest Rates and Conversion Factors: Statutory Hybrid and PPA 2006 Bankruptcy Plan Subject to Phase-In

In addition to the assumptions described in **section J.1**, **section J.2**, **section J.3** and **section J.4** above:

Statutory Hybrid Plan XYZ	
Plan Amendment	10/10/2009 (adopted and effective)
Provisions Changed	Interest Crediting Rate changed to rate of return on plan assets earned during the prior plan year
First Year of New Rates	2010 Plan Year

Rates of Return on Plan Assets before DOPT (all rates are for illustration only)				
Period of Return on Plan Assets	Plan Year's Interest Credits	Period of Interest Credits	Plan's Interest Crediting Date	Rate of Return on Plan Assets
1/1/2011 – 12/31/2011	2012	1/1/2012 – 6/30/2012	N/A	12.00%
1/1/2010 – 12/31/2010	2011	1/1/2011 – 12/31/2011	12/31/2011	11.95%
1/1/2009 – 12/31/2009	2010	1/1/2010 – 12/31/2010	12/31/2010	-1.00%

Third Segment Rates (for illustration only)	
12/2010	6.80%
12/2009	6.30%

- a. **Interest Crediting Rate after 6/30/2012.** The interest crediting rate for the account balance after 6/30/2012 (DOPT) is 5.82%, the arithmetic average of applicable interest crediting rates at interest crediting dates between 6/30/2007 (DOPT-5) and 6/30/2012 (DOPT):

Plan's Interest Crediting Date	Rate	Description
12/31/2011	6.80%	Third Segment Rate on 12/2010 for 2011 Plan Year*
12/31/2010	6.30%	Third Segment Rate on 12/2009 for 2010 Plan Year*
12/31/2009	4.50%	Interest Crediting Rate for 2009 Plan Year
12/31/2008	5.50%	Interest Crediting Rate for 2008 Plan Year
12/31/2007	6.00%	Interest Crediting Rate for 2007 Plan Year

*The plan's interest crediting rate, the rate of return on plan assets, is replaced by the third segment rate from December of the prior plan year.

- b. **Interest Crediting Rate after 12/31/2009 and before 7/1/2012.** The 10/10/2009 plan amendment decreased the interest crediting rate from 6.55% to -1.00% for interest credits after 12/31/2009 and before 1/1/2011; increased the interest crediting rate from 6.35% to 11.95% for interest credits after 12/31/2010 and before 1/1/2012; and increased the interest crediting rate from 6.50% to 12.00% for interest credits after 12/31/2011 and before 7/1/2012. Interest credits are added to the account balance between 10/30/2010 (BPD) and 6/30/2012 (DOPT) using the plan's rates (not the 5-year average if the plan uses variable rates), so interest credits after 12/31/2009 and before 1/1/2011 are applied to the account balance at the rate of -1.00 %; after 12/31/2010 and before 1/1/2012 at the rate of 11.95%; and for the partial period after 12/31/2011 and before 7/1/2012 at the rate of 12.00%. See **section J.1.b** and **section J.3.b** above.

Note: The net increases to plan benefits that result from the changes in the interest crediting rates provided by the 10/10/2009 plan amendment, including increases to the monthly benefit due to the change in the 5-year arithmetic average from 5.78% to 5.82%, are subject to the \$20/20% phase-in because the 10/10/2009 amendment was in effect for more than 1 year and less than 2 years before 10/30/2010 (BPD).

- c. **Annuity Conversion Factors.** Account balances are converted to an annuity for retirement dates after DOPT by using the methodology described in [section J.1.c](#) above because the plan is assumed to have not changed the annuity conversion basis.

6. Participant A's Monthly Benefits: Statutory Hybrid and PPA 2006 Bankruptcy Plan Subject to Phase-In

In addition to the assumptions described in [section J.1](#), [section J.2](#), [section J.3](#), [section J.4](#) and [section J.5](#) above:

Plan Participant A	
Account Balance on 1/1/2012 (under 10/10/2009 amendment)	\$220,000.00

a. Plan Benefit

- 1) **Plan Benefit at NRD.** Participant A's plan benefit payable at 11/1/2016 (NRD) is \$2,032.13 per month, which equals the greater of the immediate-basis plan formula (\$2,032.13) and the projected-basis plan formula (\$1,999.35):

Immediate-Basis Formula Accruals as of DOPT	
\$220,000.00	Account balance at 1/1/2012
$x (1 + 0.1200)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0582)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0582)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0582)^{10/12}$	2016 Interest Credits until NRD
$\underline{(12.2000 \times 12)}$	ACF1 times 12
\$2,032.13	Immediate-Basis Annuity at NRD

Projected-Basis Formula Accruals as of DOPT	
\$220,000.00	Account balance at 1/1/2012
$x (1 + 0.1200)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0582)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0582)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0582)^{10/12}$	2016 Interest Credits until NRD
$\underline{(12.4000 \times 12)}$	PACF1 times 12
\$1,999.35	Projected-Basis Annuity at NRD

- 2) **Plan Benefit at XRD.** Participant A's plan benefit payable at 7/1/2012 (XRD) is \$1,491.55 per month, which equals the greater of the immediate-basis plan formula (\$1,481.08) and the projected-basis plan formula (\$1,491.55):

Immediate-Basis Formula Accruals as of DOPT	
\$220,000.00	Account balance at 1/1/2012
$x (1 + 0.1200)^{6/12}$	2012 Interest Credits until DOPT
$\cancel{(13.1000 \times 12)}$	ACF2 times 12
\$1,481.08	Immediate-Basis Annuity at XRD

Projected-Basis Formula Accruals as of DOPT	
\$220,000.00	Account balance at 1/1/2012
$x (1 + 0.1200)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0582)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0582)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0582)^{10/12}$	2016 Interest Credits until NRD
$\cancel{(12.3000 \times 12)}$	PACF2 times 12
\$2,015.61	Monthly Accumulated Benefit
$\cancel{x 0.7400}$	ERF at 52 months early
\$1,491.55	Projected-Basis Annuity at XRD

b. **Guaranteed Benefit**

- 1) Guaranteed Benefit at NRD.** Participant A's plan benefit with accruals as of 10/30/2010 (BPD) payable at 11/1/2016 (NRD) is \$1,842.72 per month, which equals the greater of the immediate-basis plan formula (\$1,842.72) and the projected-basis plan formula (\$1,813.00):

Immediate-Basis Formula Accruals as of BPD	
\$180,000.00	Account balance at 1/1/2010
$x (1 - 0.0100)^{12/12}$	2010 Interest Credits
$x (1 + 0.1195)^{12/12}$	2011 Interest Credits
$x (1 + 0.1200)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0582)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0582)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0582)^{10/12}$	2016 Interest Credits until NRD
$\cancel{(12.2000 \times 12)}$	ACF1 times 12
\$1,842.72	Immediate-Basis Annuity at NRD

Projected-Basis Formula Accruals as of BPD	
\$180,000.00	Account balance at 1/1/2010

$x (1 - 0.0100)$	12/12	2010 Interest Credits
$x (1 + 0.1195)$	12/12	2011 Interest Credits
$x (1 + 0.1200)$	6/12	2012 Interest Credits until DOPT
$x (1 + 0.0582)$	6/12	2012 Interest Credits after DOPT
$x (1 + 0.0582)$	36/12	2013-2015 Interest Credits
$x (1 + 0.0582)$	10/12	2016 Interest Credits until NRD
<u>(12.4000×12)</u>		PACF1 times 12
\$1,813.00		Projected-Basis Annuity at NRD

Participant A's benefit under the 5-year old (BPD-5) plan with accruals as of 10/30/2010 (BPD) payable at 11/1/2016 (NRD) equals \$1,834.20 per month. See **section J.4.b(1)** above.

Participant A's guaranteed benefit payable at 11/1/2016 (NRD) is \$1,842.72 per month:

\$1842.72 (BPD-1 benefit with accruals as of BPD)

-\$1834.20 (BPD-5 benefit with accruals as of BPD)

\$8.52 (Increase in plan benefit)

\$8.52 (Guaranteed portion of the increase)

+\$1834.20 (BPD-5 benefit with accruals as of BPD)

\$1842.72 (Guaranteed benefit payable at NRD)

Note: The increase in benefits between the BPD-1 and BPD-5 plan (with accruals as of BPD) is less than \$20.00 per month (\$1842.72 – \$1834.20 = \$8.52), so the increase is fully guaranteed.

The guaranteed benefit does not include pay credits after 10/30/2010 (BPD). This means that since the plan does not provide pay credits for partial periods, the guaranteed benefit does not include pay credits for the partial period between 01/01/2010 and 10/30/2010 (BPD).

- 2) Guaranteed Benefit at XRD.** Participant A's plan benefit with accruals as of 10/30/2010 (BPD) payable at 7/1/2012 (XRD) is \$1,352.53 per month, which equals the greater of the immediate-basis plan formula (\$1343.04) and the projected-basis plan formula (\$1,352.53):

Immediate-Basis Formula Accruals as of BPD	
\$180,000.00	Account balance at 1/1/2010
$x (1 - 0.0100)$	12/12
$x (1 + 0.1195)$	12/12
$x (1 + 0.1200)$	6/12
<u>(13.1000×12)</u>	ACF2 times 12
\$1,343.04	Immediate-Basis Annuity at XRD

Projected-Basis Formula Accruals as of BPD	
\$180,000.00	Account balance at 1/1/2010
$x (1 - 0.0100)$	12/12
$x (1 + 0.1195)$	12/12
$x (1 + 0.1200)$	6/12
<u>(13.1000×12)</u>	ACF2 times 12
\$1,352.53	Projected-Basis Annuity at XRD

$x (1 + 0.1195)^{12/12}$	2011 Interest Credits
$x (1 + 0.1200)^{6/12}$	2012 Interest Credits until DOPT
$x (1 + 0.0582)^{6/12}$	2012 Interest Credits after DOPT
$x (1 + 0.0582)^{36/12}$	2013-2015 Interest Credits
$x (1 + 0.0582)^{10/12}$	2016 Interest Credits until NRD
$\underline{(12,300 \times 12)}$	PACF2 times 12
\$1,824.75	Monthly Accumulated Benefit
<u>x 0.7400</u>	ERF at 52 Months Early
\$1,352.53	Projected-Basis Annuity at XRD

Participant A's benefit under the 5-year old (BPD-5) plan with accruals as of BPD payable at 7/1/2012 (XRD) equals \$1,346.27 per month. See section J.4.b(2) above.

Participant A's guaranteed benefit payable at 7/1/2012 (XRD) is \$1352.53 per month:

\$1,352.53 (BPD-1 benefit with accruals as of BPD)
 -\$1,346.27 (BPD-5 benefit with accruals as of BPD)
\$6.26 (Increase in plan benefit)

\$6.26 (Guaranteed portion of the increase)
+\$1,346.27 (BPD-5 benefit with accruals as of BPD)
 \$1,352.53 (Guaranteed benefit payable at XRD)

Note: The increase in benefits between the BPD-1 and BPD-5 plan (with accruals as of BPD) is less than \$20.00 per month (\$1,352.53 - \$1,346.27 = \$6.26), so the increase is fully guaranteed.

The guaranteed benefit does not include pay credits after 10/30/2010 (BPD). This means that since the plan does not provide pay credits for partial periods, the guaranteed benefit does not include pay credits for the partial period between 01/01/2010 and 10/30/2010 (BPD).

c. **PC3 Benefit.** Participant A's PC3 benefit is \$904.96 per month, the plan benefit under the 5-year old (BPD-5) plan as of 11/1/2007 (BPD-3). See section J.4.c above.

Note: The PC3 benefit cannot exceed the monthly plan benefit payable at 7/1/2012 (XRD) under the DOPT plan (\$1,491.55).

d. **PC5 Benefit**

1) **PC5 Benefit at NRD.** Participant A's total PC5 benefit payable at 11/1/2016 (NRD) is \$189.41 per month ($= \$45.71 + \143.70):

Layer	Plan Provisions	Gross	Net
PC5a	5-Year Old Plan (DOPT-5)	\$1,888.43*	$\$45.71 = \$1,888.43 - \$1,842.72$
PC5b	3-Year Old Plan (DOPT-3)	\$2,032.13	$\$143.70 = \$2,032.13 - \$1,888.43$

*See [section J.2.a\(1\)](#) above.

2) **PC5 Benefit at XRD.** Participant A's total PC5 benefit payable at 7/1/2012 (XRD) is \$139.02 per month ($= \$33.55 + \105.47):

Layer	Plan Provisions	Gross	Net
PC5a	5-Year Old Plan (DOPT-5)	\$ 1,386.08*	$\$33.55 = \$1,386.08 - \$1,352.53$
PC5b	3-Year Old Plan (DOPT-3)	\$1,491.55	$\$105.47 = \$1,491.55 - \$1,386.08$

*See **section J.2.a(2)** above.

7. Assumptions Used in Section J above

All Sections:

Statutory Hybrid Plan XYZ	
Plan Type	Cash Balance Plan
Plan Year	Calendar Year
DOPT	06/30/2012
Normal Retirement Age	65
Earliest Retirement Age	55
Plan Benefit	Monthly annuity equal to the greater of an immediate-basis formula and a projected-basis formula
ERF (projected-basis formula)	6% per year
Interest Crediting Rate	Treasury Bond Index (see below)
Interest and Pay Crediting Date	12/31 of each year
Interest Credits for Partial Periods	None
Pay Credits for Partial Periods	None
Annuity Conversion Basis	Mortality and Interest from Section 417(e)(3) of the Code
Stability Period	Calendar Year
Look Back Definition	2 months
Mortality Projection	Annuity Starting Date

Interest Crediting Rates before DOPT (all rates are for illustration only)				
Month and Year of Treasury Rate	Plan Year's Interest Credits	Period of Interest Credits	Plan's Interest Crediting Date	Treasury Bond Rate
11/2011	2012	1/1/2012 – 6/30/2012	N/A	6.50%
11/2010	2011	1/1/2011 – 12/31/2011	12/31/2011	6.35%
11/2009	2010	1/1/2010 – 12/31/2010	12/31/2010	6.55%
11/2008	2009	1/1/2009 – 12/31/2009	12/31/2009	4.50%
11/2007	2008	1/1/2008 – 12/31/2008	12/31/2008	5.50%
11/2006	2007	1/1/2007 – 12/31/2007	12/31/2007	6.00%

Participant A	
Date of Birth	10/05/1951
Status on DOPT	Active
XRD	7/1/2012 (first of month after DOPT)

Account Balance on 1/1/2009	\$170,000.00
Account Balance on 1/1/2012	\$210,000.00

Factors for Converting Participant A's Account Balance (for illustration only)

Name of Factor	Retirement Date	Event	Mortality	Interest	1st Segment	2nd Segment	3rd Segment	Factor
Immediate Annuity Basis								
ACF1	11/01/2016	NRD	LS16	Average	2016	2021	2036	12.2000
ACF2	07/01/2012	XRD	LS12	Average	2012	2017	2032	13.1000
ACF3	07/01/2009	DOPT-3	LS09	Nov-08	2009	2014	2029	14.1000
Projected Annuity Basis (to NRD)								
PACF1	11/01/2016	NRD	LS16	Average	2012*	2017*	2032*	12.4000
PACF2	07/01/2012	XRD	LS12	Average	2012*	2017*	2032*	12.3000
PACF3	07/01/2009	DOPT-3	LS09	Nov 2008	2009	2014	2029	12.1000
*Based on DOPT (not Annuity Starting Date)								

Section J.3 and following:

Statutory Hybrid Plan XYZ	
Plan Type	PPA 2006 Bankruptcy Plan
Bankruptcy Petition Date (BPD)	10/30/2010

Plan Participant A	
Account Balance on 1/1/2007	\$150,000.00
Account Balance on 1/1/2010	\$180,000.00

Additional Factors for Converting Participant A's Account Balance (for illustration only)

Name of Factor	Retirement Date	Event	Mortality	Interest	1st Segment	2nd Segment	3rd Segment	Factor
Immediate Annuity Basis								
ACF4	11/01/2007	BPD-3	GU94	30-Yr Tr.	N/A	N/A	N/A	14.5000
Projected Annuity Basis (to NRD)								
PACF4	11/01/2007	BPD-3	GU94	30-Yr Tr.	N/A	N/A	N/A	11.9000

Section J.5 and following:

Statutory Hybrid Plan XYZ	
Plan Amendment	10/10/2009 (adopted and effective)
Provisions Changed	Interest Crediting Rate changed to rate of return on plan assets earned during the prior plan year
First Year of New Rates	2010 Plan Year

Rates of Return on Plan Assets before DOPT (all rates are for illustration only)				
Period of Return on Plan Assets	Plan Year's Interest Credits	Period of Interest Credits	Plan's Interest Crediting Date	Rate of Return on Plan Assets
1/1/2011 – 12/31/2011	2012	1/1/2012 – 6/30/2012	N/A	12.00%
1/1/2010 – 12/31/2010	2011	1/1/2011 – 12/31/2011	12/31/2011	11.95%
1/1/2009 – 12/31/2009	2010	1/1/2010 – 12/31/2010	12/31/2010	-1.00%

Third Segment Rates (for illustration only)	
12/2010	6.80%
12/2009	6.30%

Section J.6 and following:

Plan Participant A	
Account Balance on 1/1/2012 (under 10/10/2009 amendment)	\$220,000.00

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_12_2_1st.htm
(03/26/2010)

[Top of Page](#)

5.13-1 Aggregate Limit on Benefits Payable from PBGC Funds

Edition	2nd Edition
Issue Date	05/26/2005
Transmittal	Transmittal 85
Contact	ASK PPD

In this policy

- A. Background
 - B. Scope and Effective Date
 - C. Definitions
 - D. Applying the Aggregate Limit
 - E. Examples of Payees to Whom the Aggregate Limit Applies
 - F. Calculating a Termination Benefit Subject to the Aggregate Limit
 - G. Approximating Unfunded Guaranteed Benefits in Prior Plans
 - H. Aggregate Limit for Participants Not in Pay Status in a Prior Plan
 - I. Valuation and Benefit Liability
- Example 1
- Example 2
- Example 3
- Example 4

A. Background

Benefits guaranteed by PBGC are limited by the ► [Maximum Guaranteeable Benefit](#) and the Aggregate Limit on Benefits Payable from PBGC Funds, the “Aggregate Limit.”

The Maximum Guaranteeable Benefit (► [ERISA](#) § 4022(b)(3) and 29 CFR § 4022.22 and 4022.23) applies, generally, to a ► [Payee](#) (or Payees) entitled to benefits earned by one ► [participant](#) in [one](#) plan.

The Aggregate Limit (ERISA § 4022B and 29 CFR § 4022B.1) applies, generally, to a Payee (or Payees) entitled to benefits earned by one participant in **two or more** plans.

In this policy, PBGC provides guidance for applying the Aggregate Limit.

B. Scope and Effective Date

This ► [policy](#) provides guidance for calculating the Aggregate Limit for any ► [Payee](#) (or Payees) entitled to benefits earned by one ► [participant](#) in two or more trusted ► [single-employer plans](#).

For ► [benefit determinations](#) that become effective on or after June 1, 2002, the effective date of the April 8, 2002, Benefit Payments Regulation, this policy implements the rule that PBGC will not apply the Aggregate Limit to guaranteed benefits earned by two or more participants. For example, the Aggregate Limit will no longer be applied to the benefits of a Payee who is entitled to both a benefit in her own right as a plan participant and the survivor portion of the benefit earned by her deceased husband.

This policy does not address guarantee limits applicable to more than one person entitled to benefits earned by one participant in one plan. For example, the Aggregate Limit does not apply to the benefits of a participant and alternate payee under a separate interest QDRO both of whom are receiving benefits earned by the participant in only one plan. In the Benefit Payments Regulation, PBGC clarified that this type of aggregation is covered by 29 CFR § 4022.22, the Maximum Guaranteeable Benefit, not by the Aggregate Limit.

C. Definitions

1. Aggregate Limit on Benefits Payable from PBGC Funds (Aggregate Limit)

The Aggregate Limit on Benefits Payable from PBGC Funds (Aggregate Limit) for a ► [Payee](#) entitled to ► [guaranteed benefits](#) from more than one ► [PBGC-trusted plan](#) is the limit on the total amount of Benefits Payable from PBGC Funds described in

► [ERISA](#) § 4022B and 29 CFR § 4022B.1.

2. Current Plan

The Current Plan is the terminated plan with Payees for whom processing staff are determining benefits subject to the Aggregate Limit. See Prior Plan.

3. Benefit(s) Payable from PBGC Funds

Benefit(s) Payable from PBGC Funds are guaranteed benefits that are funded neither by plan assets as of ► DOPT nor by any amount, deemed under this policy, funded by PBGC's recovery of ► unfunded guaranteed benefits.

A Payee's Benefit Payable from PBGC Funds is equal to the Payee's Termination Benefit less the sum of

- a. any benefit funded by allocation of plan assets under § 4044,
- b. any benefit provided to the Payee by a § 4022(c) allocation or a § 4049 trust, and
- c. any benefit deemed funded by PBGC's recovery of unfunded guaranteed benefits.

For purposes of this policy, PBGC will calculate the amount deemed funded by PBGC's recovery of unfunded guaranteed benefits as follows:

- For a Payee in a ► SPARR Plan, PBGC will use the product of the applicable SPARR and the Payee's unfunded guaranteed benefit from that plan to calculate the amount deemed funded by PBGC's recovery of unfunded guaranteed benefits.
- For a Payee in a ► non-SPARR Plan with a Termination Initiation Date after December 17, 1987, PBGC will use the product of the actual recovery ratio for unfunded guaranteed benefits and the Payee's unfunded guaranteed benefit from that plan to calculate the amount deemed funded by PBGC's recovery of unfunded guaranteed benefits.
- For a Payee in a plan with a Termination Initiation Date on or prior to December 17, 1987, PBGC will calculate the amount deemed funded by PBGC's recovery of unfunded guaranteed benefits based on available records and the prevailing law applicable to the plan.

4. Earliest PBGC Retirement Date (EPRD)

EPRD means the earliest date a participant could retire for various Title IV purposes as defined in CFR 29 § 4022.10.

5. Payee

Payee means a participant, beneficiary, or an alternate payee under a QDRO, any of whom is entitled to a PBGC benefit in annuity form. See [section F](#) for special rules regarding Payees who have received or are entitled to receive a lump sum payment in lieu of an annuity.

6. Prior Plan

For any Current Plan, a Prior Plan is any trusteeed single-employer plan having (a) at least one Payee who is also entitled to benefits from the Current Plan and (b) Trusteeship Date before the Current Plan's Trusteeship Date. For the purpose of calculations under this policy, if a Payee is entitled to benefits from plans with the same Trusteeship Date, the plan with the earliest termination date, or if termination dates are the same, the earliest Termination Initiation Date, will be treated as having the earliest Trusteeship Date. If all dates are the same, the plan with the smallest number of participants will be treated as having the earliest Trusteeship Date.

7. SPARR Plan

A SPARR Plan is a single-employer plan with

- a. Termination Initiation Date after December 17, 1990, and
- b. Unfunded nonguaranteed benefits as of DOPT of \$20 million or less.

8. Termination Benefit

Termination Benefit means a Payee's guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to ERISA § 4044 or recoveries are allocated pursuant to ERISA § 4022(c).

9. Termination Initiation Date

Termination Initiation Date means

- a. for a plan that terminates in a distress termination under ERISA § 4041(c), the last date on which any notice of intent to terminate is issued to any affected party other than PBGC; and
- b. for a plan that terminates in a PBGC-initiated termination under ERISA § 4042 (even if the plan administrator had filed a notice of intent to terminate the plan in a distress termination), the date on which PBGC issues a notice of determination that the plan will be involuntarily terminated. In the absence of such a notice, the termination initiation date is the date on which PBGC's Executive Director, or his or her designee, authorizes the initiation of proceedings to terminate the plan under ERISA § 4042.

10. Title IV Benefit

Title IV Benefit means a Payee's guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to ERISA § 4044. It does not include benefits provided under ERISA § 4022(c).

D. Applying the Aggregate Limit

For a ►Payee (or Payees) entitled to benefits earned by one ►participant in two or more plans, the Aggregate Limit is applied to the Benefits Payable from PBGC Funds earned by that participant in the Current Plan, taking into account the Benefits Payable from PBGC Funds earned by that participant in all Prior Plans.

E. Examples of Payees to Whom the Aggregate Limit Applies

The Aggregate Limit applies to ►Payees' benefits in the following examples:

1. The benefit payable from the Current Plan to a ►participant who is entitled to benefits from two trusteeed ►single-employer plans.
2. The survivor benefit (►QJSA or ►QPSA) payable from the Current Plan to a surviving spouse who is also entitled to survivor benefits (QJSA or QPSA) earned by the same deceased participant in another trusteeed single-employer plan.
3. A survivor benefit (QJSA or QPSA) payable from the Current Plan to a surviving spouse and earned by a deceased participant whose ex-spouse is already receiving, under a ►QDRO, benefits earned by the same participant in a Prior Plan.
4. The benefits from the Current Plan of an alternate payee under a QDRO and the participant, both of whom are entitled to benefits earned by the participant in two trusteeed single-employer plans. Note that the Maximum Guaranteeable Benefit limitation is applied first to their combined benefits earned under each plan. The Aggregate Limit is then applied to their combined Benefits Payable from PBGC Funds earned under the Current Plan, taking into account the Benefits Payable from PBGC Funds earned by that participant in all Prior Plans.

F. Calculating a Termination Benefit Subject to the Aggregate Limit

If a ►Payee is entitled to benefits earned by one ►participant in two or more ►trusteed plans, the Payee's benefit from the plan deemed, for purposes of this policy, to have the earliest Trusteeship Date is unaffected by the Aggregate Limit. The Aggregate Limit is applied sequentially to the benefits provided by each of the subsequent plans.

PBGC will first calculate the Benefits Payable from PBGC Funds in all Prior Plans. Only benefits payable on or after the later of the ►annuity starting date of the benefit from the Current Plan and the ►DOPT of the Current Plan are taken into consideration.

For each Prior Plan, PBGC will calculate the Payee's monthly Benefit Payable from PBGC Funds and, using factors from 29 CFR § 4022.8(c)(7), adjust this amount to the annuity form of the benefit from the Current Plan. See additional guidance in **section H** of this policy for handling Prior Plan benefits not yet in pay status as of the date for which ►Termination Benefits in the Current Plan are being calculated.

PBGC will exclude *de minimis* ►lump sums from Aggregate Limit calculations. Any Termination Benefit from a Prior Plan or the Current Plan is excluded from the application of the Aggregate Limit if, as of the Current Plan's Trusteeship Date, the benefit is payable as a lump sum. For purposes of this paragraph, a benefit is payable as a lump sum if:

1. its lump sum value is less than or equal to the amount set forth as of the Current Plan's Trusteeship Date in 29 CFR § 4022.7(b)(1)(i), currently \$5,000, and
2. it was not being paid as an annuity as of the Current Plan's Trusteeship Date.

PBGC will calculate the Aggregate Limit applicable to the Payee's benefit in the Current Plan. The Aggregate Limit equals the ►Maximum Guaranteeable Benefit calculated under § 4022.22 without regard to § 4022.22(a) assuming:

1. The maximum monthly guaranteeable benefit from Appendix D to Part 4022 is determined as of the latest of the Current Plan's DOPT and all Prior Plans' DOPTs.

2. The Payee's age is determined as of the latest of the Current Plan's DOPT, all Prior Plans' DOPTs, and the annuity starting date for the benefit payable from the Current Plan.
3. PBGC's factors as specified in this section and Section H of this policy will be used to make any needed actuarial adjustments to the Prior Plan's Benefit Payable from PBGC Funds.
4. As an intermediate step, PBGC will, without regard to the Aggregate Limit, calculate guaranteed benefits for all payees, allocate plan assets according to ERISA § 4044, and determine ►unfunded guaranteed benefits in the Current Plan.

PBGC will determine whether a Payee is affected by the Aggregate Limit by first calculating the Payee's "benefit from the Current Plan that is subject to the Aggregate Limit." This is the amount that, without regard to the Aggregate Limit, would be the Payee's guaranteed benefit, reduced by the portion of the guaranteed benefit funded by plan assets, and further reduced by the portion of the unfunded guaranteed benefit deemed funded by recovery.

If calculating a Payee's benefit from the Current Plan requires intermediate conversion to a level life annuity form via CFR § 4022.23(f) or other prescribed method, Aggregate Limit calculations will be performed in the level life annuity form. For example, if a Payee's \$1000 ►J&50%\$ benefit with \$75 three-year temporary supplement and free surviving spouse benefit is converted to an equivalent J&58.6%\$ benefit for intermediate phase-in and Maximum Guaranteeable Benefit calculations, the J&58.6%\$ annuity form will be used for all intermediate Aggregate Limit calculations.

A Payee's Benefit Payable from PBGC Funds in the Current Plan is the portion of the Payee's "benefit from the Current Plan subject to the Aggregate Limit" that, when added to the Payee's Benefits Payable from PBGC Funds in all Prior Plans, does not exceed the Aggregate Limit.

If a Payee's benefit in a Prior Plan was determined in error (e.g., no reduction for the Aggregate Limit), and no revised determination was or will be issued for the benefit in the Prior Plan, then the Payee's Benefit Payable from PBGC Funds in the Current Plan will be calculated using the portion of the Payee's benefit in the Prior Plan that was actually paid from PBGC funds.

The Guaranteed Benefit in the Current Plan is the sum of the portion of the Guaranteed Benefit funded by plan assets, the portion of the unfunded guaranteed benefit deemed funded by recovery, and the Benefit Payable from PBGC Funds in the Current Plan.

A Payee's Title IV Benefit is the greater of the Payee's Guaranteed Benefit and the Payee's benefit funded by plan assets. A Payee's unfunded nonguaranteed benefit from the Current Plan includes any unfunded benefit that is not guaranteed because of the Aggregate Limit.

Therefore, a Payee whose Guaranteed Benefit is limited by the Aggregate Limit may have an ►unfunded nonguaranteed benefit in Priority Category 4.

The Termination Benefit from the Current Plan is the sum of the ►Title IV Benefit and the § 4022(c) Benefit.

G. Approximating Unfunded Guaranteed Benefits in Prior Plans

For calculating a ►Payee's Aggregate Limit, the Payee's individual ►unfunded guaranteed benefit amounts from ►Prior Plans are needed.

In some plans, individual unfunded guaranteed benefits were never calculated because benefits were proven to be unaffected by the allocation of plan assets. For example, a Payee's unfunded guaranteed benefit ordinarily would not have been calculated in a plan for which assets were insufficient to fund guaranteed benefits and no ►PC3 benefits exceeded guaranteed benefits.

In a Prior Plan for which the allocation of plan assets was not calculated, PBGC will approximate a Payee's Benefit Payable from PBGC Funds.

If the funding ratio for PC3 was not calculated in a Prior Plan's valuation, the funding ratio will be approximated by the quotient, not to exceed one, of

a. plan assets as of ►DOPT

divided by

b. the sum of the present values as of DOPT of Termination Benefits for Payees in pay status five full years as of DOPT.

If, in a Prior Plan, a Payee's benefit in PC3 was not calculated and the Payee was eligible for PC3 priority, the Payee's PC3 benefit will be approximated by the Termination Benefit less benefits provided by the 4022(c) allocation.

If the funding ratio for ►PC4 was not calculated in a Prior Plan's valuation, the funding ratio will be approximated by the quotient, not to exceed one, of

a. plan assets less the sum of the present values as of DOPT of Termination Benefits for Payees in pay status five full years as of DOPT

divided by

b. the sum of the present values as of DOPT of guaranteed benefits for participants and beneficiaries except those in pay status five full years as of DOPT.

If, in a Prior Plan, a Payee's benefit in PC4 was not calculated and the Payee was not eligible for PC3 priority, the Payee's PC4 benefit will be approximated by the Termination Benefit less benefits provided by the 4022(c) allocation.

After the unfunded guaranteed benefit has been approximated, it will be reduced by the portion of such unfunded guaranteed benefit that is deemed to have been funded by recovery.

H. Aggregate Limit for Participants Not in Pay Status in a Prior Plan

A ▶ Payee in the Current Plan may be entitled to an ▶ annuity that is payable from a ▶ Prior Plan but, as of the Current Plan's Trusteeship Date, not yet in pay status. For Aggregate Limit purposes in the Current Plan only, PBGC will calculate the Payee's ▶ Termination Benefit from the Prior Plan at a single assumed ▶ annuity starting date and in each of the Prior Plans' automatic annuity forms. These Prior Plan benefits, once calculated, will be used for Aggregate Limit purposes in the Current Plan for all valuation and payment calculations, even if the Payee commences the benefit from the Prior Plan at a different date or in a different annuity form.

Prior Plan Benefit Assumed Annuity Starting Date

1. EPRD(Prior Plan) ≤ DOPT(Current Plan)

Prior Plan Benefit calculated as of DOPT(Current Plan)

If a Payee's ▶ EPRD in the Prior Plan is on or before the ▶ DOPT of the Current Plan, PBGC will calculate the Payee's benefit in the Prior Plan using the first day of the month on or after the Current Plan's DOPT as the assumed annuity starting date.

2. DOPT(Current Plan) < EPRD(Prior Plan) ≤ EPRD(Current Plan)

Prior Plan Benefit calculated as of EPRD(Prior Plan)

If a Payee's EPRD in the Prior Plan is after the DOPT of the Current Plan but on or before the Payee's EPRD in the Current Plan, PBGC will calculate the Payee's Termination Benefit in the Prior Plan with an assumed annuity starting date equal to the Payee's EPRD from the Prior Plan.

3. DOPT(Current Plan) ≤ EPRD(Current Plan) < EPRD(Prior Plan)

Prior Plan Benefit calculated as of EPRD(Current Plan)

If a Payee's EPRD in the Prior Plan is after the Payee's EPRD in the Current Plan, PBGC will calculate a Termination Benefit for the Payee at an assumed annuity starting date in two steps. First, PBGC will calculate the Payee's Termination Benefit in the Prior Plan as of the Payee's EPRD in the Prior Plan. Second, PBGC will adjust this benefit to the EPRD in the Current Plan. PBGC will use factors from 29 CFR § 4022.23 to adjust from the Payee's age at the EPRD in the Prior Plan to the Payee's age at the EPRD in the Current Plan.

A Payee's assumed annuity starting date in a Prior Plan will be the latest of the date determined above and the DOPTs of the Current Plan and Prior Plan.

4. Current Plan Annuity Form is an annuity based on a single life contingency or term certain annuity

If a Payee's benefit from the Current Plan is an annuity based on a single life contingency or a term certain annuity, PBGC will calculate the benefit from the Prior Plan in the Prior Plan's automatic form for unmarried participants. Factors from 29 CFR § 4022.8(c)(7) will be used to adjust the benefit from the Prior Plan to the annuity form of the benefit from the Current Plan.

5. Current Plan Annuity Form is annuity based on a joint-life contingency

If a Payee's benefit from the Current Plan is an annuity based on a joint-life contingency, PBGC will calculate the benefit from the Prior Plan in the Prior Plan's automatic form for married participants. The benefit from the Prior Plan will be calculated assuming the participant and spouse are the same age. Factors from 29 CFR § 4022.8(c)(7) will be used to adjust the benefit from the Prior Plan to the annuity form of the benefit from the Current Plan.

Generally, a Payee's benefit in the Prior Plan will be calculated in both the automatic form for married participants and the automatic form for unmarried participants, but only one will be used in any given Current Plan calculation. For example, if a Payee's benefit is being calculated as the ▶ QJSA in the Current Plan, the assumed Prior Plan benefit calculated in the Prior Plan's automatic form for

married participants would be used in the calculation of the Aggregate Limit. If a Payee's benefit is being calculated as a PBGC-offered 5C&C, the assumed Prior Plan benefit calculated in the Prior Plan's automatic form for unmarried participants would be used in the calculation of the Aggregate Limit.

Only the portion of the assumed annuity payable after the annuity starting date of the benefit from the Current Plan will be considered.

Suppose, for example, under the rules above, a Prior Plan Benefit Payable from PBGC Funds were calculated as a \$500/month 10-year certain and continuous annuity at an assumed age of 60, but the Payee retired from the Current Plan at age 62 with a straight life annuity. Using the interest and mortality assumptions in 29 CFR § 4022.8(c)(7), PBGC would convert a \$500/month 8-year certain and continuous annuity for a 62-year-old to a straight life annuity for a 62-year-old to use in determining the effect of the Aggregate Limit on the benefit from the Current Plan.

I. Valuation and Benefit Liability

For a benefit from the Current Plan that is not yet in pay status as of the Current Plan's ►DOPT, PBGC will calculate, for valuation purposes, the Aggregate Limit as of the future ►Payee's ►Expected Retirement Date for the benefit from the Current Plan, subject to other rules in this ►policy.

Example 1

Calculation of Aggregate Limit on Benefits Payable from PBGC Funds

A ►participant is entitled to annuity benefits from two trusteeed ►single-employer plans—Plan ABC and Plan XYZ. Both plans are ►SPARR Plans. The participant's benefit from the Current Plan, Plan XYZ, is limited by the Aggregate Limit on Benefits Payable from PBGC Funds as follows.

Participant's Date of Birth (DOB):		3/1/1939	
Plan Data		Plan XYZ (Current Plan)	Plan ABC (Prior Plan)
(a)	►DOPT:	4/5/2001	6/16/1997
(b)	Trusteeship Date:	4/29/2001	7/9/1997
(c)	Notice of Determination date:	2/14/2001	5/17/1997
(d)	SPARR	4.94%	5.98%

Plan Benefits

(e)	►Annuity Starting Date:	9/1/2002	7/1/1997
(f)	Annuity Form:	SLA	SLA
(g)	Plan vested accrued benefit at Annuity Starting Date:	\$2,800.00	\$3,200.00

PBGC Maximum Guarantee Limit

(h)	PBGC Maximum Guaranteeable Benefit at Age 65:	\$3,392.05	detail omitted
(i)	Aggregate Limit 2001 Max adjusted for age* at Annuity Starting Date:	\$3,035.88	not applicable

* No adjustment for annuity form is needed because the annuity is a straight life annuity.

§ 4044 and § 4022(c) Allocation Categories and Funding Percentages

The participant has no benefits in ▶ PC1, ▶ PC2, or ▶ PC6.

(j)	Plan Benefit in ▶ PC3:	\$2,200.00	\$0.00
(k)	PC3 Funding Percent for § 4044:	12%	100%
(l)	PC3 ▶ UNGB Funding Percent for § 4022(c)**:	100%	N/A
(m)	Plan Benefit through ▶ PC4:	\$2,500.00	\$1,500.00
(n)	PC4 Funding Percent for § 4044:	0%	10%
(o)	PC4 UNGB Funding Percent for § 4022(c)**:	70%	N/A
(p)	Plan Benefit through ▶ PC5:	\$2,800.00	\$3,200.00
(q)	PC5 Funding Percent for § 4044:	0%	0%
(r)	PC5 UNGB Funding Percent for § 4022(c)**:	0%	8%

** UNGB Funding Percentages for the Current Plan are calculated **after** application of the Aggregate Limit.

Benefit Payable from PBGC Funds (Prior Plan)

The Benefit Payable from PBGC Funds in the Prior Plan is the unfunded guaranteed benefit less the portion of the unfunded guaranteed benefit deemed funded by recovery.

(s)	Guaranteed Benefit (m)	\$1,500.00
(t)	Portion of Guaranteed Benefit funded by Plan Assets: (m) × (n) = \$1,500.00 × 10%	\$150.00
(u)	Unfunded Guaranteed Benefit (s) – (t) = \$1,500.00 - \$150.00	\$1,350.00
(v)	Portion of Unfunded Guaranteed Benefit deemed funded by recovery (d) × (u) = 5.98% × \$1,350.00	\$80.73
(w)	Unfunded Nonguaranteed Benefit (g) – (s) = \$3,200.00 - \$1,500.00	\$1,700.00
(x)	4022(c) benefit: (r) × (w) = 8% × \$1,700.00	\$136.00
(y)	Termination Benefit: (s) + (x) = \$1,500.00 + \$136.00	\$1,636.00
(z)	Benefit Payable from PBGC Funds (y) – (x) – (t) – (v) = \$1,636.00 - \$136.00 - \$150.00 - \$80.73	\$1,269.27

Amount subject to Aggregate Limit in Current Plan

The Aggregate Limit applies to benefits in the Current Plan that are not provided by plan assets nor deemed funded by recovery.

(aa)	Guaranteed Benefit without regard to the Aggregate Limit: (m)	\$2,500.00
(bb)	Portion of Guaranteed Benefit funded by Plan Assets: (j) × (k) = \$2,200.00 × 12%	\$264.00
(cc)	Unfunded Guaranteed Benefit (without regard to the Aggregate Limit): (aa) – (bb) = \$2,500.00 - \$264.00	\$2,236.00
(dd)	Portion of Unfunded Guaranteed Benefit deemed funded by recovery (without regard to the Aggregate Limit): (d) × (cc) = 4.94% × \$2,236.00	\$110.46
(ee)	Amount subject to Aggregate Limit: (aa) - (bb) - (dd) = \$2,500.00 - \$264.00 - \$110.46	\$2,125.54

Guaranteed Benefit in Current Plan

The Guaranteed Benefit is the benefit provided by § 4044 allocation of plan assets plus the amount deemed funded by allocation of recovery, plus the Benefit Payable from PBGC Funds.

(ff)	Aggregate Limit: (i)	\$3,035.88
(gg)	Benefit Payable from PBGC Funds (Prior Plan): (z)	\$1,269.27
(hh)	Cap on Benefit Payable from PBGC Funds (Current Plan):= (ff) – (gg) = \$3,035.88 - \$1,269.27	\$1,766.61
(ii)	Benefit Payable from PBGC Funds: min { (ee), (hh) } = min{ \$2,125.54, \$1,766.61 }	\$1,766.61
(jj)	Guaranteed Benefit: (bb) + (dd) + (ii) = \$264.00 + \$110.46 + \$1,766.61	\$2,141.07

Termination Benefit in the Current Plan

The Termination Benefit is the sum of the ▶ [Title IV Benefit](#), reflecting any reduction for the Aggregate Limit, and the 4022(c) benefit.

(kk)	Unfunded Nonguaranteed Benefit in PC3: (j) – max { (jj), (bb) }, but not less than \$0 = \$2,200.00 – max { \$2,141.07, \$264.00 }	\$58.93
(ll)	Unfunded Nonguaranteed Benefit in PC4: (m) – max { (j), (bb) }, but not less than \$0 = \$2,500.00 – max { \$2,200, \$264.00 }	\$300.00

Note: Calculation of the 4022(c) Benefit in line (mm) requires a complete 4022(c) allocation for all participants with unfunded non-guaranteed benefits in Priority Categories 3 or 4.

(mm)	4022(c) Benefit in Current Plan: (l) x (kk) + (o) x (ll) = 100% × \$58.93 + 70% × \$300.00	\$268.93
(nn)	Termination Benefit in Current Plan: (jj) + (mm) = \$2,141.07 + \$268.93	\$2,410.00

Example 2

Calculation of Aggregate Limit on Benefits Payable from PBGC Funds (Current Plan's DOPT precedes Prior Plan's DOPT)

A ► participant is entitled to annuity benefits from two trusteeed ► single-employer plans—The Anderson Plan and the Zephyr Plan. Both plans are ► SPARR Plans. The participant's benefit from the Current Plan, the Zephyr Plan, is limited by the Aggregate Limit on Benefits Payable from PBGC Funds as follows.

Participant's Date of Birth (DOB):		3/1/1939	
Spouse's Date of Birth (SDOB):		5/1/1946	
Plan Data		Zephyr Plan (Current Plan)	Anderson Plan (Prior Plan)
(a)	► DOPT:	5/23/1998	3/1/2001
(b)	Trusteeship Date:	5/1/2002	3/29/2001
(c)	Notice of Determination date:	3/1/2002	N/A
(d)	► Notice of Intent to Terminate:	N/A	12/18/2000
(e)	SPARR:	9.60%	4.94%

Plan Benefits

(f)	► Annuity Starting Date:	3/1/2004	3/1/1996
(g)	► EPRD:	3/1/2004	N/A
(h)	Automatic Annuity Form for Married Participants:	J&100%S	J&50%S w/10 yrs certain
(i)	Annuity Form Elected at Actual Retirement Date:	J&100%S	J&50%S w/10 yrs certain
(j)	Plan Vested Accrued Benefit at Annuity Starting Date in Automatic Married Form:	\$1,200.00	\$4,900.00

PBGC Maximum Guarantee Limit

(k)	PBGC Maximum Guaranteeable Benefit at Age 65 as a Straight Life Annuity:	\$2,880.68	\$3,392.05
(l)	Age at DOPT:	59 yrs, 2 mos	62

(m)	Age at Nearest Birthday at DOPT:	59	62
(n)	Spouse's Age at Nearest Birthday at DOPT:	52	55

§ 4044 and § 4022(c) Allocation Categories and Funding Percentages

The participant has no benefits in ▶ PC1, ▶ PC2, or ▶ PC6. For payment of 4022(c) benefits in the Current Plan, plan-wide funding percentages for the allocation categories are determined after the application of the Aggregate Limit.

Plan Data		Zephyr Plan (Current Plan)	Anderson Plan (Prior Plan)
(o)	Plan Benefit in ▶ PC3:	\$0.00	\$4,900.00
(p)	PC3 Funding Percent for § 4044:	100%	5%
(q)	PC3 UNGB Funding Percent for § 4022(c)**:	100%	8%
(r)	Plan Benefit in PC4:	\$1,180.00	\$0.00
(s)	▶ PC4 Funding Percent for § 4044:	4%	0%
(t)	PC4 ▶ UNGB Funding Percent for § 4022(c)**:	16%	0%
(u)	Plan Benefit in ▶ PC5:	\$20.00	\$0.00
(v)	PC5 Funding Percent for § 4044:	0%	0%
(w)	PC5 UNGB Funding Percent for § 4022(c)**:	0%	0%
(x)	Guaranteed Benefit without regard to Aggregate Limit:	\$1,180.00 (given in example without detailed calculations)	\$2,198.71 (Maximum Guaranteed Benefit)

** UNGB Funding Percentages for the Current Plan are calculated after application of the Aggregate Limit.

Benefit Payable from PBGC Funds (Prior Plan)

The Benefit Payable from PBGC Funds in the Prior Plan is the unfunded guaranteed benefit less the portion of the unfunded guaranteed benefit deemed funded by recovery.

(y)	Guaranteed Benefit: (Equal to Maximum Guaranteed Benefit):	\$2,198.71
(z)	Portion of Guaranteed Benefit funded by Plan Assets: (o) × (p) = \$4,900.00 × 5%	\$245.00
(aa)	Unfunded Guaranteed Benefit: (y) - (z) = \$2,198.71 - \$245.00	\$1,953.71
(bb)	Portion of Unfunded Guaranteed Benefit deemed funded by recovery: (e) x (aa) = 4.94% x \$1,953.71	\$96.51

(cc)	Unfunded Nonguaranteed Benefit: (j) - (y) = \$4,900.00 - \$2,198.71	\$2,701.29
(dd)	4022(c) benefit: (q) × (cc) = 8% × \$2,701.29	\$216.10
(ee)	Termination Benefit: (y) + (dd) = \$2,198.71 + \$216.10	\$2,414.81
(ff)	Benefit Payable from PBGC Funds: (ee) - (z) - (bb) - (dd) = \$2,414.81 - \$245.00 - \$96.51 - \$216.10	\$1,857.20

Amount subject to Aggregate Limit in Current Plan

The Aggregate Limit applies to benefits in the Current Plan that are not provided by plan assets nor deemed funded by recovery.

(gg)	Guaranteed Benefit (without regard to the Aggregate Limit):	\$1,180.00
(hh)	Portion of Guaranteed Benefit funded by Plan Assets: (r) × (s) = \$1,180.00 × 4%	\$47.20
(ii)	Unfunded Guaranteed Benefit (without regard to the Aggregate Limit): (gg) - (hh) = \$1,180.00 - \$47.20	\$1,132.80
(jj)	Portion of Unfunded Guaranteed Benefit deemed funded by recovery (without regard to the Aggregate Limit): (ii) × (e) = \$1,132.80 × 9.60%	\$108.75
(kk)	Amount subject to Aggregate Limit: (gg) - (hh) - (jj) = \$1,180.00 - \$47.20 - \$108.75	\$1,024.05

Guaranteed Benefit in Current Plan

The Guaranteed Benefit is the benefit provided by § 4044 allocation of plan assets plus the amount deemed funded by allocation of recovery, plus the Benefit Payable from PBGC Funds.

(ll)	Aggregate Limit: (k), from plan with later DOPT, multiplied by factor from 29 CFR § 4022.23 for J&100%S, participant age 65, spouse age 58 = \$3,392.05 × 0.7440	\$2,523.69
(mm)	Benefit Payable from PBGC Funds (Prior Plan): (ff) in the form of a J&50%S with 24 months certain, participant age 65, spouse age 58	\$1,857.20
(nn)	Form conversion factor: from 29 CFR § 4022.8(c)(7) converting from: J&50%S with 24 months certain	0.8990

	converting to: J&100% participant age 65, spouse age 58	
(oo)	Benefit Payable from PBGC Funds (Prior Plan): J&100%\$ _s , participant age 65, spouse age 58 (mm) × (nn) = \$1,857.20 × 0.8990	\$1,669.62
(pp)	Cap on Benefit Payable from PBGC Funds (Current Plan): (ll) – (oo) = \$2,523.69 – \$1,669.62	\$854.07
(qq)	Benefit Payable from PBGC Funds: min { (kk), (pp) } = min{ \$1,024.05, \$854.07 }	\$854.07
(rr)	Guaranteed Benefit: (hh) + (jj) + (qq) = \$47.20 + \$108.75 + \$854.07	\$1,010.02

Termination Benefit in the Current Plan

The Termination Benefit is the sum of the Title IV Benefit, reflecting any reduction for the Aggregate Limit, and the 4022(c) benefit.

(ss)	Unfunded Nonguaranteed Benefit in PC3: (o) Participant has no benefit in PC3.	\$0.00
(tt)	Unfunded Nonguaranteed Benefit in PC4: (r) – (rr) = \$1,180 – \$1,010.02	\$169.98

Note: Calculation of the 4022(c) Benefit in line (uu) requires a complete 4022(c) allocation for all participants with unfunded non-guaranteed benefits in Priority Categories 3 or 4.

(uu)	4022(c) Benefit in Current Plan: (q) × (ss) + (t) × (tt) = 100% × \$0.00 + 16% × \$169.98	\$27.20
(vv)	Termination Benefit in Current Plan: (rr) + (uu) = \$1,010.02 + \$27.20	\$1,037.22

Example 3

Approximating Benefits Payable from PBGC Funds in a Prior Plan

The Astre Plan and the Zenith Plan are terminated trusteee plans. For Aggregate Limit purposes the Astre Plan is the Prior Plan, and the Zenith Plan is the Current Plan. No asset allocation was performed in the valuation of benefits for the Astre Plan. The benefit of a participant in the Zenith Plan is subject to the Aggregate Limit with respect to his benefit from the Astre Plan. Approximate the ► participant's Benefit Payable from PBGC Funds in the Astre Plan.

Plan Data	Zenith Plan (Current Plan)	Astre Plan (Prior Plan)
(a) ► DOPT:	1/1/2002	1/1/1987
(b) Trusteeship Date:	5/12/2002	6/10/1988
(c) Notice of Determination:	12/14/2002	N/A
(d) ► Notice of Intent to Terminate:	N/A	10/19/1986

(e)	► SPARR:	9.60%	N/A
-----	----------	-------	-----

Approximating the PC3 and PC4 Funding Percentages in the Astre Plan

At its DOPT, 1/1/1987, the Astre Plan has seven participants who have been in pay status for five full years (►DOPT-5 retirees). The total present value of the DOPT-5 retirees' ►Termination Benefits as of 1/1/87 is \$690,000. The total value of plan assets is \$920,000. The present value of guaranteed benefits for all participants at DOPT is \$1,840,000.

(f)	Approximate ►PC3 funding percent (Astre Plan): Plan assets of \$920,000 exceed the value of Termination Benefits for all DOPT-5 retirees.	100%
(g)	Approximate ►PC4 funding percent (Astre Plan): (\$920,000 - \$690,000) / (\$1,840,000-\$690,000)	20%

Participant Data		Zenith Plan (Current Plan)	Astre Plan (Prior Plan)
(h)	► Annuity Starting Date:	1/1/2002	not yet in pay status
(i)	►EPRD:	1/1/2002	1/1/1997
(j)	Automatic Form for Unmarried Participants: (For use in calculation of annuity in Current Plan's Automatic Form for Unmarried Participants)	5C&C	SLA

Benefit Payable from PBGC Funds in Prior Plan

(k)	Assumed Starting Date for Prior Plan Benefit: (The participant's EPRD in the Prior Plan precedes the Current Plan's DOPT. See Section H. of this policy.)	1/1/2002
(l)	Prior Plan Termination Benefit Calculated as of Assumed Annuity Starting Date: (Details omitted)	\$400.00
(m)	Portion of Unfunded Guaranteed Benefit deemed funded by recovery:	\$0.00
(n)	PC3 Benefit: The participant is not eligible for PC3.	\$0.00
(o)	PC4 Benefit: (Participant received no benefits from a 4022(c) allocation. Assets did not reach PC5.)	\$400.00
(p)	Benefit Funded by Plan Assets: $100\% \times \$0.00 + 20\% \times \400.00	\$80.00
(q)	4022(c) Benefit: (Pre-PPA Plan)	\$0.00
(r)	Portion of Unfunded Guaranteed Benefit deemed funded by recovery:	\$0.00

	(Pre-PPA plan with no recovery.)	
(s)	Assumed Benefit Payable from PBGC Funds in the Prior Plan at the Current Plan's DOPT: (l) - (p) - (q) - (r) = \$400.00 - \$80.00 - \$0.00 - \$0.00	\$320.00

For any calculation of the participant's benefit in the Current Plan's form for unmarried participants, the Aggregate Limit will be calculated as if the participant began receiving \$320.00 from "PBGC Funds" in the form of a straight life annuity commencing 1/1/2002.

Example 4

Aggregate Limit for Participants Not in Pay Status in a Prior Plan

A ►participant has ►unfunded guaranteed benefits in two plans. As of the Current Plan's Trusteeship Date the participant cannot receive an annuity from the ►Prior Plan.

Calculate the Benefit Payable from PBGC Funds from the Prior Plan to be used in the calculation of the participant's benefit to be paid at his ►Actual Retirement Date from the Current Plan.

Participant's Date of Birth (DOB): 6/1/1950

Spouse's Date of Birth (SDOB): 6/1/1952

Plan Data		Omega Inc. (Current Plan)	Alpha Co. (Prior Plan)
(a)	►DOPT:	8/1/2003	3/17/1998
(b)	Trusteeship Date:	4/1/2005	5/1/1998
(c)	Notice of Determination:	8/24/2003	3/29/1998
(d)	►SPARR:	7.86%	6.84%
(e)	►EPRD:	6/1/2005	6/1/2015
(f)	►Expected Retirement Date:	6/1/2005	6/1/2015
(g)	Actual Retirement Date:	6/1/2007	N/A
(h)	Automatic Form (unmarried):	10C&C	SLA
(i)	Automatic Form (married):	J&100%S	J&50%S

Alpha Co. (Prior Plan)

(j)	►Guaranteed Benefit at Prior Plan's EPRD in Normal Married Form (Assuming SDOB = DOB):	\$2,548.00
(k)	►PC4 Funding Percentage: Note: The participant's Benefit from Alpha Co. is all in PC4 and the Plan 4022(c) amount is exhausted in C3.	35%
(l)	Amount funded by plan assets: (j) x (k) = \$2,548.00 x 35% =	\$891.80
(m)	Amount deemed funded by recovery of unfunded guaranteed benefits: (d) x [(j) - (l)] = 6.84% x (\$2,548.00 - \$891.80)	\$113.28

(n)	Prior Plan Benefit Payable from PBGC Funds: (Prior to normalization for Currents Plan's form and ▶ Annuity Starting Date) (j) - (l) - (m) = \$2,548.00 - \$891.80 -\$113.28	\$1,542.92
(o)	PBGC Early Retirement Factor at Participant's Current Plan EPRD:	0.4500
(p)	PBGC Early Retirement Factor at Participant's Prior Plan EPRD:	1.0000
(q)	Prior Plan Benefit Payable from PBGC Funds: (adjusted for Current Plan's EPRD) (n) x [(o) / (p)] = \$1,542.92 x (0.4500 / 1.0000) =	\$694.31

Whether for benefit valuation or benefit payment, all Aggregate Limit calculations for this participant's joint-and-survivor type benefits from the Omega Plan will be calculated as if participant were receiving from the Alpha Plan \$694.31 per month "from PBGC Funds" as a Joint and 50% Survivor Annuity with a spouse of the same age as the participant.

At Actual Retirement Date from the Current Plan, the participant's age is 57, and he is receiving a Joint and 100% Survivor Annuity with his spouse whose age is 55.

(r)	Form Conversion Factor GAM83, 6%	
	PVF J&50%S both ages 57:	13.3334
	PVF J&100%S	
	Participant age 57, spouse age 55:	14.2675
	13.3334 / 14.2675 =	0.9345
(s)	Benefit Payable from PBGC Funds from Prior Plan as of EPRD in the Current Plan: (q) x (r) = \$694.31 x 0.9345	\$648.83

The participant's actual retirement benefit as a Joint and 100% Survivor Annuity from the Current Plan will be calculated as if, on the annuity starting date of his benefit from the Current Plan, he were receiving as of 6/1/2005 an annuity from the Prior Plan that includes \$648.83 in Benefits Payable from PBGC Funds as a Joint and 100% Survivor Annuity. See the example in Section K of this policy for additional guidance on benefits that include a period certain.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_13_1_2nd.htm
(05/26/2005)

Previous Editions

[5.13-1 Aggregate Limit on Benefits Payable from PBGC Funds 1st - Outdated](#)

5.14-1 Benefits in PPA 2006 Bankruptcy Plans

Edition	2nd Edition
Issue Date	03/27/2014
Transmittal	Transmittal 2014-07
Last Review Date	N/A
Signed Policy	5.14-1 Benefits in PPA 2006 Bankruptcy Plans
Contact	ASK PPD

In this policy

- [A. Introduction](#)
 - [B. Scope and Effective Date](#)
 - [C. Definitions](#)
 - [D. PPA 2006 Changes to PBGC Guaranteed Benefits](#)
 - [E. PPA 2006 Changes to Allocation of Plan Assets](#)
 - [F. Determinations Not Directly Affected by Bankruptcy](#)
- Concurrence, Endorsement, and Approval

A. Introduction

Section 404 of the [Pension Protection Act of 2006](#) (PPA 2006) made changes to the benefits PBGC guarantees and to how PBGC calculates benefits in [priority category 3](#) (PC3). For plans terminated while the contributing sponsor (generally the plan sponsor) is a debtor in a bankruptcy case (or a proceeding under similar law) that is filed on or after 9/16/06, PPA 2006 requires that the date on which the petition was filed be treated as the [date of plan termination](#) (DOPT) for purposes of determining (1) the benefits PBGC guarantees and (2) the amount of benefits in PC3.

For affected plans, this means that guaranteed benefits are based on a participant's vesting and accruals under the plan as of the bankruptcy petition date, and that the limitations on benefits, such as accrued-at-normal, maximum guaranteeable benefit and phase-in limitations, are determined by using the contributing sponsor's bankruptcy petition date instead of DOPT. In addition, benefits in PC3 are only those that were (or could have been) in pay status three years before the bankruptcy petition date, based generally on the provisions of the plan in effect five years before the bankruptcy petition date.

With this second edition of the policy, PBGC clarifies:

- The requirement to contact [PPD](#) in a case involving a contributing sponsor that was the subject of a non-bankruptcy insolvency proceeding. See [section C.2](#) below.
- The treatment of auxiliary disability benefits. See [section D.3.b](#) below.

B. Scope and Effective Date

This policy applies to any plan that terminates in a distress or PBGC-initiated termination while its contributing sponsor is a debtor in a bankruptcy, if the bankruptcy was filed on or after 9/16/06.

C. Definitions

1. **Bankruptcy Petition Date (BPD)** means the date on which the plan's contributing sponsor files (or has had filed against it) a bankruptcy petition (or similar filing) commencing a case under the U.S. Bankruptcy Code (or under similar federal or state law) that has not been dismissed as of [DOPT](#).

If a bankruptcy converted from one chapter to another (e.g., if the bankruptcy began with the filing of a petition for reorganization under Chapter 11 of the Bankruptcy Code but was later converted to a liquidation under Chapter 7), BPD is the date of the original petition filing.

If the plan has more than one contributing sponsor, and the sponsors entered bankruptcy on different dates, PBGC will determine BPD according to a facts-and-circumstances test. Among the facts and circumstances PBGC will consider are: the size of the various contributing plan sponsors; the relative amounts of their minimum required contributions to the plan; the amount of time between bankruptcy petition dates; and the expectations of participants regarding the continuation of the plan.

2. **PPA 2006 Bankruptcy Plan** means a single-employer plan that terminates in a distress or PBGC-initiated termination while bankruptcy proceedings (or proceedings under any similar federal or state law) are pending with respect to at least one of the plan's contributing sponsors if the bankruptcy proceedings were initiated on or after 9/16/06. Contact ▶PPD if the plan's contributing sponsor was the subject, as of the plan's DOPT, of a non-bankruptcy insolvency proceeding under federal or state law (e.g., a receivership, a special mastership, an assignment, or other type of case). For such cases, PPD will seek guidance from OCC regarding whether the federal or state law is similar enough to bankruptcy law for the plan to be a PPA 2006 Bankruptcy Plan. A PPA 2006 Bankruptcy Plan does not include a plan for which the contributing sponsor has filed only under Canadian or other international law even if the foreign filing resembles a US filing under federal bankruptcy or similar state law.

D. PPA 2006 Changes to PBGC Guaranteed Benefits

1. General Rule

For a plan that PBGC determines to be a ▶PPA 2006 bankruptcy plan, PBGC will guarantee only those benefits that meet the requirements for PBGC's guarantee as of ▶BPD. This means that only that portion of the benefit that has accrued and for which the participant has satisfied the conditions of entitlement on or before BPD can be guaranteed. For example, PBGC will not guarantee a benefit in which the participant was 100% vested at ▶DOPT but 0% vested at BPD.

2. Early Retirement

The date a participant is eligible to enter pay status with an early retirement benefit does not change for participants in PPA 2006 bankruptcy plans. However, PBGC will not guarantee early retirement subsidies to which a participant became entitled under the plan after BPD. To determine whether a participant in a PPA 2006 bankruptcy plan is eligible to start or to continue receiving early retirement benefits from PBGC, see **section D.2.a** below. To determine the extent to which PBGC will guarantee the additional value provided by an early retirement benefit or subsidy, see **section D.2.b** below.

a. Eligibility to Receive Early Retirement Benefits

The date a participant is eligible to enter pay status with an early retirement benefit does not change for participants in PPA 2006 bankruptcy plans; eligibility to receive early retirement benefits depends on the conditions that were satisfied under the plan on or before DOPT (not BPD). See PBGC Operating Policy Manual Chapter **5.2-4 Annuity Starting Dates**. This means that a participant or beneficiary the prior plan administrator put into pay status, will remain in pay status after PBGC trustees the plan if the plan's requirements for early retirement were satisfied on or before DOPT. Similarly, a participant who was not receiving a benefit before PBGC trusted the plan but who satisfied the plan's conditions for early retirement on or before DOPT will be eligible to begin receiving benefits at the later of DOPT and the participant's earliest PBGC retirement date. See PBGC Operating Policy Manual Chapter **6.1-2 Earliest PBGC Retirement Date**.

Example 1. A PPA 2006 bankruptcy plan offers 2 early retirement benefits:

- (1) a benefit payable at age 55 reduced 5% per year from normal retirement age (NRA); and
- (2) an unreduced benefit payable with 30 years of service ("30-and-out").

At DOPT, a participant was age 52 with 31 years of service. At BPD, he was age 50 with 29 years of service.

If the participant was not in pay status at DOPT, he can elect to retire after DOPT even if he is not yet age 55 because he satisfied the plan's eligibility conditions for a 30-and-out benefit on or before DOPT.

If the participant was in pay status at DOPT, he will remain in pay status.

For the amount of the participants guaranteed benefit, see **Example 2** below.

b. Guaranteed Amount of Early Retirement Subsidies

PBGC will not guarantee the additional value provided by a subsidized early retirement benefit (or other similar benefits) to which a participant becomes entitled under the plan after BPD.

The portion of the early retirement benefit that PBGC will guarantee (subject to the Title IV limitations described in **section D.4** below) will be equal to the amount which would otherwise be payable by PBGC, had the subsidized early retirement benefit not been available. If no benefit would have otherwise been payable at the annuity starting date (ASD; see **section D.2.a** above), the benefit will be actuarially reduced using the method set forth in **section D** of PBGC Operating Policy Manual Chapter **5.2-6 Benefits Erroneously Paid before Eligibility**.

Example 2. A participant in a PPA 2006 bankruptcy plan was receiving an early retirement benefit at DOPT. The plan offered 2 early retirement benefits:

- (1) a benefit payable at age 55 reduced 5% per year from normal retirement age (NRA); and
- (2) an unreduced benefit payable with 30 years of service ("30-and-out").

Early retirement factors before age 55 are not provided in the plan. At DOPT, a participant was age 52 with 31 years of service. At BPD, he was age 50 with 29 years of service. The participant's vested benefit at DOPT is \$1000.00 per month commencing at NRA (65), but at BPD his vested benefit was only \$950.00. No maximum or phase-in limits apply.

Under prior law, the participants guaranteed benefit would have been \$1000.00. Because the plan is a PPA 2006 bankruptcy plan, the guaranteed benefit is:

\$950.00	(guaranteed accruals stop at BPD instead of DOPT)
x0.5000	(ineligible for "30-and-out"; plan ERF from 65 to 55)
<u>x0.7778</u>	(no plan factor at 52: PBGC ERF at 52 / PBGC ERF at 55 = 0.3500 / 0.4500)
\$369.46	

3. Disability Benefits

PBGC will not guarantee the additional value provided by a disability benefit to which a participant becomes entitled under the plan after BPD. Like early retirement benefits (see [section D.2](#) above), eligibility for entry into pay status, including with disability benefits depends on the conditions that were satisfied under the plan on or before DOPT (not BPD).

To determine the date a participant in a PPA 2006 bankruptcy plan is or became eligible to enter pay status with a disability retirement benefit, see [section D.3.a](#) below. To determine whether a participant receiving an auxiliary disability benefit that has not yet converted to the regular retirement benefit may come out of pay status, see [section D.3.b](#) below. To determine the extent to which PBGC will guarantee the additional value provided by a disability benefit, see [section D.3.c](#) below.

a. Eligibility to Receive Disability Benefits

Eligibility for entry into pay status depends on the conditions that were satisfied under the plan on or before DOPT (not BPD).

Participants in a PPA 2006 bankruptcy plan may have met the plan's eligibility requirements for a disability benefit as a result of a disability that began or is attributable to a disabling event that occurred between BPD and DOPT. See PBGC Operating Policy Manual Chapter [5.9-1 Disability Benefits](#). The disability provisions of a plan may also provide disabled participants with a subsidized benefit payable after the disabling event. For example, a participant may have started receiving a disability benefit after becoming permanently incapacitated between BPD and DOPT, and begun receiving the plan's partially subsidized disability retirement benefit before the plan was trusteeed. In such situations, a participant the prior plan administrator put into pay status before PBGC trusteeed the plan will remain in pay status after PBGC trusteees the plan if the plan's requirements for a disability retirement were satisfied on or before DOPT. Similarly, a participant who was not in pay status when PBGC trusteeed the plan, but satisfied the plan's requirements for a disability retirement on or before DOPT, will be eligible to go into pay status at the ASD described in PBGC Operating Policy Manual Chapter [5.2-4 Annuity Starting Dates](#).

Example 3. A participant in a PPA 2006 bankruptcy plan became disabled after BPD and before DOPT. At DOPT, he is age 45. The plan's disability benefit equals the accrued benefit earned as of the disability date, reduced (but with a subsidized factor) for early commencement. The participant was receiving a benefit at DOPT. He will remain in pay status after the plan is trusteeed. If the participant were not in pay status when the plan was trusteeed, PBGC would allow the participant to enter into pay status.

b. Pre-Conversion Auxiliary Disability Benefits

For a plan disability benefit that

(1) is an auxiliary benefit which has not yet converted to a retirement benefit, as described in [section H.1](#) of PBGC Operating Policy Manual Chapter [5.9-1 Disability Benefits](#); and

(2) is not guaranteed because the participant became entitled to the auxiliary benefit between BPD and DOPT,

PBGC will generally offer the disabled participant the following options:

- Remain in pay status by submitting an application for his regular retirement benefit (including electing a benefit form) as described in [section D.3.c](#) below

or

- Come out of pay status and begin receiving his regular retirement benefit at a later date, based on the plan's retirement eligibility requirements

In either case, PBGC will seek repayment of any resulting benefit overpayments in accordance with PBGC Operating Policy Manual Chapter ***6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery***. This generally means that if the payee comes out of pay, PBGC will seek repayment of any resulting benefit overpayments by recouping from the future retirement benefit payments at no more than 10%.

If it is anticipated that plan assets and PBGC recoveries will cover a substantial portion of the nonguaranteed portion of the auxiliary benefit, contact ►PPD.

For the amount of the participant's guaranteed benefit, see ***Example 4*** below.

c. Guaranteed Amount of Disability Benefits

PBGC will determine whether the additional value provided by a disability benefit is guaranteed by following PBGC Operating Policy Manual Chapter ***5.9-1 Disability Benefits*** and substituting BPD for DOPT. Generally, PBGC will guarantee the additional value provided by a disability benefit in a PPA 2006 bankruptcy plan only if the disability began or is attributable to a disabling event that occurred on or before BPD.

If the disabling event occurred after BPD and on or before DOPT, the portion of the plan's disability benefit that PBGC will guarantee (subject to the Title IV limitations described in ***section D.4*** below) will be equal to the amount that would otherwise be payable by PBGC, had the subsidized disability benefit payable not been available. If no benefit would have otherwise been payable at the ASD (see ***section D.3.a*** above), the benefit will be actuarially reduced using the method set forth in ***section D*** of PBGC Operating Policy Manual Chapter ***5.2-6 Benefits Erroneously Paid before Eligibility***.

Example 4. A participant in a PPA 2006 bankruptcy plan became disabled after BPD and before DOPT. He was age 45 when he started receiving a disability pension from the plan between BPD and DOPT. The plan's disability benefit equals the accrued benefit earned as of the disability date. The plan also provides a benefit payable at age 55 reduced 5% per year from normal retirement age (NRA). When the participant's disability occurred, he was entitled to a vested benefit of \$1000.00 per month but at BPD his vested benefit was only \$950.00. No maximum or phase-in limits apply.

The participant will remain in pay status. Under prior law, the participant's guaranteed benefit would have been \$1000.00. Under PPA 2006, the guaranteed benefit equals \$263.89:

\$950.00	(guaranteed accruals stop at BPD)
x0.5000	(not eligible for disability at BPD)
<u>x0.5556</u>	(no plan factor at 45: PBGC ERF at 45 / PBGC ERF at 55 = 0.2500 / 0.4500)
\$263.89	(guaranteed benefit)

4. Title IV Limitations on Guaranteed Benefits

a. Accrued-at-Normal (AAN) Limitation.

Under the AAN rule, PBGC's guarantee is limited to the amount of a straight life annuity (SLA) commencing at normal retirement age. Before calculating the guaranteed benefit for a plan that is not a PPA 2006 bankruptcy plan, PBGC calculates the benefit under each plan/amendment in the 5 years before DOPT. For each plan/amendment PBGC applies the AAN limitation by determining the dollar amount payable as a straight-life annuity (SLA) commencing at normal retirement age (NRA) using the plan provisions of that plan/amendment. In performing this calculation, PBGC uses vesting and accruals (e.g., based on service, salary) as of DOPT.

In calculating and applying the AAN in PPA 2006 bankruptcy plans for guarantee purposes, PBGC will continue to use this same "amendment by amendment" approach by calculating the benefit under each plan/amendment in the 5 years before BPD and using vesting and accruals (e.g., based on service, salary) as of BPD (not DOPT).

Example 5. BPD is 1/2/08 and DOPT is 1/2/10. The PPA 2006 bankruptcy plan provides a SLA benefit at normal retirement age (NRA) equal to a benefit rate (BR) times years of credited service (YoS). The plan was amended on 1/1/00 (more than 5 years before BPD), 1/1/07 (before BPD) and 1/1/09 (between BPD and DOPT). A participant's BR and YoS are as follows:

Plan	BR	YoS: @BPD	@DOPT
5-yr-old plan (effective 1/1/00)	\$10.00	10	12
1-yr-old plan (effective 1/1/07)	\$15.00	10	12
post-BPD plan (effective 1/1/09)	\$20.00	10	12

PBGC will use credited service, salary, and other relevant factors as of BPD to determine the AAN limits on the 1/1/00 and 1/1/07 benefits, disregarding the benefit increases that result from the later amendment (1/1/09) for determining the guaranteed benefit.

To determine the AAN limit on the benefit under each amendment, PBGC will use the 5-year-old benefit (counting from BPD) determined under the plan provisions in effect prior to the 2007 amendment. The AAN limit for the 5-year-old plan is \$100.00:

$$\begin{array}{rcl} \$10.0 & \text{(BR under 5-yr-old plan)} \\ \times 10 & \text{(YoS at BPD)} \\ \$100.00 & \text{(plan benefit payable as SLA at NRA under 5-yr-old plan)} \end{array}$$

The provisions in effect at the time of the 2007 amendment will determine the 1-year-old benefit (counting from BPD) for the AAN limit. The AAN limit for the 1-year-old plan is \$150.00:

$$\begin{array}{rcl} \$15.00 & \text{(BR under 1-yr-old plan)} \\ \times 10 & \text{(YoS at BPD)} \\ \$150.00 & \text{(plan benefit payable as SLA at NRA under 1-yr-old plan)} \end{array}$$

b. Maximum Guaranteeable Benefit (MGB) and Disability Maximum.

To calculate and apply the MGB in PPA 2006 bankruptcy plans, PBGC generally will treat BPD as DOPT. This means that to determine the maximum insurance limit (MIL), PBGC will use the calendar year in which BPD (not DOPT) occurs to establish (1) the five-year period of the participant's adjusted gross income (see ERISA section 4022(b)(3)(A)), and (2) the maximum amount for a SLA payable at age 65 (see ERISA section 4022(b)(3)(B)). The lesser of these two amounts is the MIL.

To determine the MGB, PBGC actuarially adjusts the MIL for form and age by multiplying the MIL by (1) an early/late retirement factor (ERF/LRF) and (2) a benefit form conversion factor (BFCF). (For certain disabled participants, PBGC actuarially adjusts the MIL only for form. See [section D](#) of PBGC Operating Policy Manual Chapter **5.9-1 Disability Benefit.**)

If the participant is alive on DOPT:

- The ERF/LRF will be calculated using the participant's age at the later of BPD and ASD (or expected retirement date (XRD) if applicable).

If the participant is not alive on DOPT and a benefit is payable to a beneficiary at DOPT:

- The ERF/LRF will be calculated using the beneficiary's age at the later of BPD and ASD (where the ASD is the participant's ASD or, if a pre-retirement survivor annuity is payable, the beneficiary's ASD).

The BFCF will be calculated based on the form of the benefit being paid, or expected to be paid, at the later of DOPT (not BPD) and ASD (or XRD if applicable). However, if age is used in the calculation of the BFCF (e.g., the age-difference factor for a joint-life annuity), the BFCF will be based on the age(s) at the later of BPD and ASD (or XRD if applicable). Similarly, if the form of benefit includes a period-certain feature, the BFCF will be based on the number of months remaining at the later of BPD and ASD.

If the benefit is non-level (e.g., a step-down annuity), PBGC will levelize the plan benefit and compare the leveled benefit to the MGB. The factors used to levelize the plan benefit will be based on (1) the number of years additional benefits are payable at the later of the ASD (or XRD if applicable) and BPD (not DOPT) and (2) the age of the participant (last birthday) at the later of the ASD (or XRD if applicable) and BPD (not DOPT).

Example 6. BPD is 7/12/07 and DOPT is 7/12/08. Participant A (age 64 at BPD) is receiving the plan's 10-year certain-and-continuous (10C&C) annuity. Forty-eight months remain in the certain period at BPD. The MGB will equal \$3759.53:

$$\begin{array}{rcl} \$4125.00 & \text{(MIL at BPD)} \\ \times 0.9300 & \text{(ERF at age 64)} \\ \times 0.9800 & \text{(48 months remaining in the certain period at BPD)} \\ \$3759.53 & \text{(MGB payable to 64-year-old with 48 months certain)} \end{array}$$

Participant B has been receiving a J&50%S since 1/1/2007 (before BPD). The participant's spouse was 64 at BPD. The participant dies 12/15/07 (between BPD and DOPT). The spouse's survivor annuity begins on 1/1/08.

The form of the benefit in pay status at DOPT is the survivor's SLA, so the form of the MGB is SLA. The maximum benefit PBGC will guarantee is \$3836.25:

\$4125.00	(MIL at BPD)
<u>x 0.9300</u>	(ERF at age 64)
\$3836.25	(MGB payable to 64-year-old as SLA)

Participant C had a Social Security leveling option payable until age 65. He was 62 at BPD and 63 at DOPT. The plan benefit (payable as a SLA) is \$5000.00 per month until age 65 and \$4000.00 thereafter. The leveled step-down annuity equals \$4242.00:

\$242.00	(leveled at age 62 with 3 years = \$1000.00 x 0.242)
<u>+\$4000.00</u>	(plan benefit payable for life)
\$4242.00	(leveled plan benefit equivalent)

The MGB equals \$3258.75:

\$4125.00	(MIL at BPD)
<u>x 0.7900</u>	(ERF at age 62)
\$3258.75	(MGB payable to 62-year-old as SLA)

PBGC will guarantee 76.82% ($= \$3258.75 / \4242.00) of the participant's non-level benefit--i.e., \$3841.00 until age 65 and \$3072.80 thereafter:

\$5000.00	(benefit participant is receiving at DOPT)
<u>x 0.7682</u>	(guarantee ratio)
\$3841.00	(guaranteed benefit payable from age 64 to 65)
\$4000.00	(benefit participant is receiving at DOPT)
<u>x 0.7682</u>	(guarantee ratio)
\$3072.80	(guaranteed benefit payable at age 65)

c. Phase-In Limitation

PBGC will apply the phase-in limitation from BPD instead of DOPT. This means that to determine the number of years a benefit increase has been in effect, PBGC will count the number of full years (complete 12-month periods) ending on or before BPD during which such benefit increase was in effect.

As with plans that are not PPA 2006 bankruptcy plans, to determine the guaranteed benefit, multiple benefit increases within any 12-month period are aggregated and treated as one benefit increase.

For participants (and beneficiaries) receiving a benefit at DOPT, PBGC will apply the phase-in limitation using the form of benefit that is being paid at DOPT (not necessarily the form of the benefit the participant was receiving at BPD).

Example 7. BPD is 10/2/07 and DOPT is 10/2/09. A PPA 2006 bankruptcy plan provides a SLA benefit at normal retirement age (NRA) equal to a benefit rate times years of credited service (YoS). Until the 3/1/06 plan amendment increased the benefit rate to \$25.00, the benefit rate was \$20.00. A participant had 10 YoS at BPD and 12 YoS at DOPT.

The plan's benefit payable to the participant at NRA as a SLA is \$300.00 (12 YoS x \$25.00). PBGC will phase in the benefit increase at \$20/20% because the amendment was in effect only 1 full year before BPD, and will guarantee \$220.00:

\$250.00	(BPD-1 benefit with YoS until BPD = \$25.00 x 10 YoS)
<u>-\$200.00</u>	(BPD-5 benefit with YoS until BPD = \$20.00 x 10 YoS)
\$50.00	(increase in plan benefit)
\$20.00	(guaranteed portion of the increase)
<u>+\$200.00</u>	(BPD-5 benefit)
\$220.00	(guaranteed benefit)

d. Majority Owner Determination and Limitation

To determine whether a participant is a majority owner for the purposes of the majority owner limitation, PBGC will use the 60-month period ending on DOPT (not BPD). To determine the benefit PBGC will guarantee for a majority

owner, PBGC will substitute BPD for DOPT in the "x/10" phase-in ratio.

Example. BPD is 3/2/07 and DOPT is 5/12/09. The PPA 2006 bankruptcy plan was adopted in June 1999, with an effective date of 2/1/00. A participant owned 60% of the capital interest of one of the plan's contributing sponsors from May 2004 until June 2005.

PBGC will deem the participant a majority owner because he held a majority interest of a contributing sponsor within 60 months of DOPT. As the plan had been in effect for less than 10 years before BPD, PBGC will apply the majority owner phase-in to the participant's benefit. The majority owner phase-in ratio is 7/10 because the later of the effective date and adoption date of the plan is 2/1/00, which is 7 full years before BPD.

E. PPA 2006 Changes to Allocation of Plan Assets

1. Benefits Assigned to PC3.

PBGC will assign to ►PC3 those benefits that were in pay status or could have been in pay status at BPD-3, taking into account generally only the lowest benefits that were included in the provisions of the plan at BPD-5. PBGC will calculate benefits in PC3 based on vesting and the accrued benefit amount as of BPD-3. See PBGC Operating Policy Manual Chapter [4.2-1 Allocation of Assets – Priority Category 3](#).

2. Benefits Assigned to PC4.

The "gross" benefits in a priority category are the benefits PBGC assigns to that priority category; the "net" benefits in a priority category include gross benefits in that category less the benefits PBGC assigns to higher (i.e., lower numbered) priority categories. For example, this means that net ►PC4 benefits are the gross PC4 benefits less those benefits PBGC assigns to ►PC2 and PC3.

PBGC will include in gross PC4 those benefits that were accrued and nonforfeitable as of BPD (instead of DOPT) after reductions for the ►AAN, ►MIL and the non-majority owner phase-in limitations as described above. Gross PC4 benefits include benefits that would be guaranteed but for the majority owner and aggregate maximum limitations (see [section F.6](#) below).

3. Basic-Type Benefits.

For PPA 2006 bankruptcy plans, the category of basic-type benefits is expanded to include those benefits not guaranteed solely because they accrued or became nonforfeitable, or the participant became entitled to them, between ►BPD and ►DOPT.

For the purpose of separating basic-type benefits from nonbasic-type benefits in the allocation of assets to priority categories, PBGC will set a single AAN limit to be the dollar amount payable as a SLA commencing at NRA under the provisions of the plan in effect at DOPT (not BPD).

F. Determinations Not Directly Affected by Bankruptcy

1. Expected Retirement Age (XRA)

PBGC determines XRA by using Table I and Tables II-A, II-B, and II-C in CFR section 4044 Appendix D. Table I uses the guaranteed benefit to determine whether Table II-A, II-B or II-C is used.

PBGC will use the guaranteed benefit at BPD (not DOPT) in Table I. PBGC will determine XRA using the participant's earliest and unreduced retirement ages at DOPT (not BPD) in Table II-A, II-B or II-C.

2. Valuation of Benefits

PBGC will value all liabilities, including those in PC3, as of DOPT (not BPD). See PBGC Operating Policy Manual Chapter [4.2-1 Allocation of Assets - Priority Category 3](#).

3. Valuation Data

PBGC will continue to use participant and beneficiary data (regarding marital, health and death status, etc.) as of DOPT for purposes of valuation of benefit.

4. Statutory Hybrid Plans (including Cash Balance Plans)

In a statutory hybrid plan, including a cash balance plan, PBGC will fix the plan's variable rates for accumulating interest to a hypothetical account balance and converting the balance to an annuity, as well as variable mortality rates, by using DOPT (not BPD).

5. Overpayment Accrual Commencement Date (OACD)

For purposes of recoupment and recovery, PBGC will not treat payments made between BPD and DOPT as overpayments. Therefore, the plan's BPD does not affect the OACD. See PBGC Operating Policy Manual Chapter **6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**.

6. Aggregate Limit

PBGC will apply the Aggregate Limit (see ERISA section 4022B) by using the participant's MGB as of DOPT (not BPD) of the latest-terminating plan. See PBGC Operating Policy Manual Chapter **5.13-1 Aggregate Limit on Benefits Payable from PBGC Funds**.

7. 4022(c) Benefits

One element in determining 4022(c) benefits is the amount of a plan's unfunded nonguaranteed benefits (UNGB)—i.e., benefits that are neither guaranteed by PBGC nor funded by the plan's assets. See PBGC Operating Policy Manual Chapter **6.7-1**

4022(c) Amounts. Because guaranteed benefits and PC3 benefits for a PPA 2006 bankruptcy plan will be different than under prior law (see **sections D** and **E** above), the amount of UNGB will be affected. However, PBGC will continue to value UNGB as of DOPT.

Another element for determining 4022(c) benefits is the applicable recovery ratio. The recovery ratio's numerator (the value of PBGC's recoveries for its claims under sections 4062(b), 4063 and 4064) and the denominator (the amount of employer liability under sections 4062(b), 4063 and 4064) will continue to be based on amounts as of DOPT.

8. Benefits Assigned to PC5

PBGC will separate PC5 benefits into subcategories based on whether the nonforfeitable pension benefits would have been payable under the plan provisions in effect five years before DOPT (not BPD) and under subsequent plan amendments. This means that PPA 2006 indirectly affects the benefits PBGC will assign to net PC5 because the guaranteed benefit will depend on BPD (not DOPT). However, PPA 2006 does not affect the benefits PBGC will assign to gross PC5.

Example 9. BPD is 10/2/07 and DOPT is 10/2/09. A PPA 2006 bankruptcy plan provides a SLA benefit at NRA equal to a benefit rate (BR) times years of credited service (YoS). The plan had the following benefit rates:

Amendment Date	Provisions in Effect		BR
9/30/02	BPD-5	DOPT-7	\$20.00
9/30/04	BPD-3	DOPT-5	\$25.00
9/30/06	BPD-1	DOPT-3	\$30.00
9/30/08	BPD+1	DOPT-1	\$35.00

A participant (not eligible for benefits in PC3) accrued 28 YoS at BPD and 30 YoS at DOPT. The plan benefit is \$1050.00 (= \$35.00 x 30 YoS). PBGC will guarantee \$672.00:

$$\begin{aligned}
 & \$560.00 && (\text{BPD-5 benefit with YoS until BPD} = \$20.00 \times 28 \text{ YoS}) \\
 & + \$84.00 && (\text{guaranteed portion of the increase}) \\
 & + \$28.00 && (\text{guaranteed portion of the increase}) \\
 & \$672.00 && (\text{guaranteed benefit})
 \end{aligned}$$

The non-guaranteed benefits in PC5 are prioritized according to the oldest provisions, using accruals (service, salary, etc.) at DOPT. Thus, layer PC5a has priority in the asset allocation over layer PC5b, etc.:

Layer	Provisions	Gross	Net
PC5a	DOPT-5	$\$750.00 = \$25.00 \times 30 \text{ YoS}$	$\$78.00 = \$750.00 - \$672.00$
PC5b	DOPT-3	$\$900.00 = \$30.00 \times 30 \text{ YoS}$	$\$150.00 = \$900.00 - \$750.00$
PC5c	DOPT-1	$\$1050.00 = \$35.00 \times 30 \text{ YoS}$	$\$150.00 = \$1050.00 - \$900.00$

Concurrence, Endorsement, and Approval

Policy 5.14-1 Benefits in PPA 2006 Bankruptcy Plans, Endorsement, and Approval

Concurrence	Initials	Date
-------------	----------	------

ASD: Scott Young, Manager	S.Y.	03/05/2014
PPD: Susan Strassman, Manager	S.S	03/05/2014
OCC: Joseph Krettek, Assistant Chief Counsel	J.K.	03/05/2014
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	03/05/2014
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	03/13/2014
Chief Financial Officer: Patricia Kelly	P.K.	03/18/2014
Approval		
Chief of Benefits Administration and Director of the Office of Benefits Administration: Philip R. Langham	P.R.L.	03/18/2014
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on Transmittal 2014-07.</i>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
 Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_14_1_2nd.htm
 (03/27/2014).

Previous Editions

[5.14-1 Benefits in PPA 2006 Bankruptcy Plans 1st Ed. - Outdated](#)

[Top of Page](#)

5.14-2 §436 Benefit Limitations Under PPA 2006

Edition	1st Edition
Effective Date	01/01/2008
Issue Date	08/30/2012
Transmittal	Transmittal 2012-05
Contact	ASK PPD

In this policy

- A. Introduction
- B. Scope and Effective Date
- C. General Policy
- D. PBGC Treatment of Certain §436 Limitations
- E. PBGC Application of IRC §436 before the Effective Date of 26 CFR §1.436-1

A. Introduction

The ► [Pension Protection Act of 2006](#) (PPA 2006), as amended by the ► [Worker, Retiree, and Employer Recovery Act of 2008](#) (WRERA) and the ► [Pension Relief Act of 2010](#) (Pension Relief Act), added section 436, Funding-Based Limits on Benefits and Benefit Accruals under Single-Employer Plans, to the ► [Internal Revenue Code](#) (IRC). Section 436 sets forth several limitations on the accrual and payment of benefits under an underfunded plan. These benefit limitations apply when a plan's ► [adjusted funding target attainment percentage](#) (AFTAP) is less than the percentages prescribed in the statute. The §436 limitations are the:

- §436(b) limitation on ► [unpredictable contingent event benefits](#) (UCEB). A UCEB is not payable if the AFTAP is less than 60%, or would be less than 60% taking into account the UCEB.
- §436(c) limitation on plan amendments increasing liability for benefits. Certain plan amendments increasing plan liabilities may not take effect if the AFTAP is less than 80%, or would be less than 80% taking into account the amendment.
- §436(d) limitations on ► [prohibited payments](#). A prohibited payment cannot be made or the payment is restricted if the AFTAP is less than 80%.
 - ◆ Under §436(d)(1), such payments cannot be made if the AFTAP is less than 60%.
 - ◆ Under §436(d)(2), such payments cannot be made if the plan sponsor is in bankruptcy and an AFTAP of 100% (or more) has not been certified for the current plan year.
 - ◆ Under §436(d)(3), if the AFTAP is 60% or more but less than 80%, such payments are restricted, meaning, prohibited payments can be paid only to the extent that the amount of the prohibited payment does not exceed the lesser of:
 - 1) 50% of the present value of the optional benefit form that is or includes a prohibited payment, or
 - 2) 100% of the present value of the PBGC ► [maximum benefit guarantee](#) amount.

Benefit payments limited under §436(d)(3) may be split and paid in an unrestricted portion (i.e., 50% of the amount payable under the optional benefit form) and a restricted portion (the remaining benefit) payable in any optional benefit form under the plan that is not a prohibited payment.

- §436(e) limitation on benefit accruals. Benefit accruals cease under a plan if the AFTAP is less than 60%.

For most plans, section 436 applies to plan years beginning on or after January 1, 2008 (i.e., the 2008 plan year). The applicable Internal Revenue regulations, 26 CFR §1.436-1, are effective for plan years beginning on or after January 1, 2010 (i.e., the 2010 plan year).

- Before the regulations became effective, plans could comply with IRC §436 through a reasonable interpretation of the statute. Plans also could comply with section 436 by relying on the proposed regulations, 74 FR 53004 (August 31, 2007), provided such reliance was reasonable and consistent.
- For certain plans maintained pursuant to a ► [collective bargaining agreement](#) (CBA) ratified before January 1, 2008, application of the §436 limitations was deferred until the earlier of (1) the beginning of the plan year following the expiration of the CBA, or (2) the beginning of the 2010 plan year.

Under 26 CFR §1.436-1(a)(3)(ii), any §436 limitation in effect immediately before the termination of a plan does not cease to apply after termination except for certain types of prohibited payments needed to carry out the termination.

B. Scope and Effective Date

The rules in IRC §436 and 26 CFR §1.436-1 are complex. While summarily described within this ► [policy](#), the policy does not purport to restate these rules in full. The full texts of the statute and regulations are available at <http://www.law.cornell.edu/uscode/text/26/436> and <http://www.gpo.gov/fdsys/pkg/FR-2009-10-15/pdf/E9-24284.pdf>, respectively.

The purpose of this policy is to describe the rules PBGC follows in applying IRC §436 and 26 CFR §1.436-1 to PBGC's calculation, valuation, and payment of pension benefits in a ► [PBGC-trusted plan](#). For the purposes of this policy, references herein to IRC §436, section 436, and §436 include 26 CFR §1.436-1, the applicable rules under ► [WRERA](#) and the ► [Pension Relief Act](#), and guidance provided by the Internal Revenue Service unless otherwise specified. This policy is effective January 1, 2008, and applies to trusted plans with a termination date (DOPT) on or after the first day of the first plan year beginning on or after January 1, 2008.

C. General Policy

PBGC applies any ► [§436 limitation](#) it concludes was in effect prior to ► [DOPT](#) in calculating, valuing, and paying benefits except as provided in this ► [policy](#). Benefits that were limited under ► [§436\(b\)](#), ► [§436\(c\)](#), or ► [§436\(e\)](#) are not plan benefits, and therefore, are not payable by PBGC. In addition, PBGC does not pay a benefit in the form of a ► [prohibited payment](#) limited under ► [§436\(d\)](#) except as provided in this and other PBGC policy.

1. Acceptance of Pre-DOTR Plan Administration

PBGC generally will accept the ► [plan administrator's](#) application of IRC §436 in calculating and paying benefits, absent convincing evidence that the plan administrator failed to properly follow IRC §436.

- a. **Corrections.** If PBGC concludes that a plan administrator failed to properly follow IRC §436, PBGC will re-calculate, value, and/or pay an affected ► [participant's](#) or other individual's benefit in accordance with [section C.2. PBGC Application of IRC §436](#).
- b. **Prohibited payments made by plan administrator.** If a plan administrator made a prohibited payment prior to trusteeship during a period in which a §436(d) limitation applied, PBGC generally will not change the benefit form or pursue repayment of the benefit solely because of the §436(d) limitation. However, PBGC may otherwise re-calculate, value and/or pay the benefit in accordance with its rules on the calculation, valuation, and payment of benefits.

2. PBGC Application of IRC §436

PBGC follows IRC §436 and relies on available plan documents and relevant information in other plan records (§436-related documentation) as further described below in this [section C.2.](#) to evaluate whether a §436 limitation was in effect as of DOPT, and if required, to correct benefits as provided in [section C.1.a](#). For additional rules that may apply to plan years prior to the effective date of 26 CFR §1.436-1 (i.e., the 2008 and 2009 plan years), see [section E. PBGC Application of IRC §436 Before the Effective Date of 26 CFR §1.436-1](#).

- a. **Evidence suggests plan administrator did not correctly follow IRC §436.** If evidence suggests that the plan administrator did not correctly follow IRC §436, for instance, by not obtaining required ► [AFTAP](#) certifications and/or calculations, PBGC will evaluate the plan's available AFTAP certifications and calculations, if any, and other §436-related documentation to determine (1) whether a presumption of underfunding under §436(h) applied, (2) whether a §436 limitation was applicable, (3) the period of limitation, if any; and (4) the effect, if any, on benefits provided under the plan.
- b. **AFTAP certifications and/or calculations.** Beginning with the 2010 plan year, AFTAP certifications and calculations generally must comply with the rules in §1.436-1(h)(4) or as otherwise provided in §1.436-1 to be acceptable to PBGC (for AFTAP certifications and/or calculations prior to the 2010 plan year, see [section E.](#)).
- c. **PBGC unable to obtain a copy of an AFTAP certification or calculation.** If PBGC is unable to obtain a copy of an AFTAP certification or calculation (or for plan years 2008 and 2009, acceptable documentation of the AFTAP as provided in [section E.](#)) that materially complies with the requirements described in §1.436-1, PBGC will not calculate or certify a plan's AFTAP for any time period and will apply the presumption of underfunding rules provided under §436(h).
- d. **AFTAP certification after DOPT.** IRC §436 provides that under certain conditions benefits limited under §436(b), §436(c), or §436(e) earlier in a plan year must retroactively be paid or permitted to take effect if the limitation ends later in that plan year, for instance, because the plan's actuary certifies an AFTAP that ends the limitation or the plan

sponsor makes a contribution to the plan to specifically terminate the limitation (an AFTAP generally must be certified or recertified at the time the contribution is made).

When necessary, for purposes of evaluating whether benefits were limited under §436(b), §436(c), or §436(e), PBGC will use an AFTAP certified (or for plan years 2008 and 2009, acceptable documentation of the AFTAP as provided in **section E.**) after DOPT, if available and otherwise acceptable to PBGC, in determining the effect of IRC §436 for periods prior to DOPT.

D. PBGC Treatment of Certain §436 Limitations

Application of a ▶§436(b), ▶§436(c), or ▶§436(e) limitation before ▶DOPT primarily affects whether a benefit is payable and the calculation and valuation of a benefit. A ▶§436(d) limitation in effect before DOPT may affect the form in which a benefit is paid after DOPT and, in some situations, the amount of the benefit payable by PBGC. PBGC treats the §436 limitations as described below in this section D. in establishing whether a ▶§436 limitation was in effect as of DOPT and, if required under section **C.1.a.**, in correcting benefits. For additional rules applicable to plan years before 2010, see section **E. PBGC Application of IRC §436 Before the Effective Date of 26 CFR §1.436-1.**

1. Unpredictable Contingent Event Benefits

Under §1.436-1(a), if a ▶UCEB with respect to an event that occurred earlier in a plan year could not be paid due to a §436(b) limitation but becomes payable later in the plan year because the limitation no longer applies, the UCEB must be paid retroactively for the period that the UCEB was otherwise payable under the plan.

- a. While the retroactive payment of a UCEB during the plan year, as required under §1.436-1(a), is not in itself an amendment subject to ▶phase-in, PBGC will apply its phase-in rules to the UCEB, including treating it as a plan amendment adopted as of the date of the event (see ERISA §4022(b)(8), which is applicable to UCEBs that become payable after July 26, 2005).
- b. Under §1.436-1(a), if the UCEB does not become payable during a plan year because of a §436(b) limitation, the plan is treated as if it did not provide for those benefits. The plan may amend to restore all or part of the UCEB that were limited, subject to the §436(c) limitation. Such an amendment is subject to phase-in.

2. Amendments Increasing Benefit Liabilities

Under §1.436-1(a), if an amendment could not take effect as of its effective date earlier in the plan year due to a §436(c) limitation, but is permitted to take effect later in that year because the §436(c) limitation no longer applies, the amendment must take effect as of the first day of the plan year or, if later, the original effective date.

While the retroactive implementation of an amendment during the plan year, as required under §1.436-1(a), is not in itself an amendment for PBGC purposes, PBGC will apply its normal phase-in rules to the amendment, with the phase-in period beginning on the later of its adoption or effective date.

3. Prohibited Payments

- a. PBGC will not honor an unpaid plan application for a ▶prohibited payment if any of the §436(d) limitations were in effect as of DOPT, regardless of the application filing date or ▶annuity starting date, unless PBGC has identified the prohibited payment as being necessary to carry out termination of the plan. Prohibited payments that PBGC has identified as necessary to carry out termination of the plan include, but are not limited to, a withdrawal of ▶accumulated mandatory employee contributions as provided in PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**; and ▶non-de minimis lump sums payable to ▶estates as provided in PBGC Policy **8.6-1 Payments to Beneficiaries**.
- b. PBGC will not permit a payee who had an annuity starting date or benefit commencement date during a period in which a §436(d) limitation was in effect to make a new benefit form election because the limitation ended, even if the plan would have provided a new election or a new election was otherwise permissible under IRC §436.
- c. Under the §436(d)(3) limitation (i.e., the AFTAP is equal to or greater than 60% but less than 80%), a prohibited payment may be paid in restricted and unrestricted portions ('bifurcated'). If a payee was paid the unrestricted portion of the benefit, for example, in a partial ▶lump-sum, and the restricted portion of the benefit (i.e., the ▶residual benefit) has not been paid, PBGC pays the residual benefit as of DOPT as follows:
 - If the ▶lump-sum value of the residual benefit is ▶de minimis, PBGC will pay the residual benefit as provided in PBGC Policy **5.4-9 Lump-Sum Benefit Payments**.
 - If the lump-sum value of the residual benefit is ▶non-de minimis, PBGC pays the residual benefit in accordance with PBGC Policies **5.2-4 Annuity Starting Dates** and **5.4-7 Annuity Benefit Forms**.

4. Benefit accruals

Under §1.436-1(a), benefit accruals that ceased under a §436(e) limitation automatically resume at the end of the cessation period unless the plan provides otherwise. In addition, accruals that were limited earlier in a plan year must, under certain conditions, be restored later in that plan year. Plans may provide for the restoration of accruals limited under §436(e), that are not required to be restored, by automatic restoration (i.e., a pre-existing plan provision) or amending to specifically restore the accruals.

Resumption of benefit accruals means that benefits begin to accrue again as of the date that the §436(e) limitation ends.

Restoration of benefit accruals means that benefits that were limited under a §436(e) limitation are treated as not having been limited and are reinstated.

- a. **Automatic resumption of accruals.** Automatic resumption of accruals as provided under §1.436-1(a) will not be treated as an amendment for phase-in purposes. Note that resumption of the accruals is not an amendment subject to the §436(c) limitation.
- b. **Resumption of accruals by amendment.** If a plan provided that the accruals would not resume after a §436(e) limitation ended, but later is amended to permit resumption of accruals, the amendment is subject to phase-in. Note that the amendment is also subject to the §436(c) limitation.
- c. **Required restoration of accruals.** Restoration during a plan year of benefit accruals that were limited under §436(e) earlier in that year, when required under IRC §436 (i.e., because the plan sponsor makes an additional contribution and the plan's ►enrolled actuary certifies that the plan's AFTAP for that plan year is 60% or more, taking account of the restored accruals), is not an amendment for PBGC purposes and is not subject to phase-in.
- d. **Automatic restoration of accruals.** If the plan provides for automatic restoration of limited accruals under a pre-existing plan provision and the cessation period was:
 - Not more than 12 months, the restoration is not an amendment for PBGC purposes and is not subject to phase-in. Note that the restoration also is not an amendment subject to the §436(c) limitation.
 - More than 12 months, the restoration is an amendment for PBGC purposes, which is subject to phase-in. Note that the restoration also is an amendment subject to the §436(c) limitation.
- e. **Amendment to restore accruals.** If the plan did not provide for automatic restoration of accruals under a pre-existing plan provision and is amended to restore limited accruals, the amendment is subject to phase-in regardless of the length of the cessation period. Note that the amendment is also subject to the §436(c) limitation.

E. PBGC Application of IRC §436 before the Effective Date of 26 CFR §1.436-1

For plan years 2008 and 2009, plans could comply with IRC §436 through a reasonable interpretation of the statute. Although not required, plans could also rely on the Internal Revenue proposed regulations, 74 FR 53004 (August 31, 2007), if that reliance was reasonable and consistent. The final regulations, 26 CFR §1.436-1, became effective as of the beginning of the plan's 2010 plan year.

1. Evaluations Prior to the 2010 Plan Year

For the 2008 and 2009 plan years, PBGC performs a facts-and-circumstances evaluation using available §436-related documentation to establish whether a ►§436 limitation was in effect as of ►DOPT and, if required, to correct benefits as provided in **section C.1.a.**

- a. PBGC follows IRC §436, ►WRERA, the ►Pension Relief Act, and guidance received from the Internal Revenue Service in performing this evaluation.
- b. In addition, PBGC applies the proposed regulations, 74 FR 53004 (August 31, 2007), in performing this evaluation if documentation clearly demonstrates that the plan consistently followed the proposed regulations.

Example: A plan terminated on July 15, 2011. The first day of the plan's 2008 plan year was May 1, 2008.

- The statutory effective date of section 436 for this plan was May 1, 2008, and the plan had to follow the statute. Although not required, the plan could also follow the proposed regulations.
- The effective date of the regulations for the plan was May 1, 2010, and the plan had to follow the regulations beginning May 1, 2010.

In evaluating whether a §436 limitation was in effect as of DOPT and, if required, in correcting benefits as provided in **section C.1.a.**, PBGC applies the rules in:

- **Section C.2.** and **section E.**, if warranted, for the period May 1, 2008 through April 30, 2010.
- **Section C.2.** for the period May 1, 2010 through DOPT.

2. Transition Rule for 2008 Plan Year

Based on guidance from the Internal Revenue Service, PBGC will not apply the ▶§436(b), ▶§436(c), ▶§436(d)(1) or ▶§436(d)(3), and ▶§436(e) limitations before the earlier of (1) the certification date of the 2007 or 2008 ▶AFTAP or (2) the first day of the 10th month of the 2008 plan year.

- PBGC will apply the ▶§436(d)(2) limitation during any period in the 2008 plan year that the plan sponsor was in bankruptcy and did not have a certified AFTAP for the 2008 plan year of 100% or greater.
- If an AFTAP for the 2008 plan year was not certified timely, PBGC applies the presumption of underfunding under IRC §436(h)(2).

- Plans were not required to obtain or apply an AFTAP for the 2007 plan year, but could rely on a certification of the 2007 AFTAP until the earlier of the certification of the 2008 AFTAP or the first day of the 10th month of the 2008 plan year. However, an AFTAP for the 2007 plan year could not be relied upon for determining if the §436(d)(2) limitation applied.
- An AFTAP certification for a plan year is timely if it is certified before the first day of the 10th month of that plan year.

3. Documentation of AFTAP Prior to 2010 Plan Year

Prior to the 2010 plan year, PBGC generally will accept any document that is signed and dated by an ▶enrolled actuary which purports or otherwise appears to be a certification of an AFTAP unless the document specifically states that it is not a certification of the AFTAP. PBGC may accept other documentation in establishing an applicable AFTAP for the 2008 and 2009 plan years such as a plan's ▶actuarial valuation report ('AVR') or ▶Form 5500.

4. Treatment at End of Limitation Period

Unless there is evidence to the contrary, PBGC will assume that if a §436(b), §436(c), or §436(e) limitation ended, the plan would have:

- Retroactively paid a ▶UCEB as described in **section D.1**.
- Permitted an amendment increasing benefit liabilities to take effect as of the beginning of the applicable plan year, or if later during that year, its original effective date as described in **section D.2**.
- Resumed and restored benefit accruals as described in **section D.4**.

5. Restoration of UCEB

For plan years 2008 and 2009, absent a plan amendment restoring a UCEB that was limited under a §436(b) limitation, PBGC will assume that a plan did not intend to restore a UCEB after the §436(b) limitation ended, and therefore, will not restore the UCEB.

6. Restoration of Accruals After §436(e) Limitation Ends

Unless there is evidence to the contrary, and provided the applicable AFTAP was equal to or more than 60%, PBGC will assume that a plan would have restored benefit accruals that were limited under §436(e) for plan years 2008 and/or 2009 after the §436(e) limitation ended as follows:

- For the 2008 plan year, accruals will be restored based on a 2008 or 2009 AFTAP certification of 60% or more, whether timely or not.
- For the 2009 plan year, accruals will be restored based on a 2009 AFTAP or 2008 AFTAP (e.g., the 2008 AFTAP was certified in 2009, and/or, under WRERA, the 2008 AFTAP is used to determine if a §436(e) limitation applied for 2009) certification of 60% or more, whether timely or not.

An AFTAP certification for a plan year is timely if it is certified before the first day of the 10th month of that plan year.

[Top of Page](#)

5.14-3 Plant Shutdown and Other Unpredictable Contingent Event Benefits

Edition	1st Edition
Issue Date	08/28/2014
Transmittal	Transmittal 2014-08
Signed Policy	5.14-3 Plant Shutdown and Other Unpredictable Contingent Event Benefits
Contact	ASK PPD

In this policy

- A. Background
 - B. Scope and Effective Date
 - C. Definitions
 - D. Policy Statement
- Concurrence, Endorsement, and Approval

A. Background

An ▶unpredictable contingent event benefit (UCEB) is any benefit or benefit increase that becomes payable as a result of an unpredictable contingent event (UCE), such as a plant shutdown, permanent layoff, or other reduction in force. UCEBs typically trigger payment of the full pension to a ▶participant, without any reduction for age, starting earlier than an unreduced pension would otherwise be payable. Because a ▶plan sponsor is not required to fund a UCEB until after the UCE occurs, UCEBs have resulted in significant losses to the pension insurance program.

Before enactment of the ▶Pension Protection Act of 2006 (PPA 2006), PBGC generally guaranteed a UCEB like any other plan benefit, phasing in any benefit increase from the later of the adoption date of the plan provision creating the UCEB and the effective date of the UCEB. PPA 2006 amended ERISA to require that PBGC phase in the UCEB as if the adoption date of the plan provision creating the UCEB was the date the UCE occurred. This means that PBGC phases in a UCEB from the latest of the adoption date of the applicable plan provision, the effective date of the UCEB, and the date the UCE occurred. PBGC has incorporated these changes into PBGC Reg. §4022.2 (definitions of UCE and UCEB) and §4022.27 (phase-in of guarantee of UCEBs). See [79 Fed Reg. 25667 \(May 6, 2014\)](#).

PPA 2006 also added section 436(b) of the Internal Revenue Code (Code) to address UCEBs. Under section 436(b), payment of UCEBs is prohibited if the plan is less than 60% funded for the plan year in which the UCE occurs. A UCEB that is restricted at plan termination is not a benefit under the plan. (See PBGC Policy [5.14-2 § 436 Limitations Under PPA 2006](#).)

B. Scope and Effective Date

This ▶policy applies to single-employer trustee plans and addresses ▶UCEBs that become payable as a result of a UCE occurring after July 26, 2005. **section D.4** below is effective as of January 1, 2008, and covers only trustee plans with a ▶DOPT during or after the first plan year beginning on or after January 1, 2008.

C. Definitions

1. **Unpredictable Contingent Event (UCE)** means a plant shutdown or similar event, or any event triggering benefit entitlement other than the attainment of any age, the performance of service, the receipt of compensation, the occurrence of death, or the occurrence of disability. Examples of UCEs are the full or partial closing of a plant or other facility, as well as a permanent layoff or workforce reduction. (Permanent layoffs also include layoffs during which a laid-off employee continues to earn credited service ("creep-type" layoff) for a specified period of time (for example, two years), after which the layoff is deemed permanent, or until some further UCE such as a declaration by the employer that the ▶participant's return to work is unlikely or that suitable work in the employee's specified area will not be found.)
2. **Unpredictable Contingent Event Benefit (UCEB)** means any ▶plan benefit or benefit increase to the extent that the plan benefit or benefit increase would not be payable but for the occurrence of a UCE. Examples of ▶UCEBs are unreduced early retirement benefits and subsidies payable immediately after the occurrence of a UCE. For example, an early retirement benefit of \$80.00 per month is payable upon the occurrence of plant shutdown. Absent a plant shutdown, only \$20.00 per month would have been payable. In this case, the UCEB would equal \$60.00 per month (\$80.00 less \$20.00).

D. Policy Statement

PBGC will guarantee a plan ► **UCEB** at a rate of 20% (or \$20.00 if greater) for each full year the UCEB was payable during the UCEB ► **phase-in** period. The UCEB phase-in period will begin on the latest of:

- the adoption date of the plan provision creating the UCEB;
- the effective date of the UCEB (that is, the first date on which the UCEB could become payable under plan provisions); and
- the date the UCE occurred.

The UCEB phase-in period will end on ► **DOPT/BPD** (that is, on DOPT unless the plan is a ► **PPA 2006** bankruptcy plan, in which case the UCEB phase-in period will end on the earlier of DOPT and BPD. See PBGC Policy **5.14-1 Benefits in PPA 2006 Bankruptcy Plans.**)

Example 1 - UCEB phase-in period. DOPT/BPD is 12/01/2015. On 01/01/2006, the plan adopted a 70/80 rule for plant shutdowns occurring on or after 01/01/2007. (Under the 70/80 rule, early unreduced retirement benefits become immediately payable to ► **participants** whose age plus service equals 70 (if at least age 55) or 80 (at any age) if permanently laid off due to plant shutdown.) On 12/31/2014, plant operations ceased, and all employees were permanently laid off.

The UCE occurred 12/31/2014, the date plan operations ceased and all employees were permanently laid off. Therefore, the UCEB phase-in period begins on 12/31/2014, the latest of the adoption date of the plan provision creating the UCEB (01/01/2006), the effective date of the UCEB (01/01/2007), and the date the UCE occurred (12/31/2014). The UCEB phase-in period ends on DOPT/BPD (12/01/2015). Thus, the phase-in period lasted for less than one year, so the UCEB is a nonforfeitable plan benefit subject to 0% phase-in. (Note that the UCEB is a nonforfeitable plan benefit because the UCEB became payable on or before DOPT/BPD. See also **section D.1.b** below.)

1. Determining the Date the UCE Occurred

To determine the date the UCE occurred, PBGC will consider plan provisions as well as relevant facts and circumstances, including (but not limited to):

- the nature and level of activity at a facility that is closing;
- the extent to which the UCE is permanent; and
- statements or determinations (to the extent relevant) by the employer, the plan administrator, a union, an arbitrator under a collective bargaining agreement, or a court; however, PBGC will not treat such statements or determinations as controlling.

a. Predictability of the UCE Not a Factor

The fact that a UCE has become reasonably predictable (for example, the facility was widely anticipated to close) or has already occurred (for example, a UCEB payable as a result of a retroactive UCE) does not mean the benefit is no longer a UCEB.

Example 2 - Retroactive UCE. DOPT/BPD is 02/01/2017. On 09/01/2014, as the result of a settlement of a class-action suit, the plan adopted a provision for paying early unreduced retirement benefits to eligible employees permanently laid off due to a shutdown occurring on or after 01/01/2014. However, under the adopted plan provision, early unreduced retirement benefits were payable prospectively only, beginning on or after 03/01/2015. On 01/01/2014, plant operations ceased, and all employees were permanently laid off.

The UCE occurred on 01/01/2014, the date plant operations ceased and all employees were laid off. The effective date of the UCEB is 03/01/2015, the first date any UCEB was payable. Therefore, the UCEB phase-in period begins on 03/01/2015, the latest of the adoption date of the plan provision creating the UCEB (09/01/2014), the effective date of the UCEB (03/01/2015), and the date the UCE occurred (01/01/2014). The phase-in period ends on DOPT/BPD (02/01/2017). Thus, the UCEB phase-in period lasted for more than one year and fewer than two years, so the UCEB is a plan benefit subject to 20% phase in.

b. UCEBs Attributable to Post-DOPT UCEs Are Not Plan Benefits

If the UCE occurs after DOPT, the UCEB will not be a benefit payable by PBGC, regardless of plan assets or PBGC recoveries.

Example 3 - Skeleton shutdown crew. DOPT/BPD is 12/01/2015. On 01/01/2006, the plan was amended to pay early unreduced retirement benefits to eligible employees if permanently laid off due to a shutdown occurring on or after 01/01/2007. On 12/31/2014, plant operations generally ceased, and most employees were permanently laid off. A minimal skeleton crew remained to perform primarily security and basic maintenance functions. On 03/31/2016, the

plant was demolished, and the skeleton crew was permanently laid off. The plan contained no specific provision or past practice governing benefits of skeleton shutdown crews.

For the skeleton shutdown crew, the UCE occurred on 03/31/2016. Because the UCE occurred after DOPT/BPD (12/01/2015), the UCEB would not be a nonforfeitable benefit as of that date and therefore would not be guaranteeable.

c. Post-Employment Eligibility Requirements

If plan terms allow a participant to meet certain eligibility requirements after his employment ends, PBGC will not generally consider the date on which those special post-employment eligibility requirements are met (such as attainment of a plan-specified age) in determining the date the UCEB phase-in period begins.

Example 4 - Post-employment eligibility. DOPT/BPD is 09/01/2015. Under the plan, adopted and effective since 2000, in the event of a permanent plant shutdown unreduced early retirement benefits are payable to participants who (1) are age 60 or older, (2) have earned at least 20 years of service, and (3) terminate employment due to the shutdown. In addition, participants with at least 20 years of service who terminate employment due to a plant shutdown at a time when they are under 60 years of age will be entitled to an early unreduced retirement benefit so long as benefits commence on or after the attainment of age 60 and the time required to attain age 60 does not exceed the years of service with the plan sponsor. The plan imposes no other conditions on receipt of the benefit. On 01/01/2014, the plant permanently shut down. A participant whose employment was terminated due to the permanent plant shutdown had 20 years of service and was age 58. On 06/01/2015, the participant attained age 60 and entered pay status with the early unreduced retirement benefit.

The UCE occurred on 01/01/2014, the date of the only UCE necessary to make the UCEBs payable. The plan had been in effect for five years as of DOPT. Therefore, the UCEB phase-in period begins on the date the UCE occurred (01/01/2014). The phase-in period ends on DOPT/BPD (09/01/2015). Thus, the phase-in period lasted for more than one year and fewer than two years, so the UCEB is a plan benefit subject to 20% phase in.

2. Multiple UCEs

If a UCEB under a plan is payable only upon the occurrence of multiple UCEs, PBGC treats the date of the last applicable UCE as the date the UCE occurred. For example, if a UCEB is payable only if a participant is permanently laid off and the plan deems layoffs to be permanent after two years, then the UCEB phase-in period will generally begin at the end of the two-year period following the date on which the participant was laid off (not the date on which the participant was laid off).

Example 5 - Creep-type layoff benefit. DOPT/BPD is 09/01/2017. Under the plan, adopted and effective in 2000, early unreduced retirement benefits are payable to participants whose age plus service is at least 80 and whose continuous service is broken due to either (1) plant shutdown or (2) being on layoff status for two years (creep-type layoff). On 05/15/2014, a participant was laid off as part of a reduction-in-force. On 05/15/2016, the participant's continuous service was broken due to layoff. On 06/01/2016, the participant entered pay with the UCEB.

There are two UCEs necessary to make the participant's benefit payable: the participant's initial layoff (05/15/2014) and the expiration of the participant's two-year period without rehire (05/15/2016). The plan had been in effect for five years as of DOPT. Therefore, the phase-in period begins on the date the last UCE occurred (05/15/2016). The phase-in period ends on DOPT/BPD (09/01/2017). Thus, the UCEB phase-in period lasted for more than one year and fewer than two years, so the UCEB is a plan benefit subject to 20% phase in.

If the UCEB is contingent upon the employer's declaration that return to work is unlikely PBGC will also take this into account for purposes of determining the date the UCE occurred.

Example 6 - Declaration that return to work is unlikely. DOPT/BPD is 09/01/2016. Under the plan, adopted and effective in 2000, unreduced early retirement benefits are payable to participants (1) who are at least age 60 with at least 20 years of continuous service and (2) whose continuous service is broken by permanent layoff. Under the 2000 plan, a participant's continuous service is broken if the participant is laid off and the employer declares that return to work is unlikely. While laid off, employees may earn up to two years of additional credited service. On 03/01/2014, a participant age 60 with 20 years of service was laid off. On 06/15/2014, the employer declares that the participant's return to work is unlikely. On 07/01/2014, the participant went into pay status with the UCEB.

There are two UCEs necessary to make the participant's benefit payable: the participant's initial layoff (03/01/2014) and the employer's declaration that the participant is unlikely to return to work (06/15/2014). The plan had been in effect for five years as of DOPT/BPD. Therefore, the phase-in period begins on the date the last UCE occurred (06/15/2014). The phase-in period ends on DOPT/BPD (09/01/2016). Thus, the phase-in period lasted for more than two years and fewer than three years, so the UCEB is a plan benefit subject to 40% phase in.

3. Determination and Disclosure of UCE Date

a. Determination of UCE Date on Participant-by-Participant Basis

Whether the UCEB phase-in period is determined on a participant-by-participant, facility-by-facility, or on some other basis will depend largely upon plan provisions. Thus, if the plan specifies that a UCEB is payable due to a reduction-in-force and the reduction-in-force is staggered, the UCEB phase-in period may differ with respect to each participant and each layoff. But if the UCEB is payable only upon a complete shutdown of an employer's entire operations, the UCEB phase-in period generally will be the same date for all affected participants.

Example 7 - Sequential Layoffs. DOPT/BPD is 12/01/2015. On 01/01/2006, the plan adopted a 70/80 rule for plant shutdowns occurring on or after 01/01/2007. Under the plan, early unreduced retirement benefits become immediately payable to eligible participants if permanently laid off due to a plant shutdown. On 12/31/2014, plant operations permanently ceased. Employees were permanently laid off in three stages: Group A on 10/31/2014; Group B on 11/30/2014; and Group C on 12/31/2014.

For Group A, the UCE occurred on 10/31/2014; for Group B, on 11/30/2014; and for Group C, on 12/31/2014. The plan had been in effect for five years as of DOPT/BPD. Therefore, the phase-in periods begin on the date the applicable UCE occurred (Group A on 10/31/2014, Group B on 11/30/2014, and Group C on 12/31/2014). The UCEB phase-in periods end on DOPT/BPD (12/01/2015). Thus, for Groups A and B, the UCEB phase-in period lasted for more than one year and fewer than two years, so their UCEBs are plan benefits subject to 20% phase in. For Group C, the UCEB phase-in period lasted for less than one year, so their UCEBs are nonforfeitable plan benefits subject to 0% phase in.

b. Disclosure of UCE Date in Benefit Determination Letters

If a UCEB is neither fully guaranteed by PBGC nor fully funded by the asset allocation, PBGC will, in its benefit determinations, include the date the UCE occurred and the information necessary to understand the application of the UCEB phase-in limitation. The amount of information included in the benefit determination will depend on the facts and circumstances of each case. For example, PBGC may describe in the benefit statement accompanying a participant's benefit determination letter the date the UCE occurred and how PBGC determined that date (for example, because that date was the later of two UCEs necessary to make the UCEB payable).

4. Section 436 Restrictions

Any UCEB that, as of DOPT, was subject to the restricted payment rules of section 436(b) of the Code does not exist in the plan and is therefore not payable by PBGC. (Such a restriction applies if the UCE occurs during a plan year in which the plan's **► adjusted funding target attainment percentage** (AFTAP) was less than 60% or would have been less than 60% if the UCEB were taken into account.) See PBGC Policy **5.14-2 § 436 Benefit Limitations under PPA 2006** (describing the Treasury regulations under section 436).

If a restricted UCEB becomes payable as a result of the 436 restriction being removed later in the plan year—for example, after an adequate funding contribution is made—then PBGC will disregard the 436 restriction. The UCEB will still be subject to the UCEB phase-in rules, and the beginning of the UCEB phase-in period will be unaffected by any delay in the plan's payment of the UCEB due to the section 436(b) rules. See **section D** of PBGC Policy **5.14-2 §436 Benefit Limitations under PPA 2006**.

Example 8 - Removal of Section 436 restriction. DOPT/BPD is 09/01/2016. Under a plan provision adopted on 09/01/2000, an unreduced early retirement benefit becomes immediately payable to age/service-qualified participants permanently laid off due to a plant shutdown occurring after 01/01/2001. On 3/17/2014, the enrolled actuary certified the 2014 AFTAP to be 58%. On 04/15/2014, a participant eligible for the UCEB was permanently laid off due to a plant shutdown. On 08/15/2014, the plan sponsor made an additional contribution to the plan. On 09/15/2014, the actuary recertified the 2014 AFTAP to be 60% (taking into account the added liabilities caused by the UCEB) as a result of the additional contributions made to the plan. (The plan year is the calendar year.) On 10/01/2014, the participant began receiving benefit payments, including missed payments based on a retroactive annuity starting date of the UCEB as of 05/01/2014.

The UCE occurred on 04/15/2014. PBGC treats the UCEB as a benefit payable under the plan because, due to the additional contribution, the AFTAP was at least 60% for the 2014 plan year in which the UCE occurred. The UCEB provision was both adopted and effective more than five years before DOPT/BPD. Therefore, the UCEB phase-in period begins on the date the UCE occurred (04/15/2014). (Note that the delay in paying the UCEB to the participant does not affect the beginning of the UCEB phase-in period.) The UCEB phase-in periods ends on DOPT/BPD (09/01/2016). Thus, the UCEB phase-in period lasted for more than two years and fewer than three years, so the participant's UCEB is a plan benefit subject to 40% phase in.

In a case in which a UCEB does not become payable later in the plan year because of a removal of the 436(b) restriction, but the sponsor nonetheless seeks in a subsequent plan year to restore some or all of the UCEB, the sponsor may do so only by amending the plan so long as the amendment is permitted to take effect (for example, because the 436(c) limitation on plan amendments increasing benefit liabilities is not applicable). Such an amendment is subject to phase-in, and the UCEB phase-in period would generally begin on the adoption date of the amendment.

5. Assignment of UCEBs to PC3

PPA's special phase-in rule for UCEBs did not amend the rules for determining which benefits are assignable ►PC3. Thus, as was the case before the enactment of PPA 2006, in determining benefits for PC3-eligible individuals, PBGC will assign a UCEB to PC3 if:

- the adoption date of the plan provision creating the UCEB was on or before DOPT/BPD-5;
- the effective date of the UCEB was on or before DOPT/BPD-5; and
- the UCE occurred on or before DOPT/BPD-3.

See PBGC Policy **4.2-1 Allocation of Assets - Priority Category 3** for definitions of "DOPT/BPD-5" and "DOPT/BPD-3."

Note that there is a difference in the way the two terms are defined, as illustrated in Example 9 below.

Example 9 - UCEB in PC3. DOPT/BPD is 12/15/2015, DOPT/BPD-3 is 12/15/2012, and DOPT/BPD-5 is 12/16/2010. PBGC will assign a UCEB to PC3 if:

- the adoption date of the plan provision creating the UCEB and the effective date of the UCEB were on or before 12/16/2010 (DOPT/BPD-5); and
- the UCE occurred on or before 12/15/2012 (DOPT/BPD-3)

Concurrence, Endorsement, and Approval

Policy 5.14-3 Plant Shutdown and Other Unpredictable Contingent Event Benefits		
Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	07/16/2014
PPD: Laura Stephens, Acting Manager	L.S.	07/15/2014
OCC: James Armbruster, Assistant Chief Counsel	J.A.	07/15/2014
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	07/15/2014
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	07/21/2014
Chief Financial Officer: Patricia Kelly	P.K.	07/23/2014
Approval		
Chief of Benefits Administration and Director of OBA: Philip R. Langham	P.R.L.	08/20/2014

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on **Transmittal 2014-08**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:

Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.

http://intranet/standards_manuals/manuals/policy/5_14_3_1st.htm

(08/28/2014).

5.15-1 Treatment of Benefits Earned During Military Service

Edition	2nd Edition
Issue Date	08/30/2011
Transmittal	Transmittal 2011-07
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. PBGC Policy](#)

A. Background

This ► [policy statement](#) provides rules for PBGC's treatment of benefits earned by ► [participants](#) during certain periods of military service.

Federal law protects returning military veterans against employment discrimination, provides them with certain reemployment rights, and provides various protections regarding their pension benefits.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), enacted October 13, 1994, strengthens and clarifies pension rights that, generally, were established in predecessor statutes and pre-USERRA case law. USERRA provides that, upon reemployment with the pre-service employer after absence due to military service, an employee must be treated as not having a break in service with the employer maintaining the pension plan for purposes of participation, vesting, accrual, and eligibility for benefits. DOL regulations relating to the USERRA requirements are prescribed in 20 CFR Part 1002.

The Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART) expanded entitlement to pension benefits for employees and their survivors if the employee dies or becomes disabled on or after January 1, 2007, while serving in the military. Under HEART, plans are required to provide that if a participant dies while performing qualified military service, survivors of the participant are entitled to any additional benefits (other than benefit accruals) that would have been provided under the plan had the participant resumed employment the day before the date of death, and then terminated employment on account of death. Such additional benefits include vesting service, accelerated vesting, and survivor benefits contingent on termination of employment due to death.

HEART permits plans, but does not require them, to provide service for benefit accruals if a participant dies while performing qualified military service, or to provide service for vesting or accrual purposes if a participant becomes disabled while performing qualified military service.

This edition of the policy addresses PBGC's treatment of benefits attributable to deemed reemployment under HEART, clarifies the determination of a participant's reemployment position and its implications for service and compensation used in benefit calculations, and clarifies the effect of differential wage payments during military service on a participant's pension benefits.

B. Scope and Effective Date

This ► [policy](#) is effective August 30, 2011 and applies to ► [participants](#) in trusted plans whose benefits are affected by the laws described above.

The rules in this policy apply for payment purposes. See the Actuarial Services Division for guidance on valuing benefits derived from service attributable to periods of uniformed service when death, disability or reemployment occurs after ► [DOPT](#).

C. Definitions

1. **Uniformed service** means the performance of duty – on a voluntary or involuntary basis – in a uniformed service, including:

- Active duty;
- Active duty for training;
- Initial active duty for training;
- Inactive duty training;

- Full-time National Guard duty under Federal authority;
- Absence from work for an examination to determine a person's fitness for any of the above types of duty;
- Funeral honors duty performed by National Guard or reserve members; and
- Duty performed by intermittent disaster response personnel for the Public Health Service, and approved training to prepare for such service.

2. **The uniformed services** consist of the following:

- Army, Navy, Marine Corps, Air Force, or Coast Guard;
- Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve;
- Army National Guard or Air National Guard;
- Commissioned Corps of the Public Health Service; or
- Any other category of persons so designated by the President in time of war or emergency.

3. **Qualified military service** means uniformed service by an individual entitled to reemployment rights under [►USERRA](#). (See [section C.7 Reemployment under USERRA](#) below for the criteria for determining if a [►participant](#) is entitled to reemployment rights under USERRA.)

4. **Pension service** means service counted for participation, vesting, eligibility and accrual of benefits under a pension plan.

5. **PPA 2006 bankruptcy plan** means a PBGC-trusteed pension plan that terminates while bankruptcy proceedings are pending with respect to at least one of the plan's contributing sponsors, if the bankruptcy proceedings were initiated on or after September 16, 2006.

6. **Pre-service employer** means the employer that employed the individual prior to his or her uniformed service or any employer that is a successor in interest to the former employer. The determination of whether an employer is a successor in interest is made on a case-by-case basis considering the following factors:

- a. Whether there has been a substantial continuity of business operations from the former employer to the current employer;
- b. Whether the current employer uses the same or similar facilities, machinery, equipment, and methods of production;
- c. Whether there has been a substantial continuity of employees;
- d. Whether there is a similarity of jobs and working conditions;
- e. Whether there is a similarity of supervisors or managers; and,
- f. Whether there is a similarity of products or services.

7. **Reemployment under USERRA** means reemployment with the pre-service employer on or after December 12, 1994, where:

- a. the employee is honorably discharged from the uniformed service;
- b. the cumulative period of uniformed service covered under USERRA does not exceed five years; and
- c. the employee applies for reemployment within the time period required under USERRA (generally no more than 90 days after the completion of the uniformed service).

Extensions to the time limits in (b) and (c) are available in limited circumstances -- e.g., where the employee was ordered to remain on active duty or was hospitalized. Contact [►PPD](#) for guidance in such cases.

If a participant is reemployed in a position that is in a furlough, layoff, or other similar status, the participant is still considered to be reemployed under USERRA. See [section D.6](#) for more details regarding reemployment positions.

8. **Deemed reemployment under HEART** means that, when a participant dies while in active military service and eligible for reemployment under USERRA (or becomes disabled during that period, if such an event is covered under the terms of the plan), he or she is considered to be reemployed with the pre-service employer on the day before the death or disability occurs. This applies to deaths and disabilities occurring after January 1, 2007.

9. **Differential wage payments** are payments made by the employer to the participant with respect to a period of qualified military service of at least 30 days' duration that represent all or a portion of the wages the participant would have received

if the participant had continued to perform service for the employer during the period of military service.

D. PBGC Policy

1. General Rule.

- a. PBGC calculates and pays pension benefits to ► participants in ► PBGC-trusted pension plans in accordance with ► USERRA and ► HEART as summarized in this policy. PBGC will disregard any plan provision that fails to comply with the minimum requirements of USERRA or HEART for providing benefits based on pension service derived from a participant's period of qualified military service. Thus, if a plan does not explicitly provide:
 - i. pension service for periods of qualified military service for participants who are reemployed under USERRA; or
 - ii. with respect to survivor benefits, vesting service (or any additional benefits except for benefit accruals) for periods of qualified military service for participants who are deemed reemployed under HEART;

then PBGC will read such requirements into the plan and, to the extent that the participant would have earned such service if he or she had remained employed in the position, PBGC will determine benefits under the escalator principle (as described in [section D.6](#)).

Likewise, if a plan does not provide, with respect to periods of qualified military service after December 31, 2008, during which a participant receives differential wage payments, that the participant will be treated under the plan as if he or she remained employed with the employer as described in [section D.7 Differential Wage Payments](#), PBGC will read such a provision into the plan.

PBGC will recognize plan provisions that provide benefits exceeding the requirements of USERRA (such as those granting service during all or part of a period of uniformed service without regard to the participant's reemployment), provided that the conditions of eligibility for such benefits were met on or before ► DOPT. PBGC will also recognize plan provisions that provide benefits permitted but not required under HEART (such as providing service for vesting or accruals to participants disabled while in qualified military service).

- b. If a participant is reemployed under USERRA or is deemed reemployed under HEART after DOPT, PBGC will recognize the pension service attributable to the qualified military service up to DOPT, as explained below in further detail.

2. Guaranteed Benefits.

- a. **Reemployment under USERRA.** Subject to the limitations of ► Title IV of ► ERISA, PBGC will guarantee those benefits derived from pension service attributable to the participant's qualified military service up to DOPT (or the bankruptcy petition date (BPD) in a PPA 2006 bankruptcy plan), if the participant is reemployed under USERRA, even if such reemployment occurs after DOPT (or BPD in a PPA 2006 bankruptcy plan).
- b. **Deemed Reemployment under HEART.** Subject to the limitations of Title IV of ERISA, if the participant is deemed reemployed under HEART due to death, PBGC will guarantee those benefits derived from pension service (except for benefit accruals, unless they are explicitly provided by the plan) attributable to the participant's qualified military service up to the day before the date of death, or up to DOPT (or BPD) if the death occurs after such date.

In the case of a participant deemed reemployed under HEART due to disability, PBGC will guarantee benefits derived from pension service attributable to the participant's qualified military service up to the day before the date of disability, or up to DOPT (or BPD) if the disability occurs after such date, but only to the extent the plan provides for such service.

3. Priority Category 3.

- a. **Reemployment under USERRA.** If a participant is reemployed under USERRA, PBGC will include, in its determination of the participant's benefit entitlement in ► priority category 3, any pension service attributable to periods of qualified military service on or before ► DOPT-3 (or BPD-3 in a ► PPA 2006 bankruptcy plan), even if the reemployment occurs after DOPT-3 (or BPD-3).
- b. **Deemed Reemployment under HEART.** If a participant is deemed reemployed under HEART due to death, PBGC will include, in its determination of the participant's benefit entitlement in priority category 3, any pension service (except for benefit accruals, unless they are explicitly provided by the plan) attributable to periods of qualified military service up to the day before the date of death, or up to DOPT-3 (or BPD-3) if the death occurs after such date.

If a participant is deemed reemployed under HEART due to disability, PBGC will include, in its determination of the participant's benefit entitlement in priority category 3, any pension service attributable to periods of qualified military service up to the day before the date of disability, or up to DOPT-3 (or BPD-3) if the disability occurs after such date, but only to the extent the plan provides for such service.

Example: The ABC Company Pension Plan has a BPD of January 1, 2009, and a DOPT of March 1, 2009. A participant leaves the employment of the plan sponsor for service in the military on July 1, 2005 and is reemployed under USERRA on June 1, 2009. PBGC will include the pension service attributable to qualified military service from July 1, 2005 through January 1, 2006 (BPD-3) when determining the participant's benefit entitlement in priority category 3.

4. Benefits from Employee Contributions.

- a. **Reemployment under USERRA.** A participant who is reemployed under USERRA is entitled to accrued benefits attributable to employee contributions for the period of qualified military service only to the extent that he or she makes the required employee contributions to the plan. USERRA generally provides that an employee returning to work has up to three times the period of qualified military service but no longer than five years to make up any missed contributions. Contact [PPD](#) for guidance if a participant in a trustee plan was reemployed under USERRA by the plan sponsor but had not fully made up missed employee contributions attributable to the period of qualified military service.
- b. **Deemed Reemployment under HEART.** If a plan provides for benefit accruals for participants deemed reemployed under HEART, such a participant is also deemed to have made employee contributions equal to the participant's average contributions made during the 12-month period prior to military service (or the entire period of employment if less than 12 months). However, HEART allows a plan to require that disabled participants deemed reemployed under HEART must make employee contributions with respect to periods of qualified military service in order to receive employer-sponsored contributions or benefits based upon employee contributions. In such a case, PBGC will determine the participant's benefits based on the actual employee contributions made.

5. Priority Category 5. Nonforfeitable benefits related to pension service earned during a period of qualified military service that are not in priority category 4 or higher priority categories are in priority category 5 (PC5). For example, if a participant in a PPA 2006 bankruptcy plan returns to work after the bankruptcy petition date, any nonforfeitable benefits derived from pension service accrued during a period of qualified military service after BPD and on or before DOPT will be assigned to PC5.

6. Compensation and Reemployment Position. USERRA provides that returning service members are reemployed in the position that they would have attained had they not been absent for qualified military service. This is referred to as the escalator principle. If a participant's retirement benefit depends on his or her compensation from the employer, the compensation used for the period of leave for qualified military service will be calculated using the rate of pay the participant would have received in the positions determined under the escalator principle. Where this rate of pay cannot reasonably be determined, the participant's average rate of pay during the 12-month period of employment (or the entire period of employment if less than 12 months) that immediately preceded the qualified military service should be used.

The reemployment positions determined under the escalator principle may include positions that were placed in a status of unpaid furlough, layoff, or other similar status. Pension service attributable to periods of qualified military service during which the participant's reemployment position was in a status of furlough, layoff, or other similar status will be determined according to the plan's provisions regarding service while employed under such status.

7. Differential Wage Payments. For periods of qualified military service after December 31, 2008, during which a participant receives differential wage payments from the employer, the participant will be considered employed in the position determined under the escalator principle (as described in [section D.6](#)), without regard to any subsequent reemployment, death or disability.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_15_1_2nd.htm
(08/30/2011)

Previous Editions

[5.15-1 Treatment of Benefits Earned During Military Service 1st Ed. - Outdated](#)

5.15-5 Black Lung Benefits Offsets

Edition	1st Edition
Issue Date	08/30/2011
Transmittal	Transmittal 2011-08
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Policy Statement](#)

A. Background

Some PBGC payees have pension benefits that are offset by Black Lung Benefits they receive through the United States Department of Labor's Black Lung program (or similar, state-operated Black Lung programs). Typically, PBGC trustee plans that have this offset feature are plans in the steel industry, specifically those that covered coal miners.

The Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code prohibit a reduction in a pension plan benefit based on an authorized increase in Social Security benefits that occurs after the earlier of the participant's first receipt of benefits or separation from covered service. The Treasury regulations (§1.401(a) – 15(d)) extend this prohibition to other Federal or state-provided benefits "to the extent applicable."

PBGC interprets this guidance as applicable to offsets of pensions for Black Lung Benefits. If a payee's Black Lung Benefits increase after the payee's separation from service or first receipt of benefits from the plan, PBGC will not increase the Black Lung Offset amount used. However, if a payee's Black Lung Benefits decrease (for example, when the benefit recipient's children reach majority age) PBGC will decrease the Black Lung Offset amount it uses to determine the payee's benefit, which may result in an increase to the payee's PBGC benefit.

This policy replaces guidance originally issued in [**IOD Policy Bulletin 05-2: Adjustment of Benefit Offsets Because of Changes to Black Lung Payments**](#) (issued 11/10/04) and specifies PBGC will notify payees about its Black Lung Benefit offset rules in benefit determinations.

B. Scope and Effective Date

This policy statement applies to PBGC trustee plans and is effective upon issuance.

C. Policy Statement

1. General Rule

If a pension plan provides that Black Lung Benefits offset a payee's benefit, PBGC will determine the amount used to offset a payee's PBGC Benefit, the "Black Lung Offset amount", using the Black Lung Benefit amount payable as of the earlier of the payee's separation from service or first receipt of benefits from the pension plan.

If notified of a subsequent decrease to a payee's Black Lung Benefits, PBGC will decrease its Black Lung Offset amount, which may increase the PBGC benefit.

If a payee's Black Lung Benefits subsequently increases, PBGC will not change the Black Lung Offset amount used to determine the payee's PBGC benefit.

2. Notice to Participants

PBGC will describe the General Rule in the benefit determination of participants with benefits subject to a Black Lung Offset, and, if applicable, in an estimated benefit letter. The letter(s) will advise the participant to notify PBGC if the Black Lung Benefit amount decreases, after which PBGC will reduce the Black Lung Benefit Offset currently being applied, which may result in an increased PBGC benefit.

3. Documentation

If PBGC is notified of a decrease to the Black Lung Payments being used to offset the PBGC benefit, PBGC will require evidence of the reduced Black Lung Payments and the effective date of the reduced payment amount before implementing a

benefit increase.

4. Benefit Increases

PBGC will increase the PBGC benefit effective as of the date of the decrease in Black Lung Payments. If the increase is retroactive, PBGC will calculate net underpayments according to Policy **6.4-3 Calculation and Netting of Post-DOPT Overpayments and Underpayments** and reimburse following Policy **6.3-1 Underpayment Reimbursement and Interest Payments**. A new benefit determination is not required.

5. Pre-DOPT adjustments

If OBA determines that a prior plan administrator was not administering a trustee plan following the General Rule above, contact PPD.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/5_15_5_1st.htm
(08/30/2011)

[Top of Page](#)

6.1-1 Guaranteed Benefits in Disqualified Plans

Edition	1st Edition
Issue Date	04/01/1985
Transmittal	Transmittal 2
Contact	ASK PPD

In this policy

A. Scope

- B. Policy Statement
- #### **A. Scope**
- This policy applies to all terminated single employer defined benefit pension plans trustee by PBGC.

B. Policy Statement

If a terminating plan had, under Section 4021(a)(1) of ERISA met in practice the requirements of qualified plan or had, under Section 4021(a)(2) met or been determined by the Secretary of the Treasury to meet the requirements of a qualified plan after the enactment of ERISA, benefits under the plan are guaranteeable by PBGC to the extent the benefits accrued before:

- A. the date of issuance of a disqualification letter in the case of a Section 4022(b)(6)(A) disqualification; or
- B. the date of adoption of a disqualifying amendment in the case of a Section 4022(b)(6)(B) disqualification.

Benefits accrued after the dates in A and B above are guaranteeable if the situation resulting in disqualification is corrected before the date of plan termination.

Disallowance by the IRS of an employer/sponsor's deduction for a plan contribution on audit does not by itself constitute notice of disqualification of the plan.

An IRS letter of qualification issued prior to the enactment of ERISA and outstanding after enactment meets the requirement of Section 4022(a)(2).

Vesting and phase-ins do not cease as of the date of disqualification.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_1_1st.htm
(04/01/1985)

6.1-2 Earliest PBGC Retirement Date

Edition	2nd Edition
Issue Date	03/27/2014
Transmittal	Transmittal 2014-04
Last Review Date	N/A
Signed Policy	6.1-2 Earliest PBGC Retirement Date
Contact	ASK PPD

In this policy

- [A. Background](#)
 - [B. Scope and Effective Date](#)
 - [C. Definitions](#)
 - [D. General Rule](#)
 - [E. Earliest PBGC Retirement Date and "Window" periods](#)
 - [F. Examples](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

Most pension plans contain provisions that clearly identify payments that, for PBGC purposes, would be regarded as retirement annuities. However, in some cases it may be more difficult to distinguish retirement annuities from other plan payments. For example, a plan may offer a consensual lump sum upon separation from employment regardless of age, and, if so, the plan is required to offer a qualified [► joint-and-survivor annuity](#) commencing immediately. The plan may or may not distinguish such a separation annuity from a retirement annuity.

As a result, in 2002 PBGC adopted in the Benefit Payments regulation the concept of an Earliest PBGC Retirement Date (EPRD). This policy provides guidance on determining the EPRD.

The EPRD is an essential element used in administering and valuing an annuity. The EPRD will:

- establish when a participant is first eligible to be placed in pay status by PBGC,
- affect the expected retirement age at which a participant's benefit is valued, and
- affect how much, if any, of a participant's benefit is in Priority Category 3.

With this edition, PBGC has removed outdated content, including guidance on the application of EPRD in determining eligibility for [► Priority Category 3](#) (PC3). More complete guidance on EPRD and PC3 eligibility can now be found in Policy 4.2-1 Allocation of Assets – Priority Category 3.

B. Scope and Effective Date

For valuation of benefits and allocation of assets, the [► EPRD](#) applies to benefits in any plan with a [► DOPT](#) on or after June 1, 2002.

For determining when participants will first be able to receive annuity benefits, the EPRD applies to benefits not yet in pay status as of June 1, 2002 in plans trusted by PBGC on and after October 1, 1998. In plans trusted by PBGC before October 1, 1998, PBGC will not apply the new age-55 rule, but, instead, will continue to apply only the facts-and- circumstances test.

Note that EPRD does not affect PBGC's rules that generally require a payee's annuity starting date to be on the first of the month following receipt of his or her application for benefits. See Policy [5.2-4 Annuity Starting Dates](#). EPRD also does not affect PBGC's rules that generally require a participant to permanently leave covered employment in order to receive benefits before his or her normal retirement date. See Policy [5.2-2 Working Retirement](#).

This edition of the policy is effective upon issuance.

C. Definitions

In this policy, the following definitions apply:

1. **Earliest Annuity Date** is the earliest date under plan provisions on which the participant could separate from service with the right to receive an immediate annuity.

Note: Earliest Annuity Date is generally determined based on the plan provisions in effect at the earlier of DOPT or the date the participant terminated employment.

2. **Age** is age as of last birthday unless otherwise stated or clear from context.

D. General Rule

The Earliest PBGC Retirement Date (EPRD) is the earliest date on which the participant could "retire" for certain purposes under Title IV of ▶ERISA. If the participant's Earliest Annuity Date is on or after the date the participant reaches age 55, the EPRD will be the Earliest Annuity Date. However, if the participant's Earliest Annuity Date is before the date the participant reaches age 55, the EPRD will be the date the participant reaches age 55, unless PBGC determines, under a facts-and-circumstances test, that the participant could retire on an earlier date. When making a facts-and-circumstances determination, PBGC will consider plan provisions, the age at which employees customarily retire (under the particular plan or in the particular company or industry, as appropriate), and all other relevant factors. (See Examples 4 through 6 in **section F**.) EPRD will never be earlier than the participant's Earliest Annuity Date.

E. Earliest PBGC Retirement Date and "Window" periods

Until further guidance is developed, staff should bring questions about ▶EPRD determinations in plans with "window" periods to the Policy and Procedures Division (▶PPD).

F. Examples

1. Normal retirement age.

A plan's normal retirement age is age 65. The plan does not offer a consensual lump sum or an immediate annuity upon separation before ▶normal retirement age. The ▶EPRD for a participant who, as of the plan's ▶DOPT, is age 50 is the date the participant reaches age 65.

2. Early retirement age.

A plan's normal retirement age is age 65. The plan specifies an early retirement age of 60 with 10 years of service. The plan does not offer a consensual lump sum or an immediate annuity upon separation before early retirement age. The EPRD for a participant who, as of the plan's DOPT, is age 55 and has completed 10 years of service is the date the participant reaches age 60.

3. Separation at any age.

A plan's normal retirement age is age 65. The plan specifies an early retirement age of 60 but offers an immediate annuity upon separation regardless of age. The EPRD for a participant who, as of the plan's DOPT, is age 35 is the date the participant reaches age 55, unless PBGC determines under the facts and circumstances that the participant could "retire" for purposes of ▶ERISA section 4044(a)(3)(B) on an earlier date, in which case the participant's EPRD would be that earlier date.

4. Age 50 retirement common.

A plan's normal retirement age is age 60. The plan specifies an early retirement age of 50 but offers an immediate annuity upon separation regardless of age. The EPRD for a participant who, as of the plan's DOPT, is age 35 is the date the participant reaches age 55, unless PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the EPRD would be that earlier date. For example, if it were common for participants to retire at age 50, PBGC could determine that the participant's EPRD would be the date the participant reached age 50.

5. "30-and-out" benefit.

A plan's normal retirement age is age 65. The plan offers an immediate annuity upon separation regardless of age and a fully subsidized annuity upon separation with 30 years of service. The EPRD for a participant who, as of the plan's DOPT, is age 48 and has completed 30 years of service is the date the participant reaches age 55, unless PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the participant's EPRD would be that earlier date. In this example, PBGC generally would determine under the facts and circumstances that the participant's EPRD is the date the participant completed 30 years of service.

6. Typical airline pilots' plan.

An airline pilots' plan has a normal retirement age of 60. The plan specifies an early retirement age of 50 (with 5 years of service). The EPRD for a participant who, as of the plan's DOPT, is age 48 and has completed five years of service would be the date the participant reaches age 55, unless PBGC determines under the facts and circumstances that the participant could retire for purposes of ERISA section 4044(a)(3)(B) on an earlier date, in which case the participant's EPRD would be that earlier date. In this example, PBGC generally would determine under the facts and circumstances that the participant's EPRD is the date the participant reaches age 50. If the plan instead had provided for early retirement before age 50, PBGC would consider all the facts and circumstances (including the plan's normal retirement age and the age at which employees customarily retire in the airline industry) in determining whether to treat the date the participant reaches the plan's early retirement age as the participant's Earliest PBGC Retirement Date.

7. EPRD Precedes Earliest Retirement Date in Benefit Determination Issued Under Old Rules.

PBGC trusted the plan October 19, 1998. DOPT is August 24, 1998. On September 30, 2001, PBGC issued a benefit determination to a participant who, at DOPT, was 37 years old with ten years of service. The determination stated that the participant's earliest retirement date was the first of the month on or after his attainment of age 60. Because of plan provisions that provided an annuity at any age, his EPRD under this policy is age 55. PBGC will allow the participant to retire upon attainment of age 55, subject to the rules in Policies **5.2-4 Annuity Starting Dates** and **5.2-2 Working Retirement**.

Concurrence, Endorsement, and Approval

Policy 6.1-2 Earliest PBGC Retirement Date, Endorsement, and Approval		
Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	02/24/2014
PPD: Susan Strassman, Manager	S.S.	02/25/2014
OCC: James Armbruster, Assistant Chief Counsel	J.A.	02/25/2014
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	02/24/2014
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	03/06/2014
Chief Financial Officer: Patricia Kelly	P.K.	03/07/2014
Approval		
Chief of Benefits Administration and Director of the Office of Benefits Administration: Philip R. Langham	P.R.L.	03/10/2014
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on Transmittal 2014-04.</i>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_1_2_2nd.htm
(03/27/2014).

Previous Editions

[6.1-2 Earliest PBGC Retirement Date 1st Ed. - Outdated](#)

6.2-1 Earnings-Offset Provisions - Appendix - Comprehensive Earnings-Offsets Examples

Edition	2nd Edition
Issue Date	08/30/2011
Transmittal	Transmittal 2011-09
Contact	ASK PPD
Related Links	6.2-1 Earnings-Offset Provisions

NOTE: The examples in this appendix demonstrate the rules in PBGC Policy 6.2-1 Earnings-Offset Provisions.

In this Appendix

[Example 1: Earnings-Offset Calculations - Anticipated Earnings Not Used](#)

[Example 2: Earnings-Offset Calculations - Anticipated Earnings Used](#)

Example 1: Earnings-Offset Calculations - Anticipated Earnings Not Used

Participant Fee is a pre-DOPT retiree who retired on 7/1/2009. When the plan terminated, Fee was receiving a plan benefit of \$1,600, including a plan supplement of \$400/month or \$4,800/year.

1. Plan earnings offset provisions/practice:

- a. Did not use anticipated earnings in calculating the plan supplement paid each year.
- b. Offset the supplement by \$1 for every \$2 of earnings in excess of \$5,500/year or applied a maximum earnings limitation of \$15,100 ($(\$4800 \times 2) + \$5,500 = \$15,100$).*
- c. Requested actual earnings information for the preceding year in early January of the following year.
- d. Upon receipt of the actual earnings information, calculated the earnings offset, actual plan supplement, and any resulting earnings-offset overpayment (or underpayment) for the previous year using the actual earnings.
- e. Applied a temporary benefit reduction of up to 100% to the participant's plan benefit to collect any earnings offset overpayment beginning with the April 1 payment.
- f. Discontinued paying the supplement the earlier of when the participant reached age 62 or became eligible for SSA disability benefits.

*Some plans cap the maximum earnings limitations at a flat amount. For example, instead of a maximum earnings limitation of \$15,100, as described in this situation, the plan may establish a maximum earnings limitation of \$15,000.

2. Post-DOPT Administration:

DOPT: 10/30/2011

DOTR: 4/15/2013

- a. **11/2011 – 7/2013:** Fee continued to be paid plan benefits by the prior plan administrator.
- b. **8/2013:** PBGC discontinued applying the plan's earnings-offset provisions and began paying Fee a monthly estimated benefit of \$1,195, including an estimated PBGC supplement of \$50/month.
- c. **7/2015:** Benefit determinations are scheduled to be sent during July 2015. Fee is eligible for a PBGC benefit of \$1,260/month, including a PBGC supplement of \$105/month. In preparing to issue Fee's benefit determination, PBGC will reconcile the estimated benefit payments made with the actual PBGC benefit payments that were due by calculating:
 - 1) The actual PBGC supplements using Fee's actual earnings and the PBGC supplement of \$105.
 - 2) The actual benefit payments due, adjusted for any earnings-offset overpayment or underpayment, from DOPT through the date that the benefit determination will be implemented.
 - 3) Any resulting net benefit overpayments or underpayments.

d. **9/2015:** Benefit adjustments to implement the benefit determination are scheduled for 9/1/2015.

3. Benefit Determination Reconciliation: Using the benefits listed below, PBGC calculates the actual PBGC supplements and benefit payments due Fee DOPT through the date that the benefit determination will be implemented and reconciles them with those paid, as follows:

Fee's Plan Benefit as of DOPT			
1.	Monthly plan benefit without supplement	\$1,200	***
2.	Monthly plan supplement	\$400	***
3.	Monthly plan benefit with supplement	\$1,600	Line 1 + Line 2 = \$1,200 + \$400 = \$1,600
Fee's Estimated PBGC Benefit			
4.	Monthly PBGC benefit without supplement	\$1,145	***
5.	Monthly PBGC supplement	\$50	***
6.	Monthly PBGC benefit with supplement	\$1,195	Line 4 + Line 5 = \$1,145 + \$50 = \$1,195
Fee's Final PBGC Benefit			
7.	Monthly PBGC benefit without supplement	\$1,155	***
8.	Monthly PBGC supplement	\$105	***
9.	Monthly PBGC benefit with supplement	\$1,260	Line 7 + Line 8 = \$1,155 + \$105 = \$1,260

NOTE: To view all benefit calculation tables and descriptions, click **Expand All**. To hide all benefit calculation tables and descriptions, click **Collapse All**.

[[Expand All](#) | [Collapse All](#)]

- ▶ [3.1 2011 DOPT Year – Pre-DOPT Calculations](#)
- ▶ [3.2 2011 DOPT Year – Post-DOPT Calculations](#)
- ▶ [3.3 2012 Pre-DOTR Year Calculations](#)
- ▶ [3.4 2013 DOTR Year Calculations](#)
- ▶ [3.5 2014 Year After DOTR Year Calculations](#)
- ▶ [3.6 2015 BD Year Calculations](#)
- ▶ [3.7 Benefit Payments Made DOPT Year until Implementation of the Benefit Determination](#)
- ▶ [3.8 Calculation of Benefit Overpayments and Underpayments](#)
- ▶ [3.9 Net Benefit Overpayment](#)
- ▶ [3.10 Post-Benefit Determination Annual Calculations](#)

Example 2: Earnings-Offset Calculations - Anticipated Earnings Used

Participant Gee is a pre-DOPT retiree who retired on 7/1/2009. When the plan terminated Gee was eligible for a plan benefit of \$1,600, including a plan supplement of \$400/month or \$4,800/year.

1. Plan earnings offset provisions/practice: The plan:

- a. Used anticipated earnings to calculate an anticipated plan supplement that was paid each year.
- b. Offset the plan supplement by \$1 for every \$2 of earnings in excess of \$5,500/year or applied a maximum earnings limitation of \$15,100 ($(\$4800 \times 2) + \$5,500$) to calculate the anticipated and actual plan supplements for a year.
- c. Requested actual earnings information for the preceding year in early January of the following year.
- d. Upon receipt of the actual earnings information, calculated the earnings offset, actual plan supplement, and any resulting earnings-offset overpayment (or underpayment) for the previous year (earnings-offset overpayments and

underpayments were calculated by comparing the actual plan supplement for a year to the anticipated plan supplement paid that same year).

- e. Applied a temporary benefit reduction of up to 100% to the participant's plan benefits to collect any earnings offset overpayment beginning with the April 1 payment and typically paid any earnings-offset underpayments April 1, as well.
- f. Discontinued paying the supplement when the participant reached age 62 or became eligible for SSA disability benefits.

2. PBGC Administration:

DOPT: 10/30/2011

DOTR: 4/15/2013

- a. **11/2011 – 7/2013:** Gee continued to be paid plan benefits by the prior plan administrator.
- b. **8/2013:** PBGC discontinued applying the plan's earnings offset provisions and began paying Gee an estimated benefit payment of \$1,195, including an estimated PBGC supplement of \$50. PBGC did not use anticipated earnings in calculating the estimated payments.
- c. **7/2015:** Benefit determinations are scheduled to be sent during July 2011. Gee is eligible for a PBGC benefit of \$1,260/month including a PBGC supplement of \$105/month. In preparing to issue Gee's benefit determination, PBGC will reconcile the estimated benefit payments made with the actual benefit payment that were due by:
 - 1) Calculating the anticipated PBGC supplement using Gee's anticipated earnings and *the PBGC supplement of \$105* for the DOPT year through the DOTR year.
 - 2) Calculating the actual PBGC supplements using Gee's actual earnings and *the PBGC supplement of \$105*.
 - 3) Comparing the anticipated PBGC supplement with the actual PBGC supplement to determine any earnings-offset overpayments or underpayments.
 - 4) Calculating the actual benefit payments due, adjusted for any earnings-offset overpayment or underpayment, from DOPT through the date that the benefit determination will be implemented.
 - 5) Calculating any resulting net benefit overpayments or underpayments.
- d. **9/2015:** Benefit adjustments to implement the benefit determination are scheduled for 9/1/2015.
- e. **1/2016:** PBGC continues its annual process of collecting actual earnings information and begins making annual earnings-offset adjustments.

3. Benefit Determination Reconciliation: Using the benefits listed below, PBGC calculates the actual PBGC supplements and benefit payments due Gee for DOPT through the date that the benefit determination will be implemented and reconciles them with those paid, as follows:

Gee's Plan Benefit as of DOPT			
1.	Monthly plan benefit without supplement	\$1,200	***
2.	Monthly plan supplement	\$400	***
3.	Monthly plan benefit with supplement	\$1,600	Line 1 + Line 2 = \$1,200 + \$400 = \$1,600
Gee's Estimated PBGC Benefit			
4.	Monthly PBGC benefit without supplement	\$1,145	***
5.	Monthly PBGC supplement	\$50	***
6.	Monthly PBGC benefit with supplement	\$1,195	Line 4 + Line 5 = \$1,145 + \$50 = \$1,195
Gee's Final PBGC Benefit			
7.	Monthly PBGC benefit without supplement	\$1,155	***

8.	Monthly PBGC supplement	\$105	***
9.	Monthly PBGC benefit with supplement	\$1,260	Line 7 + Line 8 = \$1,155 + \$105 = \$1,260

NOTE: To view all benefit calculation tables and descriptions, click **Expand All**. To hide all benefit calculation tables and descriptions, click **Collapse All**.

[[Expand All](#) | [Collapse All](#)]

- ▶ [3.1 2011 DOPT Year – Pre-DOPT Plan Calculations](#)
- ▶ [3.2 2011 DOPT Year – Post-DOPT Calculations](#)
- ▶ [3.3 2012 Pre-DOTR Year Calculations](#)
- ▶ [3.4 2013 DOTR Year Calculations](#)
- ▶ [3.5 2014 Year After DOTR Year Calculations](#)
- ▶ [3.6 2015 BD Year Calculations](#)
- ▶ [3.7 Benefit Payments Made DOPT Year until Implementation of the Benefit Determination](#)
- ▶ [3.8 Calculation of Benefit Overpayments and Underpayments](#)
- ▶ [3.9 Net Benefit Underpayment](#)
- ▶ [3.10 Post-Benefit Determination Annual Calculations](#)

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_2_1_2nd_Appendix.htm
(08/30/2011)

Previous Editions

[6.2-1 Application of Earnings Offset Provisions 1st Ed. - Outdated](#)

[Top of Page](#)

6.2-1 Earnings-Offset Provisions

Edition	2nd Edition
Issue Date	08/30/2011
Transmittal	Transmittal 2011-09
Contact	ASK PPD
Related Links	6.2-1 Earning-Offset Provisions - Appendix - Comprehensive Earnings-Offsets Examples

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. General Policy](#)
- [E. PBGC Administration of Earnings-Offset Provisions](#)
- [F. PBGC Earnings-Offset Calculations](#)
- [G. Discretionary Authority](#)

A. Background

In addition to a [► participant's](#) vested [► accrued benefit](#), a pension plan may pay a supplemental benefit when certain plan criteria are met. Such supplements typically are payable until a participant reaches a specified age or becomes eligible for another benefit, usually disability benefits from the Social Security Administration (SSA). The plan may also provide that the supplement due for any given year is reduced ('offset') by all or part of any earnings from work that the participant has for that year. These plan provisions are commonly referred to as "earnings-offset" provisions.

Pension plans administer these provisions in a variety of ways. Plan provisions and practices differ in their timing and method for verifying earnings information, calculating earnings offsets and the actual supplement due, and making related adjustments to benefit payments. Some plans:

- 1) pay the full supplement provided by the plan for a given year,
- 2) obtain actual earnings information for that year the following year,
- 3) calculate the actual supplement that was due,
- 4) compare the actual supplement due to the supplement that was paid, and
- 5) pay any underpayment or collect any overpayment that results.

Other plans use estimated earnings in paying a supplement and later use actual earnings to calculate the actual supplement due and reconcile any differences. Plans typically collect any overpayment resulting from application of its earnings-offset provisions by making a temporary reduction in benefit payments. The amount of the reduction and the period for collecting such an overpayment also varies among plans.

Because plan provisions and practice widely vary, PBGC adopted the rules in PBGC Policy [**6.2-1 Application of Earnings-offset Provision**](#) (1st edition) to administer earnings-offset provisions in [► trusted plans](#) in a uniform manner.

B. Scope and Effective Date

With this edition, PBGC is:

- 1) changing the annual reporting requirements of [► participants](#) to provide that participants will not routinely be required to provide proof of their earnings,
- 2) providing that PBGC will not apply a plan's earnings-offset provisions in calculating and paying estimated benefits,
- 3) providing that PBGC will honor a participant's request to suspend payment of a supplement in order to avoid potential overpayments resulting from application of a plan's earnings limitations,
- 4) describing its methodology for calculating and applying earnings-offsets in preparing to issue [► benefit determinations](#),

- 5) changing the period for collecting any overpayments specifically resulting from application of a plan's earnings limitations from nine months to twelve months,
- 6) changing its rules on the treatment of underpayments specifically resulting from application of a plan's earnings limitations, and
- 7) making minor editorial changes.

This policy is effective upon issuance and applies to all plans trusteeed by PBGC.

- For plans trusteeed on or after its issuance date, the earnings-offset provisions in this policy apply as of the trusteeship date.
- For plans trusteeed before the issuance date of this policy, PBGC will begin to apply the earnings-offset provisions in this policy as soon as practicable and as appropriate based on the plan's status (e.g., estimated benefits are being paid, benefit determinations are expected to be issued shortly after the issuance date, or benefit determinations have already been issued), but no later than the beginning of the 2013 calendar year.

C. Definitions

As used in this [►policy](#):

- 1. Benefit reduction** means a temporary reduction in a benefit payment to collect an *earnings-offset overpayment* (see C.4.). It is not a reduction in a benefit due to other factors, such as the application of form conversion factors, [►early retirement factors](#), and/or PBGC [►limitations on guaranteed benefits](#).
- 2. Earnings** mean earnings as defined under a plan's earnings-offset provisions. Earnings typically include wages, salaries, tips, bonuses, commissions, and self-employment income.
 - *Actual earnings* are the earnings a [►participant](#) reports as having been earned and are used to calculate actual PBGC and plan supplements (see C.6. and C.7.).
 - *Anticipated earnings* are earnings that a participant expects to earn or is projected to earn and are used to calculate anticipated PBGC or plan supplements (see C.6. and C.7.).
- 3. Earnings limitation** means the rules and/or formula established in plan provisions that are used to determine or calculate the amount by which a *plan supplement* (see C.7.) is offset.
 - A plan's *maximum earnings limitation* is the threshold or amount of earnings that results in the greatest offset of the supplement.
 - Application of a plan's maximum earnings limitation typically causes the supplement to be completely offset.
- 4. Earnings-offset overpayment** means the amount by which the *plan supplement* (see C.7.) and/or PBGC supplement (see C.6.) paid to a participant in a given year exceeds the actual plan supplement and/or actual PBGC supplement for that year. These overpayments are calculated and collected as provided in this policy.
- 5. Earnings-offset underpayment** means the amount by which the actual plan supplement (see C.7.) and/or actual PBGC supplement (see C.6.) due for a given year exceeds the plan supplement and/or PBGC supplement paid during that year. These underpayments are calculated and paid as provided in this policy.
- 6. PBGC supplement** means the monthly supplement payable by PBGC after application of its limitations on guaranteed benefits, [►asset allocation](#) and allocation of any [►4022\(c\) amount](#), but prior to application of the plan's earnings limitations, as described in this policy. The PBGC supplement may be the same or less than the *plan supplement* (see C.7.).
 - The *actual PBGC supplement* is the monthly PBGC supplement due after application of the plan's earnings limitations. The actual PBGC supplement may be the same or less than the actual plan supplement.
 - The *anticipated PBGC supplement* is the monthly PBGC supplement paid or due after application of the plan's earnings limitation using anticipated earnings. The anticipated PBGC supplement may be the same or less than the anticipated plan supplement.
- 7. Plan supplement** means the monthly supplement payable under plan provisions prior to application of the plan's earnings limitations.
 - The *actual plan supplement* is the monthly amount due after application of the plan's earnings limitations.
 - The *anticipated plan supplement* is the monthly plan supplement paid after application of the plan's earnings limitation using anticipated earnings.

8. **Year** means calendar year unless specified otherwise.

- *Affected year* means any year in which a participant's or other individual's benefit payments from PBGC are affected by the application of the earnings-offset provisions under this policy.
- *DOPT year* is the calendar year in which the plan terminated.
- *DOTR year* means the calendar year in which the plan was trusteeed.

D. General Policy

PBGC applies a plan's earnings limitations in calculating the actual PBGC supplements and benefit payments due a ► participant in accordance with plan provisions and plan practice¹ and as further described in **sections E. PBGC Administration of Earnings-Offset Provisions** and **F. PBGC Earnings-Offset Calculations** of this policy.

Note 1: Subsequent references to a plan's earnings-offset provisions in this policy also include the plan's practices, if known, for administering its earnings-offset provisions. Where PBGC is unable to determine plan practice, PBGC will apply the earnings-offset provisions as otherwise described in this policy.

1. In general. PBGC administers the benefits provided under a plan with earnings-offset provisions, as follows:

- a. PBGC does not apply earnings-offset provisions when calculating and paying estimated benefits.
- b. However, PBGC continues to collect actual earnings information for use in preparing to issue ► benefit determinations.
- c. PBGC also collects information about a participant's eligibility for ► SSA disability benefits, if applicable under plan provisions, during this period to determine if the participant remains eligible for an estimated PBGC supplement.
- d. In preparing to issue benefit determinations, PBGC calculates the actual PBGC supplements and benefit payments due using the participant's actual earnings and reconciles the benefit payments due the participant with those paid through the date that the benefit determination will be implemented.
- e. In calculating the actual PBGC supplements and benefit payments due the ► DOPT year through the ► DOTR year, PBGC follows the plan's earnings-offset provisions, such as on the use of anticipated earnings and collection of earnings-offset overpayments.
- f. Regardless of plan provisions, beginning the year after the DOTR year, PBGC does not use anticipated earnings to offset the PBGC supplement paid during a given year.
- g. Beginning the year after the DOTR year, PBGC collects an earnings-offset overpayment by applying a benefit reduction for a 12-month period beginning April of the year following the year in which the overpayment was incurred, rather than according to plan provisions.
- h. After a benefit determination is issued, on an annual basis, PBGC continues to:
 - 1) pay the PBGC supplement each year that the participant is eligible for a plan supplement,
 - 2) collect actual earnings information and information about a participant's eligibility for SSA disability benefits, if applicable, to determine if the participant remains eligible for a PBGC supplement,
 - 3) calculate the actual PBGC supplement due, and
 - 4) make any related benefit adjustments.

2. Notification to participants. PBGC notifies potentially affected participants of its earnings-offset policy and procedures as soon as practicable after trusteeship, typically at the time benefits are adjusted to estimated-benefit levels. In addition, PBGC notifies participants potentially affected by changes in PBGC's policy and procedures for applying earnings-offset provisions as soon as practicable.

3. Other individuals due payments for an affected year. In unusual situations, PBGC applies the earnings-offset provisions in this policy in determining the benefit payments that are due another individual, such as a surviving spouse, non-spousal ► beneficiary, or ► alternate payee for an affected year.

- a. **Requests for information.** If needed, PBGC will request the participant's actual earnings information and information about his or her eligibility for SSA disability benefits from other individuals due payment for an affected year, as provided in **sections E.2. Actual earnings information** and **E.3. Eligibility for SSA disability benefits**.

- b. **Exception for participant's death.** If PBGC determines that a beneficiary (determined under PBGC Policy [8.6-1 Payments to Beneficiaries](#)) due payment for an affected year, is reasonably unable to provide the requested earnings information, PBGC will use the average of the participant's last two years of actual earnings to determine the benefit payments due for the affected year.
4. **Period for applying earnings-offset provisions.** PBGC applies the earnings-offset provisions in this policy in calculating the actual PBGC supplements and benefit payments due a participant beginning with DOPT through the year after the year in which a participant is no longer eligible for a plan supplement under plan provisions, such as upon attaining a specified age or becoming eligible for SSA disability benefits, rather than due to excess earnings.
- Supplements paid by PBGC after the date that a participant is no longer eligible for a plan supplement under such plan provisions are treated as ▶ [benefit overpayments](#) rather than earnings-offset overpayments.
- Example 1:** A plan provides that participants are no longer eligible for a supplement the earlier of reaching age 62 or becoming eligible for SSA disability benefits.
- 1) Participant Aee became age 62 in July 2011 and under plan provisions was no longer eligible for a plan supplement as of August 2011. Aee's last PBGC supplement was paid July 1, 2011. In January 2012, PBGC requested Aee's actual 2011 earnings and used them (pro-rated under plan provisions) to calculate the actual PBGC supplements for January – July 2011. Aee incurred an earnings-offset overpayment for January 2011 – July 2011, which PBGC will collect by benefit reduction beginning April 2012.
 - 2) Participant Bee reported in January 2012 of becoming entitled to SSA disability benefits as of July 2011. Under plan provisions, Bee was no longer entitled to a plan supplement as of August 2011. Bee's last PBGC supplement is paid February 2012. Bee did not have any earnings in 2011. However, Bee incurred a benefit overpayment for August 2011 – February 2012, which PBGC will recoup, as provided in PBGC Policy [6.4-1: Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#).
5. **Exception.** PBGC does not offset a PBGC supplement as otherwise described in this policy for any month in which the PBGC supplement is \$25 or less.
6. **Effect on plan assets.** For a plan with earnings-offset provisions that apply the year before the DOPT year and/or during the DOPT year, PBGC will determine whether post-DOPT repayment of any pre-DOPT earnings-offset overpayment will have a material effect on plan assets as of DOPT.
- If PBGC determines that post-DOPT repayments will have a material effect, PBGC will adjust the plan assets appropriately.
 - If PBGC determines that post-DOPT repayments will not have a material effect, PBGC will disregard them in determining the plan assets.
7. **Valuation assumptions.** For a plan with earnings-offset provisions in effect as of DOPT, PBGC applies the following ▶ [assumptions](#) in performing its ▶ [valuation](#) of the plan:
- a. A pre-DOPT retiree who had earnings in the year preceding DOPT continues to have the same earnings through the year in which the retiree is no longer eligible for a plan supplement under plan provisions.
 - b. A pre-DOPT retiree who did not have earnings in the year preceding DOPT continues to not have earnings through the year in which the retiree is no longer eligible for a plan supplement under plan provisions.
 - c. A participant who retires on or after DOPT will not have any earnings in any year through the year in which the participant is no longer eligible for a plan supplement under plan provisions.

E. PBGC Administration of Earnings-Offset Provisions

1. Estimated benefit payments.

In calculating and paying estimated benefits, including any estimated PBGC supplement, PBGC does not apply a plan's earnings-offset provisions, including the use of anticipated earnings.

- a. **Discontinuation of earnings-offset provisions.** As soon as practicable after trusteeship, PBGC discontinues application of the plan's earnings-offset provisions and adjusts benefit payments to the estimated level, including any estimated PBGC supplement.
- b. **Underpayments do not result from discontinuation of plan earnings-offset provisions.** At the time benefits are adjusted to the estimated level, any increase in a ▶ [participant's](#) payment resulting from discontinuation of the plan's

earnings-offset provisions is not treated as resulting in a benefit underpayment for any months prior to the adjustment. Any difference will be reconciled later in preparing to issue [►benefit determinations](#), as described below in section *E.4. Benefit determination reconciliation*.

Example 2: A participant's plan benefit was \$1,300. The plan had applied a benefit reduction of \$300/month to collect an earnings-offset overpayment. At [►DOTR](#), the participant was being paid \$1,000/month (\$1,300 - \$300) by the plan. Shortly after DOTR, PBGC discontinues the plan's benefit reduction and adjusts the participant's payment to an estimated benefit of \$1,100/month, including an estimated PBGC supplement of \$100.

The \$100 difference in the estimated PBGC payment of \$1,100 and the plan payment of \$1,000 is not treated as a benefit underpayment for the period between [►DOPT](#) and the date the participant's benefit is adjusted because the difference is due to discontinuation of the plan's earnings-offset provisions.

- c. **Other eligibility factors.** PBGC applies a plan's other eligibility factors, as described in [section D.4. Period for applying earnings-offset provisions](#), in determining if and when an estimated PBGC supplement is payable. For example, if plan provisions provide that a participant is no longer eligible for a plan supplement upon reaching age 62, an estimated PBGC supplement is no longer payable when the participant reaches age 62.

2. Actual earnings information. On an annual basis, PBGC requests actual earnings information from a participant for each year that the participant's PBGC supplement is potentially subject to a plan's earnings limitations. PBGC generally will not require proof of the earnings, but reserves the right to require proof.

- a. PBGC will provide a response period of not less than 30 days from the date of the letter requesting the earnings information.
- b. For any year that PBGC does not receive the requested earnings information, PBGC applies the plan's maximum earnings limitation in determining the actual PBGC supplement for that year as described in [section F.3. Determination of actual PBGC supplement](#).

If actual earning information is later received by PBGC, PBGC will recalculate the earnings offset and actual PBGC supplement and adjust the participant's payments, if needed, as described in [section F.7. Late reports of actual earnings](#).

3. Eligibility for SSA disability benefits.² If a plan provides that a supplement is not payable for any month the participant is or was eligible for an [►SSA](#) disability benefit, at the time PBGC requests actual earnings information as described above in [section E.2.](#), PBGC will also ask the participant to confirm whether he or she became eligible for SSA disability benefits.

- a. If the participant reports becoming eligible for SSA disability benefits, PBGC will request proof of the date that the participant was first eligible for an SSA disability payment from the participant.
- b. PBGC will provide a response period of not less than 30 days from the date of the letter specifically requesting proof of eligibility for the SSA disability payments.
- c. If the participant does not provide the requested proof, PBGC will treat the participant as eligible for the SSA disability benefit as of the first day of the month after the receipt of the participant's most recent response to a prior year's request for information about the participant's eligibility for SSA disability benefits.

If proof of the participant's eligibility for the SSA disability benefit is later received, the participant's eligibility for a PBGC supplement will subsequently be adjusted to reflect the actual date that the participant became eligible for the SSA disability benefit.

Example 3: In January 2011, a participant reported not having any earnings for 2010 and as not being eligible for SSA disability benefits. In February 2012, the participant reported not having any earnings for 2011 but also reported becoming eligible for SSA disability benefits in December 2011. The participant did not respond to PBGC's February 6, 2012 request for proof of the participant's eligibility for the SSA disability benefit.

PBGC treats the participant as having become eligible for the SSA disability benefit as of February 2011, the month after the participant last reported not being eligible for SSA disability benefits. The last PBGC supplement was paid March 1, 2012. As a result, the participant incurred a [►benefit overpayment](#) for February 2011 – March 2012 that will be recouped, as provided in PBGC Policy [6.4-1: Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#).

Note 2: If a plan provides that a supplement is no longer payable upon eligibility for another type of benefit, PBGC will apply similar rules as described in this section in determining the participant's eligibility for the PBGC supplement.

4. Benefit determination reconciliation. In preparing to issue benefit determinations, PBGC will reconcile the benefit payments that were due to those made from DOPT through the date that the benefit determination is expected to be implemented, as follows:

- a. PBGC will calculate, using actual earnings, the actual PBGC supplements, earnings-offset overpayments or underpayments, related benefit adjustments (e.g., a benefit reduction to collect an earnings-offset overpayment) and the benefit payments due, as described in [**section F. PBGC Earnings-Offset Calculations**](#).
- b. PBGC will next compare the benefits due to those paid and compute any net benefit overpayments and underpayments for that time, as provided in PBGC Policy [**6.4-3 Computation and Netting of Post-DOPT Benefit Overpayments and Underpayments**](#).

5. Ongoing administration. After issuance of benefit determinations, PBGC will continue on an annual basis to:

- a. Pay the PBGC supplement each month that a participant is eligible for a plan supplement under plan provisions during a given year.
- b. Request actual earnings information and information about eligibility for SSA disability benefits, if applicable, for that year, as previously described in sections [**E.2.**](#) and [**E.3.**](#)
- c. Calculate the actual PBGC supplement and any earnings-offset overpayment or underpayment for that year, and calculate the benefit payments due the following year, as described in [**section F. PBGC Earnings-Offset Calculations**](#).

6. Voluntary suspension of PBGC supplement. PBGC will honor requests from a participant for suspension of his or her PBGC supplement in order to avoid incurring earnings-offset overpayments, as follows:

- a. Upon trusteeship, PBGC will continue any voluntary suspension of a supplement previously implemented by the plan administrator.
- b. Upon receipt of a written request for suspension, PBGC will suspend the PBGC supplement (estimated or final) as soon as practicable after sending a notice confirming the date that the suspension will take effect, which generally will be no later than sixty days after receipt of an acceptable request.
- c. Upon receipt of a written request to reinstate payment of a PBGC supplement, PBGC will reinstate the supplement as soon as practicable, which generally will be no later than sixty days after receipt of the request.
- d. At the time the supplement is reinstated, PBGC will pay the PBGC supplement retroactively for the months in the year that are prior to the date the supplement is reinstated only if the participant specifically requests retroactive payments.
 - Interest will not be paid on these retroactive payments.
 - PBGC will subsequently reconcile the PBGC supplements that were not paid with the actual PBGC supplement for the months prior to reinstatement when it performs its annual reconciliation for that year, as previously described in [**sections E.4.**](#) and [**E.5.**](#), as appropriate.
- e. PBGC will otherwise apply the rules in this policy in determining the actual PBGC supplement, applicable adjustments, and benefit payments due a participant who has requested a suspension for each affected year on an annual basis, as previously described in [**section E.4.**](#) and [**E.5.**](#), as appropriate.

F. PBGC Earnings-Offset Calculations

PBGC calculates earnings offsets, actual PBGC supplements and the benefit payments due a [► participant](#) for any affected year as follows:

1. Calculations for DOPT Year through DOTR Year. PBGC follows the plan's earnings-offset provisions in calculating the PBGC supplements and benefit payments payable the [► DOPT](#) year through the [► DOTR](#) year. For example:

- If the plan used anticipated earnings in calculating and paying an anticipated plan supplement and benefit payments for a given year, PBGC will use anticipated earnings (if available) to calculate an anticipated PBGC supplement and the benefit payments for that same year.
- If the plan applied a 100% benefit reduction to collect an earnings-offset overpayment, PBGC will also apply a 100% benefit reduction to collect an earnings-offset overpayment.

2. Calculation if supplement due only part of year. When a participant is eligible under plan provisions for a plan supplement for only part of a year, such as the year the participant is first eligible for the supplement or the year that the participant is no

longer eligible for the supplement due to age or receipt of [SSA](#) disability benefit, PBGC will calculate the offset and actual plan and PBGC supplement due for that year by following the relevant plan provisions and practice. For example, if the plan would have prorated earnings for a year in which the participant is eligible for a supplement for only part of the year, PBGC will similarly prorate the earnings for that year.

3. Determination of actual PBGC supplement. PBGC calculates the actual PBGC supplement for any given year as follows:

- a. **Calculation of actual plan supplement.** Using actual earnings, or the plan's maximum earnings limitation when appropriate, PBGC will first calculate the earnings-offset and the actual plan supplement that would have been due for an affected year in accordance with plan provisions.
- b. **Comparison of actual plan supplement to PBGC supplement.** PBGC then compares the actual plan supplement to the PBGC supplement. The lesser of the two is the actual PBGC supplement.

Example 4: Participants Cee, Dee, and Eee are participants in three different plans.

- All three are eligible for a plan supplement of \$400/month.
- The earnings offset provisions for the three plans are the same: The supplement is offset by \$1 for every \$2 of earnings in excess of \$5,500/year.
- Cee's and Dee's PBGC supplements are limited by PBGC's [limitations on guaranteed benefits](#). Eee's PBGC supplement is not limited.

PBGC requests their actual 2011 earnings information in January 2012 and calculates their actual PBGC supplements for 2011, as follows:

	Participants	Cee	Dee	Eee
1.	Monthly plan supplement	\$400	\$400	\$400
2.	Monthly PBGC supplement	\$100	\$200	\$400
3.	2010 Actual earnings	\$10,000	\$13,000	\$14,000
4.	Monthly earnings offset = $((\text{Line 3} - \$5,500) \div \$2) \div 12 \text{ months}$ Cee: $((\$10,000 - \$5,500) \div \$2) \div 12 \text{ months} = \187.50 Dee: $((\$13,000 - \$5,500) \div \$2) \div 12 \text{ months} = \312.50 Eee: $((\$14,000 - \$5,500) \div \$2) \div 12 \text{ months} = \354.17	\$187.50	\$312.50	\$354.17
5.	Actual monthly plan supplement = Line 1 - Line 4* Cee: $\$400 - \$187.50 = \$212.50$ Dee: $\$400 - \$312.50 = \$87.50$ Eee: $\$400 - \$354.17 = \$45.83$ *But not less than \$0	\$212.50	\$87.50	\$45.83
6.	Actual monthly PBGC supplement = The lesser of Line 2 and Line 5, if not equal.	\$100	\$87.50	\$45.83

4. Earnings-offset overpayments and underpayments. PBGC calculates an earnings-offset overpayment or underpayment for a given year, as follows:

- a. PBGC compares the actual monthly PBGC supplement for the previous year (as calculated under section F.3.) to the monthly PBGC supplement(s) that were paid the previous year. The difference between the actual PBGC supplement and that paid is the monthly earnings-offset overpayment or underpayment.³

Note 3: For the DOPT year through the DOTR year, if the plan would have used anticipated earnings to calculate an anticipated plan supplement to be paid during a given year, PBGC will also use anticipated earnings to calculate an anticipated PBGC supplement for that same year. *The anticipated PBGC supplement is treated as having been paid*

during that year, rather than the PBGC supplement. PBGC will then compare the actual PBGC supplement with the anticipated PBGC supplement to determine any earnings-offset overpayment or underpayment for that year.

- b. The annual earnings-offset overpayment or underpayment is the net total of the monthly earnings-offset overpayments and underpayments for that year.⁴

Note 4: Earnings-offset underpayments generally occur only if anticipated earnings are used or a participant's PBGC supplement is voluntarily suspended for any given year.

Example 5 - Continuing from Example 4: Cee, Dee, and Eee were paid their PBGC supplements every month in 2011.

In 2012, PBGC calculates earnings-offset overpayments based on their actual PBGC supplements for 2011, as follows:

	Participants	Cee	Dee	Eee
1.	Actual monthly PBGC supplement	\$100	\$87.50	\$45.83
2.	Monthly PBGC supplement paid	\$100	\$200	\$400
3.	Monthly difference = Line 1 - Line 2	\$0	(\$112.50)	(\$354.17)
4.	2010 Earnings offset overpayment = Line 3 X 12 months	\$0	(\$1,350)	(\$4,250.04)

Example 6: A plan used anticipated earnings in calculating the plan supplement paid during a given year. In preparing to issue a benefit determination in 2013, PBGC reconciles the actual PBGC supplement with the anticipated PBGC supplement calculated for the participant for 2011.

- The participant is eligible for a PBGC supplement of \$50/month.
 - Using the participant's 2011 anticipated earnings, PBGC calculates an anticipated PBGC supplement of \$30/month.
 - Using the participant's actual 2011 earnings and the PBGC supplement of \$50/month, PBGC calculates an actual PBGC supplement of \$45/month for 2011.
 - As a result, the participant incurred an earnings-offset underpayment of \$180 ((\$45 - \$30) X 12 months) for 2011.
- c. Earnings-offset overpayments are collected as described below in section F.5. *Benefit reductions to collect earnings-offset overpayments* and earnings-offset underpayments are paid or netted with ▶ [benefit overpayments](#), as described below in section F.6. *Treatment of earnings-offset underpayments*.

5. **Benefit reductions to collect earnings-offset overpayments.** PBGC collects an earnings-offset overpayment for a previous year (as calculated under section F.4.) by applying a benefit reduction to the PBGC benefit payable the following year.

- a. **Calculations for DOPT year through the DOTR year.** PBGC calculates and applies the benefit reduction in accordance with plan provisions.
- b. **Calculations for years after the DOTR year.** For years after the DOTR year and continuing, PBGC calculates the benefit reduction by dividing the earnings-offset overpayment by 12 months and applying the reduction to benefit payments for the 12-month period beginning April of the following year.
- c. **Limitation on benefit reduction.** The amount of the benefit reduction is limited only by the amount of the net PBGC payment after any other required withholdings or deductions are made, such as payments due an ▶ [alternate payee](#) or recoupment of a benefit overpayment.

Example 7 - Continuing from Example 5: Cee did not incur an earnings-offset overpayment or underpayment for 2011. However, Dee and Eee did incur earnings-offset overpayments.

PBGC calculates the benefit reductions to collect Dee's and Eee's earnings-offset overpayments beginning April 2012 as follows:

	Participants	Cee	Dee	Eee

1.	2011 Earnings offset overpayment	N/A	(\$1,350)	(\$4,250.04)
2.	2012 Monthly benefit reduction = Line 1 ÷ 12 months	N/A	(\$112.50)	(\$354.17)

6. **Treatment of earnings-offset underpayments.** PBGC treats an earnings-offset underpayment (as calculated under section F.4.) similarly to a benefit underpayment, as follows:

- a. **Due date.** Earnings-offset underpayments are due on the first day of April following the year that the PBGC supplement used to calculate the underpayment was paid (i.e., the same date that a benefit reduction for an earnings-offset overpayment for the previous year would apply).
- b. **Netting of earnings-offset underpayments with benefit overpayments.** PBGC generally will net any earnings-offset underpayments with benefit overpayments in computing the net benefit overpayment, if any, to be recouped or the net benefit underpayment, if any, to be reimbursed as described in PBGC Policy **6.4-3 Computation and Netting of Post-DOPT Benefit Overpayments and Underpayments.**
- c. The earnings-offset underpayment will otherwise be reimbursed as soon as practicable as provided in PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments.**

7. **Late reports of actual earnings.** If a participant reports actual earnings after a benefit reduction has been applied based on use of a plan's maximum earnings limitation, PBGC will recalculate the earnings offset using the actual earnings as soon as practicable, unless the actual earnings exceed the maximum earnings limitation. PBGC will adjust the affected benefit payments as follows:

- a. PBGC will adjust any benefit reduction in place as needed to repay the remaining earnings-offset overpayment, if any, for the remainder of the benefit reduction period in effect.
- b. If the earnings-offset overpayment has already been collected, PBGC will treat any underpayment resulting from the recalculation as owed on the first day of the month following the month that the overpayment was repaid. PBGC will reimburse the underpayment as soon as practicable, as otherwise provided in PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments.**
- c. If the recalculation of the actual PBGC supplement results in an earnings-offset underpayment for the prior year, it will be treated as provided above in section F.6. The benefit reduction will be stopped and any resulting benefit underpayment will be reimbursed as soon as practicable as provided in PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments.**

8. **Calculation of PBGC benefit payments due.** In a plan with earnings-offset provisions, the amount of the benefit payment due from PBGC for each month after DOPT is the PBGC ►termination benefit, including the PBGC supplement, after any required deductions, such as payments due an alternate payee or recoupment for a benefit overpayment, minus any applicable benefit reduction to collect an earnings-offset overpayment that occurred the previous year.

Example 8 - Continuing from Example 7: Cee and Eee have benefit overpayments that are being recouped.

PBGC calculates Cee's, Dee's, and Eee's benefit payments for April 2012 – March 2013 as follows:

	Participants	Cee	Dee	Eee
1.	Monthly PBGC termination benefit without PBGC supplement	\$1,000	\$1,000	\$1,000
2.	Monthly PBGC supplement	\$100	\$200	\$400
3.	Monthly PBGC benefit payment including PBGC supplement = Line 1 + Line 2	\$1,100	\$1,200	\$1,400
4.	Monthly recoupment for benefit overpayment	\$55	N/A	\$70
5.	Monthly PBGC benefit payment after recoupment = Line 3 - Line 4	\$1,045	\$1,200	\$1,330
6.	Monthly benefit reduction to collect earnings-offset overpayment	N/A	\$112.50	\$354.17

7.	Monthly PBGC benefit payment due April 2012 – March 2013 = Line 5 - Line 6	\$1,045	\$1,087.50	\$975.83
----	---	---------	------------	----------

9. **Comprehensive examples.** For comprehensive examples that demonstrate the calculations described in section F., see the [Appendix](#).

G. Discretionary Authority

PBGC reserves the right to use its discretion in the manner in which it determines the actual PBGC supplement and the resulting benefit payments due a [► participant](#) and to seek repayment of any earnings-offset overpayments in a manner other than that described in this [► policy](#) in unusual situations. PBGC's Policy and Procedures Division ([► PPD](#)) will determine when PBGC will exercise this authority based on the facts and circumstances of the case.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
 Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_2_1_2nd.htm
 (08/30/2011)

Previous Editions

[6.2-1 Application of Earnings Offset Provisions 1st Ed. - Outdated](#)

[Top of Page](#)

6.3-1 Underpayment Reimbursement and Interest Payments

Edition	5th Edition
Issue Date	08/30/2017
Transmittal	Transmittal 2017-06
Last Review Date	N/A
Signed Policy	6.3-1 Underpayment Reimbursement and Interest Payments
Contact	ASK PPD

In this policy

- [A. Background](#)
 - [B. Scope and Effective Date](#)
 - [C. General Rule](#)
 - [D. Interest on Lump Sums](#)
 - [E. Pre-Termination Plan Liabilities](#)
 - [F. QDRO Related Suspension](#)
 - [G. Replacement of Post-DOPT Payments \(allegations of non-receipt\)](#)
 - [H. Rollover of Large Reimbursements](#)
- [Concurrence, Endorsements, and Approval](#)

A. Background

Sometimes payees in a pension plan may receive less than the payments to which they are entitled. There are several ways this may occur. For example, payees may:

- receive estimated PBGC benefits that are later determined to be less than their final benefit, including estimated payments based on the continuation of erroneous calculations by the plan administrator;
- not receive monthly payments between their annuity starting date (ASD) and actual first payment date, due to the processing time between the ASD and completion of the benefit application process;
- not receive benefit payments because the payments were suspended for a period of time; or
- not receive payments from a plan that were due prior to DOPT (pre-termination plan liabilities).

This policy provides the rules under which PBGC will make payments to payees in trustee plans to compensate for underpayments and describes when PBGC pays interest. With this edition of the policy, PBGC is clarifying that:

- PBGC always pays PBGC interest on pre-termination plan liabilities (which are reimbursed provided Financial Plan Assets are sufficient to pay them) regardless of plan provisions;
- PBGC applies the "tolerance rules" of Policy [5.8-1 Benefit Corrections](#) to determination of pre-termination liabilities;
- PBGC no longer has an exception to paying interest for a one or two month delay in the first payment date of a new payee (former Section D); and
- PBGC pays interest in cases of replacement payments for post-DOPT payments when the payment is more than 180 days late.

B. Scope and Effective Date

This policy covers reimbursements of benefit underpayments, including:

- Net benefit underpayments determined under Section 4022.81(c) of PBGC Regulations (Section C);
- Benefit payments suspended by PBGC (Section C);
- De minimis and other lump-sum benefit amounts (including estimated lump-sum payments) (Section D);
- Pre-termination plan liabilities (Section E);

- Benefit payments suspended as part of the procedures to review a domestic relations order (DRO) for qualification (Section F);
- Replacement of post-DOPT Payments (Section G); and
- Reimbursements that may be eligible for rollover (Section H).

This policy applies to payees in plans administered by PBGC and is effective upon issuance for all reimbursement payments processed on or after October 01, 2017.

C. General Rule

PBGC pays net underpayments including backpayments, with interest, if the net underpayment plus interest totals \$1 or more as described in Section 4022.81(c) of PBGC Regulations, and more fully described in this policy.

1. Calculation of Net Underpayment

PBGC calculates a net underpayment as described in Section 4022.81(c) of PBGC Regulations and PBGC Operating Policy [6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments](#).

2. When to pay a net underpayment

When the PBGC determines that there is a net underpayment, PBGC pays the net underpayment in a single payment, including interest as appropriate, as soon as practicable.

3. Interest

Except as provided below, PBGC will add interest to underpayments, as provided in Section 4022.81(c)(4) ("PBGC interest").

D. Interest on Lump Sums

PBGC pays interest on de minimis lump sum benefits from the first day of the month coincident with or following DOPT to the date of distribution.

E. Pre-Termination Plan Liabilities

1. Amounts owed prior to DOPT

PBGC will determine pre-termination liabilities (amounts owed to payees prior to DOPT, including "residual" amounts determined owed after a prior pre-termination liability payment was made) by including PBGC interest before and after DOPT, and by applying the tolerance rules in [5.8-1 Benefit Corrections](#). PBGC will pay these pre-termination liabilities if a plan has sufficient assets to pay the amounts. These amounts may be missed payments or underpayments as of DOPT including uncashed checks from the prior plan administrator.

2. Assets

PBGC pays the pre-termination plan liabilities with interest to the extent the plan's assets are sufficient to pay for them. For this purpose, sufficiency is determined based on the **Financial Plan Assets**, as opposed to Valuation Plan Assets. For small plans (UNGB not exceeding \$20 million), Financial Plan Assets and Valuation Plan Assets use different values for PBGC's recovery of Due and Unpaid Employer Contributions (DUEC). If the Financial Plan Assets as of DOPT are less than the total pre-termination plan liabilities (including benefit and non-benefit liabilities), assets are allocated to each payee according to the ratio of his or her pre-termination liability to the total pre-termination plan liabilities.

- **Financial Plan Assets** consist of (a) the **DUEC Recovery** as defined in Policy [6.7-2 DUEC Recovery Amounts](#), plus (b) the value at DOPT of all other plan assets (i.e., stocks, bonds, accounts, and other tangible or intangible plan assets). The DUEC Recovery is the value of DUEC determined under PBGC Operating Policy [8.2-1 Valuation and Allocation of Recoveries](#). Valuation DUEC Recovery amounts (e.g., Small Plan DUEC Recovery Ratio (SPDRR) amounts) are not considered when determining if assets are sufficient to pay pre-termination plan liabilities.
- **Valuation Plan Assets** are allocated to participants' benefits via the priority categories under Section 4044 of ERISA. They consist of (a) the **Valuation DUEC Recovery** as defined in Policy [6.7-2 DUEC Recovery Amounts](#), plus (b) the value at DOPT of all other plan assets (i.e., stocks, bonds, accounts, and other tangible or intangible plan assets). The Valuation DUEC Recovery is the value determined by multiplying (a) the DUEC for a plan by (b) the section 4062(c) recovery ratio (e.g., the SPDRR for small plans). Any pre-termination plan liabilities paid are subtracted from the Valuation Plan Assets before the assets are allocated to participants' benefits; however, the amount allocated to participants' benefits cannot be less than the full amount of the Valuation DUEC Recovery.

		Example 1 PTPL < All Other Plan Assets	Example 2 PTPL > All Other Plan Assets	Example 3 PTPL > VPA
(a)	All Other Plan Assets	\$1000	\$1000	\$1000
(b)	DUEC Recovery	\$100	\$50	\$100
(c)	Valuation DUEC Recovery	\$100	\$100	\$50
(d)	Pre-Termination Plan Liabilities (PTPL)	\$900	\$1075	\$1075
(e)	Financial Plan Assets (a) + (b) =	\$1100	\$1050	\$1100
(f)	PTPL Payable Lesser of (d) and (e) =	\$900	\$1050	\$1075
(g)	Valuation Plan Assets (VPA) (a) + (c) =	\$1100	\$1100	\$1050
(h)	VPA Available for 4044 Allocation Greater of (c) and [(g) – (f)] =	\$200	\$100	\$50

F. QDRO Related Suspension

1. Payment

Section F of PBGC Operating Policy [**6.6-3 Qualified Domestic Relations Orders**](#) provides that payments may be suspended while an order is being reviewed. After the suspension is lifted, PBGC pays any underpayments as described in this policy.

2. Interest

PBGC pays interest for these underpayments as described in Section 4022.81(c) of PBGC Regulations and PBGC Operating Policy [**6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**](#).

G. Replacement of Post-DOPT Payments (allegations of non-receipt)

1. Payment

PBGC may determine that it will reissue a Post-DOPT payment previously issued by PBGC or the prior plan administrator in response to a payee's assertion that payment was not received.

2. Interest

PBGC generally does not pay interest on these payment replacements; however, if the reimbursement is issued more than 180 days after the original payment was issued, PBGC interest will be paid.

H. Rollover of Large Reimbursements

1. General Rule

Generally, payments received as part of an annuity are not rollover eligible. However, under certain conditions, PBGC will consider a large payment eligible for rollover. In order for PBGC to report any portion of a payment as eligible for rollover treatment under section 402(c) of the Code, the payment must:

- a) Equal or exceed \$5000; and
- b) Equal at least three times the monthly benefit.

Generally, such a payment is eligible for rollover treatment if (a) the payee is a participant, surviving spouse or alternate payee under a QDRO who is a spouse or former spouse and (b) the payment meets other IRS rules.

- Ex. 1** Jane Doe's estimated monthly benefit amount is \$1660.
 Her Annuity Starting Date is April 1, 2014.
 Her first monthly payment is July 1, 2014.
 On July 1, 2014, her three missed payments (April, May, and June) total \$4980. With interest the backpayment is \$5018.45.
 Jane's backpayment is both greater than \$5000 and greater than three times the monthly benefit ($3 \times \$1660 = \4980), so the payment is eligible for rollover treatment.
- Ex. 2** John Doe's estimated monthly benefit amount is \$1000.
 His Annuity Starting Date is January 1, 2011.
 His first monthly payment is January 1, 2011.
 PBGC issues a benefit determination dated May 2014 with his final monthly benefit amount of \$1100.
 His benefit is adjusted upwards to the final amount as of July 1, 2014.
 His underpayments as of July 1, 2014 total \$4200 (42 months x \$100 underpayment).
 With interest, his reimbursement is \$4509.44.
 John's reimbursement is greater than three times the monthly benefit ($3 \times \$1100 = \3300), but it is not greater than \$5000, so the payment is not eligible for rollover treatment.

Concurrence, Endorsements, and Approval

Policy 6.3-1 PBGC Underpayment Reimbursement and Interest Payments, 5th Ed.		
Concurrence	Initials	Date
OBA/ASD: Jarred Scott, Supervisory Technical Recruiter	J.S.	07/19/2017
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	07/19/2017
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	07/19/2017
OBA/PSD: Jennifer Messina, Director	J.M.	07/24/2017
OCC: Joseph Krettek, Assistant General Counsel	J.M.K.	07/19/2017
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	07/19/2017
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	08/01/2017
Chief Financial Officer: Patricia Kelly	P.K.	08/03/2017
Approval		
OBA: David Foley for Cathy Kronopolus, Chief of Benefits Administration	D.F.	07/27/2017

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on **Transmittal 2017-06**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
 Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
[\(08/30/2017\).](http://intranet/standards_manuals/manuals/policy/6_3_1_5th.htm)

Previous Editions

[6.3-1 Reimbursement of Underpayments/Back Payments 1st Ed. - Outdated](#)

[6.3-1 Underpayment Reimbursement and Interest Payments 2nd Ed. - Outdated](#)

[6.3-1 Underpayment Reimbursement and Interest Payments 3rd Ed. - Outdated](#)

6.3-1 Underpayment Reimbursement and Interest Payments
4th Ed. - Outdated

[Top of Page](#)

6.3-1 Underpayment Reimbursement and Interest Payments

Edition	6th Edition
Issue Date	03/30/2021
Transmittal	Transmittal 2021-02
Last Review Date	N/A
Signed Policy	6.3-1 Underpayment Reimbursement and Interest Payments
Contact	Ask PPD

- [A. Introduction](#)
 - [B. Scope and Effective Date](#)
 - [C. General Rule](#)
 - [D. Interest on Lump Sums](#)
 - [E. Pre-termination Plan Liabilities](#)
 - [F. QDRO Related Suspension](#)
 - [G. Replacement of Post-DOPT Payments \(Allegations of Non-Receipt\)](#)
 - [H. Rollover of Large Reimbursements](#)
-

A. Introduction

Sometimes payees in a pension plan may receive less than the payments to which they are entitled. There are several ways this may occur. For example, payees may:

- receive estimated PBGC benefits that are later determined to be less than their final benefit, including estimated payments based on the continuation of calculations by the plan administrator;
- not receive monthly payments between their annuity starting date (ASD) and actual first payment date, due to the processing time between the ASD and completion of the benefit application process;
- not receive benefit payments because the payments were suspended for a period of time; or
- not receive payments from a plan that were due prior to DOPT (pre-termination plan liabilities).

This policy provides the rules under which PBGC will make payments to payees in trustee plans to compensate for underpayments and describes when PBGC pays interest. With this edition, PBGC is revising the policy to:

- Clarify that backpayments reimbursed after a payee (i.e., a participant, surviving spouse or alternate payee under a QDRO who is a spouse or former spouse) reaches their required beginning date are not eligible rollover distributions; and

- Increase the Large Reimbursement threshold so that the reimbursement must be \$50,000 or more **and** equal to at least 12 times the monthly payment amount.

B. Scope and Effective Date

This policy covers reimbursements of benefit underpayments, including:

- Net benefit underpayments determined under Section 4022.81(c) of PBGC Regulations (Section C);
- Benefit payments suspended by PBGC (Section C);
- De minimis and other lump-sum benefit amounts (including estimated lump-sum payments) (Section D);
- Pre-termination plan liabilities (Section E);
- Benefit payments suspended as part of the procedures to review a domestic relations order (DRO) for qualification (Section F);
- Replacement of Post-DOPT Payments (Section G); and
- Reimbursements that may be treated as eligible rollover distributions (Section H).

This policy applies to payees in plans trustee by PBGC and is effective upon issuance for all reimbursement payments processed on or after April 1, 2021, with the following exception: payees with reimbursement payments communicated prior to the effective date of this policy will be paid following the prior thresholds in Section H).

C. General Policy

PBGC pays net underpayments including backpayments, with interest, if the net underpayment plus interest totals \$1 or more as described in Section 4022.81(c) of PBGC Regulations, and more fully described in this policy.

1. Calculation of Net Underpayment

PBGC calculates a net underpayment as described in Section 4022.81(c) of PBGC Regulations and PBGC Operating Policy 6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments.

2. When to pay a net underpayment

When the PBGC determines that there is a net underpayment, PBGC pays the net underpayment in a single payment, including interest as appropriate, as soon as practicable.

3. Interest

Except as provided below, PBGC will add interest to underpayments, as provided in Section 4022.81(c)(4) ("PBGC interest").

D. Interest on Lump Sums

PBGC pays interest on de minimis lump sum benefits from the first day of the month coincident with or following DOPT to the date of distribution.

E. Pre-Termination Plan Liabilities

1. Amounts owed prior to DOPT

PBGC will determine pre-termination liabilities (amounts owed to payees prior to DOPT, including “residual” amounts determined owed after a prior pre-termination liability payment was made) by including PBGC interest before and after DOPT, and by applying the tolerance rules in 5.8-1, Benefit Corrections. PBGC will pay these pre-termination liabilities if a plan has sufficient assets to pay the amounts. These amounts may be missed payments or underpayments as of DOPT including uncashed checks from the prior plan administrator.

2. Assets

PBGC pays the pre-termination plan liabilities with interest to the extent the plan’s assets are sufficient to pay for them. For this purpose, sufficiency is determined based on the **Financial Plan Assets**, as opposed to Valuation Plan Assets. For small plans (UNGB not exceeding \$20 million), Financial Plan Assets and Valuation Plan Assets use different values for PBGC’s recovery of Due and Unpaid Employer Contributions (DUEC). If the Financial Plan Assets as of DOPT are less than the total pre-termination plan liabilities (including benefit and non-benefit liabilities), assets are allocated to each payee according to the ratio of his or her pre-termination liability to the total pre-termination plan liabilities.

- **Financial Plan Assets** consist of (a) the **DUEC Recovery** as defined in Policy 6.7-2 DUEC Recovery Amounts, plus (b) the value at DOPT of all other plan assets (i.e., stocks, bonds, accounts, and other tangible or intangible plan assets). The DUEC Recovery is the value of DUEC determined under PBGC Operating Policy 8.2-1 Valuation and Allocation of Recoveries. Valuation DUEC Recovery amounts (e.g. Small Plan DUEC Recovery Ratio (SPDRR) amounts) are not considered when determining if assets are sufficient to pay pre-termination plan liabilities.
- **Valuation Plan Assets** are allocated to participants’ benefits via the priority categories under Section 4044 of ERISA. They consist of (a) the **Valuation DUEC Recovery** as defined in Policy 6.7-2 DUEC Recovery Amounts, plus (b) the value at DOPT of all other plan assets (i.e., stocks, bonds, accounts, and other tangible or intangible plan assets). The Valuation DUEC Recovery is the value determined by multiplying (a) the DUEC for a plan by (b) the section 4062(c) recovery ratio (e.g. the SPDRR for small plans). Any pre-termination plan liabilities paid are subtracted from the Valuation Plan Assets before the assets are allocated to participants’ benefits; however, the amount allocated to participants’ benefits cannot be less than the full amount of the Valuation DUEC Recovery.

		Example 1 PTPL < All Other Plan Assets	Example 2 PTPL > All Other Plan Assets	Example 3 PTPL > VPA
(a)	All Other Plan Assets	\$1000	\$1000	\$1000
(b)	DUEC Recovery	\$100	\$50	\$100
(c)	Valuation DUEC Recovery	\$100	\$100	\$50
(d)	Pre-Termination Plan Liabilities (PTPL)	\$900	\$1075	\$1075

(e)	Financial Plan Assets	\$1100	\$1050	\$1100
	(a) + (b) =			
(f)	PTPL Payable	\$900	\$1050	\$1075
	Lesser of (d) and (e) =			
(g)	Valuation Plan Assets (VPA)	\$1100	\$1100	\$1050
	(a) + (c) =			
(h)	VPA Available for 4044 Allocation	\$200	\$100	\$50
	Greater of (c) and [(g) – (f)] =			

F. QDRO Related Suspension

1. Payment

Section F of PBGC Operating Policy 6.6-3 Qualified Domestic Relations Orders provides that payments may be suspended while an order is being reviewed. After the suspension is lifted, PBGC pays any underpayments as described in this policy.

2. Interest

PBGC pays interest for these underpayments as described in Section 4022.81(c) of PBGC Regulations and PBGC Operating Policy 6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments.

G. Replacement of Post-DOPT Payments (allegations of non-receipt)

1. Payment

PBGC may determine that it will reissue a Post-DOPT payment previously issued by PBGC or the prior plan administrator in response to a payee's assertion that the payment was not received.

2. Interest

PBGC generally does not pay interest on post-DOPT payment replacements; however, if the reimbursement is issued more than 180 days after the original payment was issued, PBGC interest will be paid.

H. Rollover of Large Reimbursements

1. General Rule

Generally, payments received as part of an annuity are not an eligible rollover distribution (eligible for rollover treatment under section 402(c) of the Code).

2. Large Reimbursements

However, under rare conditions, PBGC will treat a large reimbursement payment as an eligible rollover distribution. In order for PBGC to report the payment as a rollover eligible distribution:

- a. the payee must be a participant, surviving spouse or alternate payee under a QDRO who is a spouse or former spouse;
- b. the payment must be made prior to the payee's required beginning date

(RBD); and

c. the payment must:

- i. Equal or exceed \$50,000; and
- ii. Be at least twelve times the monthly benefit.

Policy 6.3-1 Underpayment Reimbursement and Interest Payments, 6th Ed.	
Concurrence	
OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2021.03.26 07:38:00 -04'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	 LAURA STEPHENS 2021.03.26 06:26:52 -04'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	 MICHELE GRAY <small>Digitally signed by MICHELE GRAY Date: 2021.03.30 14:08:34 -04'00'</small>
OBA/PSD: Jennifer Messina, Director	 JENNIFER MESSINA Date: 2021.03.29 09:26:12 -04'00'
OGC: Joseph Krettek, Assistant General Counsel	 JOSEPH KRETTEK JOSEPH KRETTEK Date: 2021.03.31 08:49:42 -04'00'
Endorsements	
General Counsel: F. Russell Dempsey	 FREDRICK DEMPSEY FREDRICK DEMPSEY Date: 2021.03.31 10:51:45 -05'00'
Chief Financial Officer: Patricia Kelly	 PATRICIA KELLY PATRICIA KELLY Date: 2021.03.31 08:00:49 -04'00'
Approval	
Chief of Benefits Administration: David Foley	 DAVID FOLEY DAVID FOLEY Date: 2021.03.30 15:29:31 -04'00'
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on Transmittal 2021-02..</i>	

6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery

Edition	9th Edition
Issue Date	01/30/2018
Transmittal	Transmittal 2018-04
Signed Policy	Policy 6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and effective date
- C. Definitions
- D. When to use administrative correction, recoupment, and recovery

E. PBGC's discretionary authority

F. Notice requirements

G. Situations in which PBGC does not collect an overpayment

H. Methods of administrative correction

I. Methods of recoupment

J. Methods of Recovery

K. Appeals and reconsideration of recovery determinations

L. Prepayment

M. Fraud

Appendix A. Qualified Domestic Relations Orders (QDROs)

Appendix B. Recoupment from non-level benefits over the MIL

Appendix C. Appeals and de minimis repayment amounts for plans trustee before 08/23/2007

Concurrence, Endorsement, and Approval

A. Background

PBGC sometimes makes benefit overpayments. This policy statement describes how PBGC corrects payment errors and collects benefit overpayments through:

- Administrative correction—for example, when PBGC makes duplicate payments
- Recoupment pursuant to PBGC's recoupment and reimbursement regulation (PBGC Reg. 4022.81-.82)—for example, when annuity payments are larger than the correct entitlement
- Recovery pursuant to PBGC's debt collection regulation (PBGC Reg. 4903.1-.22)—for example, when no future benefit is payable as of DOPT

The ninth edition of this policy statement revises the 6-year rule for overpayments subject to recovery. Specifically, PBGC will not initiate recovery action of an overpayment that occurred more than 6 years earlier. See [**section G.3.b.**](#)

The ninth edition of this policy statement clarifies:

- Recovery in a case in which PBGC made significant payments over plan levels, PBGC is paying very small monthly benefit amounts, and the overpayment is too great to recoup—see [**section D.3.d**](#)
- Repayment forgiveness for benefit determinations advising that PBGC will not seek repayment—see [**section F.1**](#)
- Recoupment from joint-and-survivor "pop-up" and similar annuities—see [**section I.5**](#)
- Repayment for QDROs—see [**Appendix A**](#)

The ninth edition of this policy statement removes:

- Two exceptions to the 10% recoupment cap:
 - Fixed-term benefits over plan amounts—see [**section I.2.b of the eighth edition**](#) of this Policy
 - Errors in payment frequency—see [**section I.2.c of the eighth edition**](#) of this Policy
- Two situations in which temporary benefit reductions used to apply:
 - Change in entitlement to supplemental benefits—see [**section I.2.g of the eighth edition**](#) of this Policy
 - Not suspending for working retirement—see [**section I.2.h of the eighth edition**](#) of this Policy

B. Scope and effective date

This policy statement generally applies to payment errors and overpayments. See PBGC Policy [**6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments**](#).

This policy statement does not apply to payments made pursuant to agreements settling lawsuits under which PBGC has agreed to pay benefits other than guaranteed benefits, except as otherwise provided in the agreement.

This policy statement does not limit PBGC's right to correct payment errors or to collect overpayments by methods or in circumstances other than those described in this policy.

This policy statement is effective upon issuance.

C. Definitions

C.1. ACH reclamation means reclaiming through the Automated Clearing House funds credited to the account at a financial institution of a recipient who is the deceased payee as described under 31 C.F.R. Part 210, Subpart B.

C.2. ACH reversal means reversing through the Automated Clearing House an entry of funds to a recipient's (for example, a participant's) account as described under 31 C.F.R. § 210.6(f). ACH reversal typically results in the recipient's financial institution returning to PBGC's paying agent funds electronically deposited into the payee's bank account in error.

C.3. Administrative correction means promptly correcting a payment error before PBGC treats the payment error as an overpayment. PBGC uses administrative correction before recoupment or recovery. Examples of administrative correction methods are ACH reversals and reclamation, stop payment orders, and suspending or delaying benefit payments.

C.4. Date of delinquency means the thirty-first day after PBGC gives the debtor written notice in accordance with PBGC Reg. 4903.5 that an overpayment is subject to recovery.

C.5. Debtor means an individual or legal entity that owes a debt to PBGC.

A debtor can be a payee who was entitled to a PBGC benefit ("payee debtor") or another person who was not entitled to a PBGC benefit ("non-payee debtor").

More than one debtor may owe PBGC a debt for the same pension benefit. For example, a non-vested participant is the debtor for payments PBGC makes by mistake. After the participant dies, a signatory to the participant's account who does not return payments made by electronic direct deposit after the participant's death is the non-payee debtor for those payments.

A deceased payee's trust or estate is the debtor for payments PBGC made after the payee's death if the trust or estate administrator notifies PBGC that the payments are the property of the trust or estate.

C.6. Overpayment means a net benefit overpayment—that is, the negative account balance resulting from an improper payment or payments. See PBGC Policy [6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments](#).

C.7. Recoupment means collecting an overpayment by reducing future benefit payments to the payee (for example, the participant or any beneficiary).

C.8. Recoupment end date means the date on which the overpayment is repaid through recoupment and in full except for any partial final monthly recoupment amount.

C.9. Recovery means collecting an overpayment other than by reducing future benefits. Payments that PBGC did not stop paying on a communicated end date are also subject to recovery, subject to the 6-year rule described in [section G.3.b](#). Recovery typically involves full repayment or installment payments. Recovery may also involve collection efforts made by the U.S. Department of the Treasury.

D. When to use administrative correction, recoupment, and recovery

When PBGC makes a payment error, PBGC will try to correct the payment error promptly through administrative correction. See [section D.1](#).

When PBGC does not correct a payment error through administrative correction, PBGC will treat the payment error as an overpayment. PBGC will try to collect the overpayment through recoupment and/or recovery. For recoupment, see [section D.2](#). For recovery, see [section D.3](#).

- For PBGC's discretionary authority, see [section E](#)
- For notice requirements, see [section F](#)
- For not collecting overpayments, see [section G](#)
- For administrative correction methods, see [section H](#)
- For recoupment methods, see [section I](#)
 - For QDROs, see [Appendix A](#)
 - For non-level benefits over the MIL, see [Appendix B](#)
 - For appeals and de-minimis recoupment and recovery amounts, see [Appendix C](#)
- For recovery methods, see [section J](#)
- For appeals and reconsiderations, see [section K](#)
- For prepaying overpayments, see [section L](#)
- For fraud cases, see [section M](#)

D.1. When to use administrative correction

PBGC will try to administratively correct a payment error promptly when:

- PBGC makes duplicate monthly payments
- PBGC pays the beneficiary of a deceased payee by mistake

- PBGC makes a clerical error

When possible, PBGC will correct the payment error before treating the payment error as an overpayment subject to PBGC's recoupment and recovery rules.

For the administrative correction notice requirements, see [section F.3.b](#).

For the administrative correction methods, see [section H](#).

D.1.a. Duplicate monthly payments

If a payee is entitled to continuing monthly payments and receives duplicate monthly payments for one or two months, PBGC will try to correct the payment error by the methods in [section H](#).

D.1.b. Payments to a deceased payee received by the beneficiary

If a deceased payee's sole beneficiary receives the deceased payee's payments and the beneficiary is entitled to continuing payments, PBGC will try to correct the payment error by the methods in [section H](#).

D.1.c. Clerical errors

If a payment error results from a clerical error, PBGC will try to correct the payment error by the methods in [section H](#).

Examples of clerical errors are (this list is not exhaustive):

- A payment error due to transposing digits in the dollar amount
- A payment error due to paying the wrong person

D.2. When to use recoupment

PBGC will generally recoup from benefit payments made with respect to a payee when the payee has received an overpayment and, as of DOPT, PBGC pays a future annuity benefit with respect to the payee.

For example, PBGC overpays a joint-life annuity. PBGC will recoup from the participant's benefit and, if necessary, continue recouping from the survivor's benefit. If spousal consent for waiving the plan's QJS was invalid under PBGC Policy [5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities\)](#), see [section G.5](#).

For payment errors that PBGC can correct promptly through administrative correction, see [section D.1](#).

For payments that PBGC did not stop on a previously communicated end date, see [section D.3.b](#).

For the recoupment notice requirements, see [section F](#).

For the recoupment methods, see [section I](#).

D.3. When to use recovery

PBGC will generally try to collect overpayments by recovery when no future annuity benefits as of DOPT are payable and PBGC's administrative correction and recoupment rules do not apply.

PBGC will also try to collect by recovery some overpayments otherwise subject to recoupment:

- For payments that PBGC did not stop on a previously communicated end date, see [section D.3.b](#).
- For payments from false information or an error by the payee, see [section D.3.f](#).

For the recovery notice requirements, see [section F](#).

For the recovery methods, see [section J](#).

For overpayments outstanding for more than 6 years, see [section G.3.b](#).

D.3.a. No annuity payments on or after DOPT

Recovery applies when the debtor received an overpayment and, as of DOPT, the debtor was not entitled to receive future annuity benefits from PBGC, under either plan terms or Title IV of ERISA.

Examples (this list is not exhaustive):

- A participant who was not vested at DOPT and whose termination benefit is \$0
- A participant who received a pre-DOPT lump sum equivalent to an annuity exceeding the benefit otherwise payable by PBGC (for example, a partial lump sum payment that exceeds the value of the entire benefit payable by PBGC)

D.3.b. Benefits after a communicated end date

PBGC will try to collect an overpayment by recovery when PBGC makes the overpayment after the benefit end date and PBGC or the prior plan administrator communicated the benefit end date to the payee. PBGC will not try to collect any payments outstanding for more than 6 years. See [section G.3.b](#).

For example, PBGC starts paying a participant \$1,000.00 per month on 01/01/2012. On 02/01/2012, a letter from PBGC notifies the participant that the last payment will be sent on 08/01/2012. The last payment to the participant was made on 12/01/2012 – 4 months too late. PBGC will try to collect the \$4,000.00 overpayment (\$1,000.00 x 4 months) by recovery. If PBGC did not discover the error until 09/15/2018 and sent a demand letter for repayment on 09/20/2018, PBGC would not try to collect the 08/01/2012 or 09/01/2012 payments because, as of 09/20/2018, those payments were outstanding for more than 6 years.

If PBGC or the prior plan administrator does not communicate to the payee the benefit end date, PBGC will not try to collect these overpayments.

Examples (this list is not exhaustive):

- A letter from PBGC notifies a beneficiary under a 10-year certain-and-continuous annuity that payments will last for 24 more months, but PBGC pays the beneficiary for 30 months
- A letter from the prior plan administrator notified a participant that payments drop to \$0 in 2014 because of an offset from another plan, but PBGC pays the participant until 2016

D.3.c. De-minimis lump sums

PBGC will try to collect an overpayment by recovery when PBGC paid the benefit in the form of a de-minimis lump sum.

If PBGC pays the benefit as an annuity instead of a lump sum, PBGC will try to collect the overpayment by reducing future benefits. See [section D.2](#).

D.3.d. Payments over plan levels and recoupment insufficient

PBGC will try to collect an overpayment by recovery when the benefit PBGC paid significantly exceeded the payee's total plan benefit and recoupment is insufficient for PBGC to collect the entire overpayment.

For example, if a participant was overpaid \$10,000.00 and the monthly benefit decreased at age 65 to \$5.00 per month due to an offset from a purchased annuity, PBGC will try to collect the entire overpayment by recovery and will not recoup from the participant's benefit.

See [sections E](#) and [I.2.a](#).

D.3.e. Payments after death to a non-entitled debtor

PBGC will try to collect an overpayment by recovery when PBGC pays a debtor after the payee's death and the debtor is not entitled to benefits with respect to the payee. For example, a debtor who received payments after the payee's death and who is not entitled to the payee's survivor annuity is subject to recovery.

D.3.f. Payments from false information or an error by the payee

PBGC will try to collect an overpayment by recovery, recoupment, and/or legal action when PBGC made the overpayment because of false information or an error the payee is responsible for.

- For recoupment and payments from false information or an error by the payee, see [section I.2.c](#).
- For PBGC's discretionary authority, see [section E](#).

E. PBGC's discretionary authority

Except as prohibited by law, PBGC may simultaneously use multiple collection methods to collect a debt.

PBGC has discretion under its recoupment and recovery regulations to determine whether to collect a debt and which methods are most advantageous to the Government.

- For payments over plan levels, see [sections D.3.d](#) and [I.2.a](#)
- For payments from false information or an error by the payee, see [sections D.3.f](#) and [I.2.c](#)

F. Notice requirements

When PBGC learns that a payee has received an overpayment, PBGC will send the payee a benefit determination letter, a separate demand letter, and/or other written notice.

F.1. Benefit determinations

Except as described in [sections F.2.b](#) and [F.3](#), in every case in which PBGC learns of an overpayment, PBGC will send an initial (if PBGC has not already sent one) or revised benefit determination covering the payee's entitlement to a benefit, the amount of the benefit, and the right to appeal the benefit determination.

In addition to the information listed above, for overpayments subject to recoupment, the benefit determination will generally include the amount of the overpayment and the amount of the monthly benefit reduction for recoupment (or whether PBGC intends to seek collection of the overpayment).

If the benefit determination or demand letter (see [section F.2](#)) says that PBGC will not seek collection of a benefit overpayment, PBGC will generally not seek collection of the overpayment. For example, on 07/21/1995, PBGC sent a participant a benefit determination explaining that PBGC would not seek collection of an overpayment (even though the participant had been overpaid by \$650.00). On 07/14/2018, the participant died. On 08/01/2017, PBGC started paying the participant's surviving spouse a survivor benefit. In this case, PBGC will not seek to recoup from the surviving spouse's benefit.

If PBGC revises the benefit determination under PBGC Policy [5.8-1 Benefit Corrections](#), PBGC will try to collect any additional overpayments. See PBGC Policy [6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments](#).

F.2. Demand letters

To collect an overpayment subject to recovery, PBGC will send a demand letter complying with the requirements of PBGC Reg. 4903.5.

F.2.a. Demand letters to a payee debtor

In addition to the benefit determination discussed in [section F.1](#), if the recipient of an overpayment subject to recovery is a debtor who was also the correct payee, PBGC will send a separate demand letter when the benefit determination becomes final. (A benefit determination generally becomes final either (1) on the 46th day after PBGC issues the benefit determination if the participant does not appeal or (2) when the Appeals Board decides the appeal and the decision goes into effect).

F.2.b. Demand letters to a non-payee debtor

If the recipient of an overpayment subject to recovery is a debtor who was not the correct payee, PBGC will send the debtor a demand letter and try to collect the overpayment.

F.3. Written notices

F.3.a. Failure to reduce benefits

If the benefit determination says that PBGC will reduce a benefit (including to \$0) and PBGC does not reduce the benefit, PBGC will recalculate the overpayments and reduce the benefit.

PBGC will send written notice (not a revised benefit determination) that describes the corrective benefit reduction. The written notice will not include appeal rights.

For overpayments outstanding for more than 6 years, see [section G.3](#).

F.3.b. Administrative correction

If PBGC administratively corrects a payment error, PBGC will send written notice (not a benefit determination) to the payee (or debtor) as soon as practicable. See [section D.1](#).

Such written notice may occur immediately after the issuance of a stop payment order or after an ACH reversal but, when possible, prior to implementing ACH reclamation. See [section H](#).

F.3.c. Increased overpayment and/or recoupment amount

If the overpayment increases after PBGC sends the benefit determination (for example, when PBGC does not recoup on time), PBGC will give written notice (not a revised benefit determination) to the payee of the increased overpayment and/or recoupment amount.

G. Situations in which PBGC does not collect an overpayment

G.1. No future benefits

PBGC will generally not try to collect an overpayment if benefits are payable at DOPT but no future benefits are payable with respect to the payee (for example, the participant or beneficiary).

Examples (this list is not exhaustive):

- A participant received a straight life annuity and died before PBGC sends a benefit determination
- A participant continued to receive payments after the benefit end date and neither PBGC nor the prior plan administrator communicated the benefit end date to the participant until after the overpayment occurred
- A surviving spouse entitled only to a 50%-survivor benefit continued to receive payments equal to the deceased participant's full benefit amount and died before PBGC discovered that the spouse was being overpaid

In these examples, PBGC paid benefits at DOPT. Neither PBGC nor the plan administrator told the participant that benefits would stop. The overpayments therefore were subject to recoupment. Because payments later stopped, PBGC had no payments from which to recoup. For benefits that PBGC does not stop after a communicated end date, see [section D.3.b](#).

If the debtor is not the correct payee, PBGC will try to collect the overpayment through recovery. See [sections D.3](#) and [F.2.b](#).

G.2. Final partial monthly recoupment amount

PBGC will generally not recoup the final partial monthly recoupment amount if the overpayment that remains in the final month is less than the monthly recoupment reduction amount. See [section I](#).

If the prior plan administrator started the recoupment, PBGC will follow plan terms or plan administrator communication about the final monthly amounts. See [section I.4](#).

G.3. Overpayments outstanding for more than 6 years

G.3.a. Recoupment

PBGC will not start (or resume) recoupment of overpayment(s) in instances where PBGC or the plan administrator notified the debtor of the overpayment by a method consistent with [section F.1](#), more than 6 years ago, regardless of the amount of the overpayment, except in cases of fraud (see [section M](#)).

For example, on 12/01/2014, PBGC sends a retiree a benefit determination. The benefit determination says PBGC will start recouping on 02/01/2015. If PBGC does not start recouping by 02/01/2021, PBGC will not try to collect the overpayment. If PBGC started recouping on 02/01/2015 and on 06/01/2015 stopped recouping due to administrative oversight, PBGC would not try to collect the remaining overpayment unless PBGC resumed recoupment by 06/01/2021.

G.3.b. Recovery

PBGC will generally not try to recover overpayments that PBGC or the plan administrator made more than 6 years ago, except in cases of fraud (see [section M](#)).

Examples (this list is not exhaustive):

- On 10/01/2000, PBGC begins making monthly payments of \$100.00 to a payee. PBGC subsequently discovers that the payee was not entitled to benefits under the plan. On 09/10/2017, PBGC notifies the payee that PBGC will cease payments on 11/01/2017 and that PBGC will not attempt to recover any monthly payments made on and before 11/01/2011. Instead, PBGC will seek recovery of only \$7,200.00 (6 years x 12 months/year x \$100.00/month).

- On 12/10/2018, PBGC pays a participant a de-minimis lump sum (with interest) of \$3,000.00. PBGC later discovers that the participant was entitled only to a lump sum (with interest) of \$2,000.00. If PBGC does not try to recover the overpayment of \$1,000.00 by 12/10/2024, PBGC will write off the debt and administratively close the case.
- On 11/01/2019, PBGC makes a single erroneous payment to the wrong person. If PBGC does not try to recover the overpayment by 11/01/2025, PBGC will write off the debt and administratively close the case.

G.4. Debtors who are minors

PBGC will not try to collect an overpayment by recovery if the debtor was a minor when PBGC made the overpayment.

G.5. Invalid spousal consent

If PBGC makes an overpayment because of benefit changes required to correct a past failure to obtain spousal consent that is valid under PBGC Policy [5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities\)](#), OBA will generally not seek repayment of the overpayment. Refer the case to PPD.

H. Methods of administrative correction

PBGC's methods of administrative correction include:

- Stop payment orders
- ACH reversals
- ACH reclamations
- Suspending or delaying benefit payments

PBGC will generally first try to use a stop payment order, ACH reversal, or ACH reclamation.

For ACH reversals and reclamation, PBGC will follow the National Automated Clearing House Association (NACHA) Operating Rules.

If efforts to stop payment or to effect an ACH reversal or reclamation fail, PBGC will try to suspend or delay benefit payments.

If PBGC's methods of administrative correction fail or do not apply, PBGC will treat the payment error as an overpayment. See PBGC Policy [6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments](#). PBGC will try to collect any resulting overpayment by recoupment or recovery, as applicable. See [sections D.2](#) and [D.3](#).

For when to use administrative correction, see [section D.1](#).

I. Methods of recoupment

If PBGC recoups from future benefit payments to collect an overpayment, PBGC will reduce future benefit payments with respect to the payee in accordance with PBGC Reg. 4022.81-.82.

PBGC will reduce benefits through the entire benefit stream—with recoupment continuing after the participant's death and applying to payments to any surviving contingent annuitants—until the earlier of the recoupment end date and the date of the last benefit payment from PBGC.

PBGC will not consider financial hardship in recoupment cases.

For when to use recoupment, see [section D.2](#).

I.1. Computation of benefit reduction: general rule

To collect an overpayment through recoupment, PBGC will reduce future monthly payments by the Initial Recoupment Percentage. See [section I.1.a](#).

PBGC will generally limit the monthly recoupment reduction to 10% of the monthly benefit payment. See [section I.1.b](#).

I.1.a. Initial Recoupment Percentage

PBGC will calculate the Initial Recoupment Percentage by:

- Dividing the amount of the overpayment by the present value of the termination benefit payable with respect to the payee
- Multiplying the result by 100 to obtain a percentage

PBGC will use the present value of the termination benefit as of DOPT. PBGC will use PBGC interest rates and factors in effect on DOPT.

I.1.b. 10% limitation on recoupment reduction: general rule

PBGC will limit the monthly recoupment reduction to 10% of the monthly benefit payment unless PBGC applies an exception in [section I.2](#).

Example I-1

A participant is entitled to a termination benefit of \$1,000.00 per month in the form of a joint-and-50% survivor annuity. For 36 months from 01/01/2007 until 12/01/2009, PBGC pays \$2,000.25 per month.

- The monthly overpayment is \$1,000.25 (\$2,000.25 - \$1,000.00)
- The overpayment is \$36,009.00 (36 x \$1,000.25)
- The present value of the termination benefit is \$100,000 for this example
- The Initial Recoupment Percentage is 36.01% (\$36,009.00/\$100,000 x 100)

The Initial Recoupment Percentage is greater than 10%. PBGC will limit the monthly recoupment reduction to 10%. PBGC will reduce the monthly payments by \$100.00 (10% of \$1,000.00).

Recoupment begins on 01/01/2010. PBGC pays the participant \$900.00 per month (\$1,000.00 - \$100.00).

The recoupment end date is 12/01/2039. Starting 01/01/2040, the participant will receive \$1,000.00 per month without reduction for recoupment. PBGC will not try to collect the partial final monthly recoupment amount of \$9.00.

PBGC recoups for 6 months. The participant dies on 06/15/2010.

PBGC will collect the remaining overpayment of \$35,409.00 (\$36,009.00 - \$600.00) by reducing the survivor benefit for 708 months.

On 07/01/2010, PBGC begins paying the survivor \$450.00 per month. The survivor's monthly payment equals \$500.00 per month (50% x \$1,000.00) less \$50.00 per month (10% x \$500.00) for recoupment.

The recoupment end date is 06/01/2069. Starting 07/01/2069, the survivor will receive \$500.00 per month without reduction for recoupment. PBGC will not try to collect the partial final monthly recoupment amount of \$9.00.

I.2. Exceptions to the 10% limitation

I.2.a. Payments over plan levels

If total benefit payments for a period of time after DOPT significantly exceed the benefits actually payable under the terms of the plan for that period, PBGC may use its discretionary authority to collect the overpayment. For example, PBGC may remove the 10% limit on the monthly recoupment reduction. See [section E](#). PBGC may also try to collect any remaining overpayment by recovery. See [section D.3.d](#).

I.2.b. Benefits over the Maximum Insurance Limitation (MIL)

PBGC will limit the monthly recoupment reduction to the greater of 10% of the monthly benefit payment and the dollar amount by which the termination benefit exceeds the MIL if:

- A payee's termination benefit exceeds the MIL, and
- The Initial Recoupment Percentage is greater than 10%

(The MIL is the monthly dollar amount of the unreduced, age 65 maximum guaranteeable benefit payable under section 4022(b)(3)(B) of ERISA without adjustment for age and benefit form.)

PBGC will not reduce the monthly benefit by more than the Initial Recoupment Percentage.

For recoupment from non-level benefits over the MIL, see [Appendix B](#).

I.2.c. False information or an error or omission by the payee of information material to benefit amount, entitlement, or eligibility

PBGC will not limit the monthly recoupment reduction if PBGC learns that PBGC overpaid a payee due to false information or an error by the payee.

Examples (this list is not exhaustive):

- The payee gave or verified false information
- The payee was responsible for the error
- The payee was deceased and someone else continued to receive the payee's payments
- The payee did not notify PBGC of a change in condition or circumstances affecting benefit entitlement or amount

PBGC will consider information in a benefit determination or other written correspondence verified if the payee knew of, or reasonably ought to have known of, the error and did not tell PBGC. Similarly, PBGC will consider whether the payee knew of, or reasonably ought to have known of, a change in circumstances affecting his or her benefit entitlement amount or eligibility for benefits but failed to notify PBGC.

PBGC may also try to collect the overpayment in full by recovery and/or legal action. See [sections D.3.f](#) and [E](#).

I.2.d. Disability status

I.2.d(1) Timely notice of change in disability status: regular recoupment

If PBGC overpays a participant due to either:

- A change in the award of (and in some cases retroactive payment of) a Social Security disability benefit or
- An improvement in health making the participant ineligible for disability benefits under the plan

and if the participant notifies PBGC within one year of the later of:

- The change in disability status and
- The first notice from PBGC that disability benefits are contingent upon disability status

and, as a result, the participant is no longer eligible for disability benefits under the plan, PBGC will limit the monthly recoupment reduction to 10% of the monthly benefit payment. See [section I.1](#).

I.2.d(2) Untimely notice in change in disability status: temporary 40% reduction

If PBGC overpays a participant due to either:

- A change in the award of (and in some cases retroactive payment of) a Social Security disability benefit or
- An improvement in health making the participant ineligible for disability benefits under the plan

and if the participant does not notify PBGC within one year of the later of:

- The change in disability status and

- The first notice from PBGC that disability benefits are contingent upon disability status

and, as a result, the participant is no longer eligible for disability benefits under the plan, PBGC will temporarily reduce monthly benefit payments by 40%.

PBGC will stop reducing monthly benefit payments by 40% when PBGC collects the full amount of the resulting overpayment.

Temporary 40% reduction will be in addition to any other recoupment reduction in effect for the benefit.

Thus, temporary 40% reduction will result in a total reduction of 50% for benefit payments that PBGC is already reducing by 10%. See [section I.1](#).

I.3. When to use the recoupment percentage

PBGC will generally use the recoupment percentage computed under [section I.1](#) to reduce future benefits payable on or after the date a recoupment reduction goes into effect.

PBGC will stop the monthly recoupment reduction as of the recoupment end date or, if earlier, at the time the payee prepays in full the outstanding amount of the overpayment. See [section L](#).

For temporary benefit reduction by 40% due to untimely notice in change in disability status, see [section I.2.d\(2\)](#).

PBGC will reduce benefit payments for recoupment before reducing benefit payments for other deductions (for example, withholding for taxes).

For recoupment purposes, PBGC will treat a payee's benefit payments as payments made to the payee's beneficiary if:

- PBGC makes the annuity payments after the payee's death
- The payee's beneficiary receives those annuity payments (for example, the payments were deposited into a joint account)
- The payee's beneficiary is entitled to continuing annuity payments after the payee's death, and
- The payee's beneficiary does not return those payments to PBGC

If PBGC was reducing a joint-life benefit for recoupment and an overpayment remains when the survivor benefit starts, PBGC will generally continue to reduce benefit payments by the same recoupment percentage and adjust the recoupment end date. If spousal consent for waiving the plan's QJSA was invalid under PBGC Policy [5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities\)](#), see [section G.5](#).

I.4 Recoupment by the prior plan administrator

PBGC will continue temporary benefit reductions that the prior plan administrator started before DOPT or communicated before DOPT to recoup pre-DOPT benefit overpayments.

Benefit overpayments made on or after the Overpayment Accrual Commencement Date are subject to PBGC's administrative correction, recoupment, and recovery rules. See PBGC Policy [6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments](#).

PBGC will reduce the payee's termination benefit by the same recoupment percentage that the prior plan administrator reduced, or would reduce, the payee's plan benefit. PBGC will not limit the monthly reduction to 10%.

For example, a plan benefit was \$2,000.00 per month. The plan recouped \$500.00 per month. The plan's recoupment percentage is 25.00% ($\$500.00 / \$2,000.00 \times 100$).

The PBGC termination benefit is \$1,600.00 per month.

PBGC will continue to recoup at 25.00%. PBGC will reduce the termination benefit by \$400.00 per month (25.00% of \$1,600.00) to collect the pre-DOPT overpayment. The payee will receive the remaining benefit of \$1,200.00 per month ($\$1,600.00 - \400.00).

For the final monthly partial recoupment payment, PBGC will follow plan practice. See [section G.2](#).

Any additional overpayments that PBGC makes after DOPT will be subject to the PBGC's recoupment rules. See [section I](#).

In calculating PBGC's recoupment for post-DOPT overpayments, PBGC will treat the benefit paid before the prior plan administrator's recoupment reduction as the amount the payee received. In the example above, PBGC will treat the amount of \$1,600.00 per month as the amount the payee received.

I.5 Joint-and-survivor "pop up" and similar annuities

To recoup from benefits that increase (or decrease) due to the death of the surviving beneficiary—for example, joint-and-survivor "pop up" annuity—and similar annuities, PBGC will continue to reduce the participant's benefit by the same monthly recoupment amount, with the same recoupment end date, if recoupment started before the participant's monthly benefit increased (or decreased).

For example, if a participant's joint-and-survivor "pop up" annuity of \$900.00 was being recouped at \$50.00 per month for 130 months and, as a result of the death of the participant's survivor, the participant's monthly benefit increased to \$1,000.00 per month, PBGC will continue to reduce the participant's benefit by \$50.00 per month and will not adjust the recoupment end date (unless there is a subsequent overpayment requiring the initial recoupment percentage to be recalculated).

J. Methods of Recovery

PBGC's methods to recover an overpayment include:

- By means of a single lump-sum payment
- Under the terms of an installment payment agreement
- Through referral to the U.S. Department of the Treasury
- Through litigation

PBGC may reduce or waive the debt. Reducing and waiving debts will be subject to the Federal Claims Collection Standards and Part 4903 of PBGC's regulations.

For when to use recovery, see [section D.3](#).

For fraud, see [section M](#).

J.1. Estates and trusts as debtors

If an estate or trust administrator tells PBGC that the overpayments are property of the estate, PBGC will treat the estate or trust as the debtor. PBGC will tell the estate or trust to repay the overpayment in a single payment.

If the estate or trust administrator does not repay the overpayment promptly, OBA will generally refer the case to the PSD Recovery Coordinator for referral to OGC. In such cases, OGC will take appropriate actions to collect the debt unless OGC determines that it is not legally possible or cost-effective to recover the overpayment from the estate or trust.

J.2. Financial hardship

PBGC will consider demonstrated financial hardship in recovery cases. If the debtor establishes financial hardship, PBGC may:

- Reduce the recovery debt
- Eliminate the recovery debt
- Permit an installment payment agreement

For installment payment agreements, see [section J.4](#).

J.3. Single-sum payments

PBGC will not charge interest, penalties, or administrative costs on overpayments repaid in a single-sum payment before the date of delinquency. See PBGC Reg. 4903.6.

J.4. Installment payment agreements

PBGC will permit an installment payment agreement only in cases of financial hardship. For financial hardship, see [section J.2](#).

PBGC will generally not permit an installment payment agreement under which the installment period exceeds 36 months.

All installment agreements will include interest as described in [section J.5.a](#).

J.5. Interest, penalties, and administrative charges in the case of default

If the debtor fails, before the date of delinquency, to repay the overpayment in full and refuses or is not eligible to enter into an installment payment agreement—or if the debtor defaults on making payments under an installment agreement—PBGC will charge simple interest, penalties, and administrative costs, in accordance with 31 U.S.C. § 3717 and 31 C.F.R. § 901.9 (per PBGC Reg. 4903.6).

J.5.a. Interest

PBGC will charge simple interest for amounts not repaid in full before the date of delinquency. The rate of interest will remain fixed for the duration of the indebtedness.

PBGC will use the first day of the month coincident with or else next following the date of delinquency to determine:

- The date on which PBGC begins to add interest, when applicable, for recoveries
- The rate of interest, which is the U.S. Department of the Treasury's Current Value of Funds Rate in effect

J.5.b. Penalties

PBGC will assess penalties for late payments, for default on installment agreements, and for other recovery situations, as appropriate.

J.5.c. Administrative costs

PBGC will charge administrative costs that reflect the actual or estimated costs of collecting overpayments through recovery, as appropriate.

J.5.d. Order and suspension of charges

PBGC will apply debtor payments first to outstanding penalties, second to administrative costs, third to outstanding interest, and last to the principal amount.

The PSD Recovery Coordinator will determine whether OBA suspends or waives interest, penalties, and administrative costs, based on the facts and circumstances of the debt.

J.6. Deceased debtors

In the case of a deceased debtor who was the intended payee (for example, the participant, beneficiary, or alternate payee) and who failed to execute and to return an installment payment agreement before death:

- If the amount of the outstanding debt is \$10,000.00 or less, PBGC will write off the outstanding debt and stop collection activities. This write-off rule will not apply to estates as debtors. See [section J.1](#).
- If the amount of the outstanding debt is more than \$10,000.00, the OBA Recovery Coordinator will refer the case to OGC after the benefit determination becomes final.

If a deceased debtor and PBGC had executed an installment payment agreement, PBGC will write off the debt that remains as of the debtor's death.

K. Appeals and reconsideration of recovery determinations

Decisions by OBA to collect overpayments, to reduce or eliminate debt, and to permit installment payment agreements, will not be subject to review by the Appeals Board.

The underlying determinations of benefit entitlement and amount will be subject to review by the Appeals Board.

At the request of a payee or other interested party, OBA will review any of the other factors underlying its computation of the amount of a benefit overpayment (for example, the amount the payee actually received) and the calculation of the recoupment reduction or installment payment amount for accuracy. OBA will make any necessary corrections.

L. Prepayment

PBGC will accept prepayment of the full amount of an outstanding overpayment.

If the method of repayment is recoupment of future annuity payments, PBGC will tell the payee that:

- PBGC does not charge interest during the recoupment period
- PBGC will not try to collect the partial final monthly recoupment amount

M. Fraud

PBGC will forward to the Office of Inspector General any overpayment case involving possible fraud, including any case in which a person received payments directed to another person.

For overpayments outstanding for more than 6 years, see [section G.3](#).

Appendix A. Qualified Domestic Relations Orders (QDROs)

PBGC will apply its recoupment regulation and policy to participants and alternate payees (APs) under a QDRO in accordance with this [Appendix A](#).

Except as discussed below, PBGC will generally seek repayment of benefit overpayments only from the party who was overpaid. For example, if PBGC overpaid the participant due to a failure to reduce the participant's benefit in accordance with the terms of the QDRO, PBGC will seek repayment only from the participant (not the AP). However, PBGC also reserves the right to use its discretion under the recoupment regulation (PBGC Reg. 4022.81(a)) to use other methods for QDROs on a case-by-case basis.

Before using any repayment method for overpayments involving a QDRO other than the rules described in this [Appendix A](#) or elsewhere in this policy, contact PPD.

A.1. Recoupment due to PBGC's guarantee limitations

The QDRO may say how to adjust the participant's and/or AP's benefits for PBGC's guarantee limitations ("PBGC's benefit adjustments"). For example, the QDRO may say that PBGC will adjust:

- The participant's and AP's benefits on a pro-rata basis
- Only one party's benefits, that is, the AP's or the participant's benefits
- One party's benefits before adjusting the other party's benefits

If the QDRO says how to treat the participant's and AP's benefit payments for PBGC's benefit adjustments, PBGC will generally honor those QDRO provisions. If the QDRO is silent on how to treat benefit payments for PBGC's benefit adjustments, PBGC will adjust on a pro-rata basis.

If overpayments occur for reasons besides PBGC's benefit adjustments (for example, because of an administrative error, erroneous benefit amount), PBGC will generally try to collect the overpayment from the party that received the overpayment, based on the general repayment guidelines in this policy.

A.2. QDRO treats AP as surviving spouse or beneficiary

If the QDRO states to treat the AP as the participant's surviving spouse or beneficiary, PBGC will use the regular recoupment rules for surviving spouses or beneficiaries to determine the monthly recoupment amount and recoupment end date for the AP after the participant's death. See [section I.3](#).

A.3. Shared payment QDROs

For shared payment QDROs, the method for dividing the monthly recoupment amount will depend on whether the shared payment QDRO awards the AP a fixed percentage or a specified dollar amount of the participant's benefit.

If the shared payment QDRO awards the AP both a fixed percentage and specified dollar amount, or awards the AP another type of benefit, contact PPD.

Because a shared payment QDRO does not award to the AP a lifetime annuity, the balance of any net overpayment for which the AP is the debtor will generally be subject to recovery from the AP if the participant predeceased the AP, at the time of the participant's death. However, if in this situation the participant's form of benefit was a joint-life annuity with the AP as contingent annuitant, PBGC will generally recoup from the AP's survivor benefit instead of seeking repayment by recovery.

A.3.a. Fixed percentage

If a shared payment QDRO awards the AP a fixed percentage of the participant's benefit, PBGC will divide the monthly recoupment amount between the participant and the AP in the same proportion (pro rata).

Example A-1

At DOPT, a participant was married and receiving an estimated monthly benefit of \$600.00 per month in the form of the plan's qualified joint-and-50% survivor annuity.

Two years after DOPT, a shared payment QDRO awards the former spouse (the AP) 60.00% of the participant's monthly benefit payments (\$360.00 per month).

Five years after DOPT, PBGC sends a benefit determination to the participant and AP. The termination benefit is \$500.00 per month instead of \$600.00 per month:

- The AP's monthly benefit is \$300.00 (60.00% of \$500.00)
- The participant's monthly benefit is \$200.00 (40.00% of \$500.00)
- The recoupment reduction is 8.00% (assumed)
- The total monthly recoupment amount is \$40.00 (8.00% of \$500.00)

PBGC divides the \$40.00 monthly recoupment amount between the participant and AP. PBGC uses the same proportions that the QDRO uses to divide the participant's benefit between the participant (40.00%) and the AP (60.00%):

- PBGC reduces the AP's payments by \$24.00 per month (60.00% of \$40.00)
- PBGC reduces the participant's payments by \$16.00 per month (40.00% of \$40.00)

If the AP dies before the participant, the AP's net monthly payment of \$276.00 (\$300.00 - \$24.00) will return to the participant.

If the participant dies before the AP, the AP will receive the survivor's portion of the QJSA (\$250.00). PBGC will reduce the survivor benefit by 8.00% (\$20.00) for recoupment.

A.3.b. Specified dollar amount

If a shared payment QDRO awards the AP a specified dollar amount, PBGC will generally recoup only from the participant's benefit. PBGC will generally not recoup from the AP's benefit.

If the participant's monthly recoupment reduction exceeds the participant's monthly benefit amount, PBGC will recoup the entire amount of the participant's benefit and recoup the monthly recoupment amount that exceeded the participant's benefit from the AP.

Example A-2

At DOPT, a participant aged 62 was married. The participant had a deferred vested benefit under the plan of \$900.00 per month in the form of a straight-life annuity beginning at age 65.

The participant divorces one year after DOPT. A shared payment QDRO awards the former spouse as AP a flat-dollar amount of \$500.00 of the monthly pension until death. The QDRO does not require the plan to treat the AP as the surviving spouse.

Two years after DOPT, the participant remarries a different spouse. At age 65, the participant starts receiving estimated benefits in the form of the plan's qualified joint-and-50% survivor annuity with the current spouse.

Of the estimated termination benefit of \$800.00 per month:

- PBGC pays \$500.00 per month to the AP
- PBGC pays \$300.00 per month to the participant

Four years after DOPT, PBGC issues the benefit determination. The termination benefit is \$700.00 per month instead of \$800.00 per month.

On a combined basis, the Initial Recoupment Percentage is 12.00%. PBGC limits the monthly recoupment reduction to 10%. The monthly recoupment amount is \$70.00 (10% of \$700.00).

PBGC reduces the participant's monthly benefit payments by \$70.00. PBGC does not reduce the AP's monthly benefit payments.

If AP dies before the participant, the AP's monthly benefit of \$500.00 will return to the participant. The participant's recoupment amount will not change.

If the participant dies before the AP, the current spouse will receive the survivor's portion of the QJSA (\$350.00) reduced by 10% (\$35.00) for recoupment.

A.4. Separate interest QDROs

For recoupment from separate interest QDROs, PBGC will treat the participant and the AP as separate plan participants.

PBGC will determine separately for the participant and the AP:

- The amount of overpayment to be recouped
- The recoupment percentage
- The monthly recoupment amount
- The recoupment end date

A.4.a. Determining the separate amounts of overpayment

To determine the participant's and AP's separate overpayment amounts, PBGC will separately compare:

- The participant's actual benefits paid with the participant's correct termination benefit payable
- The AP's actual benefits paid with the AP's correct termination benefit payable

PBGC will not offset overpayments PBGC made to one party (for example, the participant) by net benefit underpayments PBGC owes to the other party (for example, the AP).

If PBGC overpays one party and owes a net benefit underpayment to the other party, PBGC will separately reimburse the underpayment and recoup for the overpayment.

A.4.b. Determining the separate present values as of DOPT

PBGC will determine separate present values of the participant's and AP's termination benefits payable as of DOPT.

A.4.c. Determining the separate recoupment percentages and limits

PBGC will determine separate recoupment reduction percentages for the participant and for the AP. PBGC will limit recoupment to 10% for the participant and to 10% for the AP.

Contact PPD if both:

- The monthly termination amount without regard to the QDRO exceeds the MIL and
- The Initial Recoupment Percentage computed for overpayments made to either the participant or the AP exceeds 10%

A.4.d. Determining the separate recoupment end dates

PBGC will determine separate recoupment end dates for the participant and for the AP.

Appendix B. Recoupment from non-level benefits over the MIL

Appendix B applies to payees entitled to future non-level benefits exceeding the MIL:

- Whose benefits are subject to recoupment
- Whose benefit determination PBGC sent on or after 04/13/1999

PBGC will compare the Initial Recoupment Percentage with the dollar amount by which the termination benefit exceeds the MIL to determine the payee's monthly recoupment reduction. See **sections I.1.a** and **I.2.b**.

If the payee's benefit is non-level (for example, a life benefit with a temporary supplement or a social security leveling option) and future benefit amounts exceed the MIL, then for each benefit level exceeding the MIL, PBGC will limit the payee's monthly recoupment reduction to the greater of:

- 10% of the monthly benefit and
- The dollar amount by which the termination benefit exceeds the MIL in effect the year the plan terminated

If the benefit level does not exceed the MIL, PBGC will limit the recoupment reduction to 10% of the monthly benefit.

PBGC will reduce the payee's monthly benefit for recoupment until the payee has repaid the overpayment, except for any partial final monthly recoupment amount.

PBGC will recalculate the recoupment reduction for non-level benefits over the MIL if PBGC begins to pay survivor benefits to the payee's beneficiary. See **Appendix example B-2**. PBGC will generally not recalculate the Initial Recoupment Percentage after survivor benefits begin. See **sections I.1.b** and **I.3**.

If the payee dies before the payee's beneficiary, PBGC may adjust the recoupment end date to reflect a lower recoupment amount from decreased spousal benefits.

Example B-1

A participant's form of benefit is a social security leveling option (SSLO):

- No survivor benefit is payable
- The benefit is \$4,000.00 per month before age 65 and \$2,000.00 per month thereafter
- The present value of the benefit as of DOPT is \$275,000 for this example
- The participant is age 60
- PBGC overpays the participant by \$32,000.00
- DOPT is in 1990
- The MIL is \$2,164.90

The Initial Recoupment Percentage is 11.64%:

$$\begin{array}{rcl} \$32,000.00 & \text{(Overpayment)} \\ \div \$275,000 & \text{(Present value of termination benefit)} \\ \times 100 & \text{(Percentage)} \\ \hline 11.64\% & \text{(Initial Recoupment Percentage)} \end{array}$$

For the pre-65 benefit level, the monthly recoupment reduction is \$465.46:

$$\begin{array}{rcl} 11.64\% & \text{(Initial Recoupment Percentage)} \\ \times \$4,000.00 & \text{(Monthly termination benefit)} \\ \hline \$465.46 & \text{(Monthly recoupment reduction)} \end{array}$$

PBGC limits the pre-65 monthly benefit reduction to \$1,835.10 per month (the greater of 10% of benefit and the monthly termination benefit amount exceeding the MIL):

\$4,000.00	(Monthly termination benefit)
x 10.00%	(10% recoupment)
<hr/>	
\$400.00	(10% recoupment limit)

\$4,000.00	(Monthly termination benefit)
- \$2,164.90	(MIL for 1990)
<hr/>	
\$1,835.10	(Monthly termination benefit less MIL)

PBGC will reduce the pre-65 benefit amount by \$465.46 per month (not \$1,835.10 per month or \$400.00 per month).

PBGC will reduce post-65 benefit payments (\$2,000.00 per month) by PBGC's regular recoupment rules:

- The post-65 benefit level does not exceed the MIL (\$2,164.90).
- At age 65, PBGC will limit the participant's recoupment reduction to 10% of the monthly benefit (\$200.00 per month).

Example B-2

A participant is receiving a joint-and-50% survivor annuity with a temporary supplement payable until age 62:

- The regular benefit payable to the participant is \$2,100.00 per month
- The temporary supplement is an additional \$400.00 per month
- The total benefit before age 62 is \$2,500.00 per month and \$2,100.00 per month thereafter
- The temporary supplement benefit includes no survivor benefit
- The total survivor benefit is \$1,050.00 (50% x \$2,100.00)
- The present value of the termination benefit is \$250,000 for this example
- The participant is age 60
- PBGC overpays the participant by \$40,000.00
- DOPT is in 1990
- The MIL is \$2,164.90

The Initial Recoupment Percentage is 16.00%:

\$40,000	(Overpayment)
÷ \$250,000	(Present value of termination benefit)
x 100	(Percentage)
<hr/>	
16.00%	(Initial Recoupment Percentage)

For the pre-62 benefit level, the monthly recoupment reduction is \$400.00:

16.00 %	(Initial Recoupment Percentage)
x \$2,500.00	(Monthly termination benefit)
<hr/>	
\$400.00	(Monthly recoupment reduction)

PBGC limits the pre-62 monthly benefit reduction to \$335.10 per month (the greater of 10% of benefit and the monthly termination benefit amount exceeding the MIL):

\$2,500.00	(Monthly termination benefit)
x 10%	(10% recoupment)
<hr/>	

\$250.00 (10% recoupment limit)

\$2,500.00 (Monthly termination benefit)

- \$2,164.90 (MIL for 1990)

\$335.10 (Monthly termination benefit less MIL)

PBGC will reduce the pre-62 benefit by \$335.10 per month (not \$400.00 per month or \$250.00 per month).

PBGC will reduce post-62 benefit (\$2,100.00 per month) payments by PBGC's regular recoupment rules:

- The post-62 benefit does not exceed the MIL (\$2,164.90)
- At age 62, PBGC will limit the participant's benefit reduction to 10% of the monthly benefit (\$210.00)

For the survivor benefit, PBGC will reduce benefit payments by \$105.00 per month (10% x \$1050.00). In this case, the participant's age at his death does not matter because:

- The survivor benefit is derived only from the participant's joint-and-50% survivor portion of the termination benefit—not the temporary supplement
- The survivor benefit never exceeds the MIL (\$2,164.90)

For the survivor benefit, PBGC will limit the recoupment reduction to 10% of the monthly benefit.

PBGC will not recalculate the Initial Recoupment Percentage for recouping from the survivor benefit unless PBGC has further overpaid the survivor.

Appendix C. Appeals and de minimis repayment amounts for plans trustee before 08/23/2007

On 11/04/2002, PBGC issued **Policy Bulletin 2003-2: Effect of Appeals on De Minimis Recoupment and Recovery Amounts**. Under the recoupment and recovery policies then in effect, PBGC treated an overpayment of \$500.00 or less as a de minimis amount. PBGC did not try to collect overpayments under the de minimis threshold.

Sometimes, overpayments that were de minimis at the time of benefit determination issuance increased to over \$500.00 by the time the benefit determination became final. It was unclear whether PBGC would try to collect overpayments that increased above the de minimis threshold by the time the Appeals Board closed the appeal.

Under **Policy Bulletin 2003-2**, PBGC froze de minimis overpayments as of when PBGC issued the benefit determination. **Policy Bulletin 2003-2** covered benefit determinations:

- That described de minimis recoupment and recovery amounts which PBGC processed on or after 10/28/2002, and
- That PBGC issued for which an appeal was filed but unresolved as of 10/28/2002

For recoupment, PBGC removed the de minimis threshold for plans trustee on or after 08/23/2007. The rules in this **Appendix C** are irrelevant for overpayments from plans trustee on or after 08/23/2007.

For recoveries, the rules in this **Appendix C** are no longer relevant due to the scope and effective date of this policy. See **section B**.

Example C-1

PBGC overpays a participant by \$22.00 per month for 22 months:

- PBGC sends the benefit determination
- The overpayment is \$484.00
- The participant appeals
- The Appeals Board closes the appeal
- The benefit determination becomes final
- The overpayment increases to \$600.00

PBGC will adjust his benefit to the new lower level. PBGC will not try to collect the overpayment.

Concurrence, Endorsement, and Approval

Policy 6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery (9th Edition)		
Concurrence	Initials	Date
OBA/ASTD/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	01/17/2018
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	01/17/2018
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	01/18/2018
OBA/PSD: Jennifer Messina, Director	J.M.	01/23/2018
OGC: Joseph Krettek, Assistant General Counsel	J.M.K.	01/17/2018

Endorsements		
General Counsel: Judith R. Starr	J.R.S.	01/24/2018
Chief Financial Officer: Patricia Kelly	P.K.	01/29/2018
Approval		
Chief of Benefits Administration: Cathleen Kronopolus	C.K.	01/24/2018

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on **Transmittal 2018-04**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_4_1_9th.htm
(01/30/2018).

Previous Editions

[6.4-1 Recoupment/Recovery of Post-DOPT Benefit 1st Ed. - Outdated](#)

[6.4-1 Recoupment/Recovery of Post-DOPT Benefit 2nd Ed. - Outdated](#)

[6.4-1 Recoupment & Recovery of Post-DOPT Benefit Overpayments 3rd Ed. - Outdated](#)

[6.4-1 Recoupment/Recovery of Post-DOPT Benefit Overpayments 4th Ed. - Outdated](#)

[6.4-1 Recoupment/Recovery of Post-DOPT Benefit Overpayments 5th Ed. - Outdated](#)

[6.4-1 Recoupment and Recovery of Post-DOPT Benefit Overpayments 6th Ed. - Outdated](#)

[6.4-1 Repayment of Benefit Overpayments through Recoupment, Recovery, and Administrative Correction 7th Ed. - Outdated](#)

[6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery 8th Ed. - Outdated](#)

[Top of Page](#)

6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments

Edition	5th Edition
Issue Date	03/29/2018
Transmittal	Transmittal 2018-06
Last Review Date	N/A
Signed Policy	6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Overpayment Accrual Commencement Date (OACD)
- D. Computation of the Net Amount of Overpayment or Underpayment
- E. Benefits from Related Plans
- F. Benefits Related to Other Payees
- Concurrence, Endorsement, and Approval

A. Background

After the date of plan termination (DOPT), payees or others may receive benefits that are more (overpayments) or less (underpayments) than the benefits they are entitled to receive. A payee may have been overpaid in some months and underpaid in other months. This policy statement provides rules for computing post-DOPT overpayments and underpayments, and netting them when applicable for recoupment, recovery, or reimbursement.

This policy specifies the method PBGC will use to determine overpayments, underpayments, and the net amount owed by or to a payee who has received both benefit overpayments and underpayments, in accordance with Subpart E of 29 CFR § 4022 (§ 4022.81 – 4022.83). In this fifth edition, PBGC makes changes to **section E** with respect to benefits from related plans.

B. Scope and Effective Date

This policy statement applies to the calculation of net overpayments or underpayments made on or after the DOPT in PBGC-trusteed plans. It is applicable to the computation of overpayments and underpayments of estimated or final benefits on or after the date of issuance of this policy.

This policy does not apply to:

- adjustments resulting from earnings offsets as provided in Policy **6.2-1 Earnings-Offset Provisions** nor
- a determination of amounts owed as pre-termination liabilities as provided under Policy **6.3-1 Underpayment Reimbursement and Interest Payments**.

C. Overpayment Accrual Commencement Date (OACD)

The OACD is used to determine benefit overpayments that can be included (includable overpayments) in determining a payee's net overpayment or underpayment.

1. If a Notice of Intent to Terminate (NoIT) was issued, the OACD is the later of:
 - a. the proposed termination date under section 4041(a) or
 - b. the actual DOPT under section 4048.
2. If a NoIT was not issued (i.e., the plan sponsor never filed for a standard or distress termination), the OACD is the later of:
 - a. the date on which proceedings to terminate the plan are instituted (such date would normally be the date the Notice of Determination was issued under section 4042 - the "NoD Date") and
 - b. the actual DOPT.
3. The OACD cannot be prior to the actual DOPT, regardless of whether a NoIT was issued. Further, the plan's Date of Trusteeship (DoTR) does not affect the OACD.

If both a NOD and a NOIT have been issued with respect to the same plan and the DOPTs are different dates, [contact PPD](#).

Example C-1: A NoIT was not issued. PBGC issued a NoD on 05/30/2015. DOPT was 03/31/2015, and DoTR was 08/31/2015. Since a NoIT was not issued, the OACD is the later of:

- a. the NoD date (05/30/2015) or
- b. the actual DOPT (03/31/2015).

Therefore, the OACD is 05/30/2015.

Example C-2: A NoIT was issued, and the proposed DOPT was 02/15/2015. DOPT was 03/31/2015. Since a NoIT was issued, the OACD would be the later of:

- a. the proposed DOPT (02/15/2015), or
- b. the actual DOPT (03/31/2015),

Therefore, the OACD is 03/31/2015.

D. Computation of the Net Amount of Overpayment or Underpayment

1. General Rule

PBGC will calculate the net overpayment or underpayment made with respect to a participant as follows:

- a. Starting with a value of zero beginning as of the end of the calendar month preceding DOPT, PBGC will calculate a cumulative account balance.
- b. For the calendar month of DOPT and each month thereafter, PBGC will
 - subtract from the account balance includable overpayments made in the month (i.e., overpayments made on or after the OACD) and
 - add includable underpayments (i.e., underpayments made on or after DOPT) made in the month.

If the error is corrected at (original) BD issuance, then for each month for which PBGC is computing post-DOPT overpayments and underpayments, PBGC will deem "X" as the correct monthly entitlement if payment amount "X" exceeds the correct monthly entitlement by less than \$1.00 (or \$5.00 if the plan was trustee before 10/01/2014) for that month. See **Example D-1** and **section D.1** and **section D.2** of Policy **5.8-1 Benefit Corrections**.

If the error is corrected after (original) BD issuance, then for each month for which PBGC is computing post-DOPT overpayments and underpayments, PBGC will deem "X" as the correct monthly entitlement if either

- payment amount "X" exceeds the correct monthly entitlement by less than \$5.00 for that month or
- the correct monthly entitlement amount exceeds payment amount "X" by less than \$1.00 for that month.

See **Example D-2** below and **section D.3** of Policy **5.8-1 Benefit Corrections**.

- c. If the cumulative account balance as of the end of a month is

- positive (a net benefit underpayment), PBGC will add interest to the account balance for that month
- negative (a net benefit overpayment), interest will not be added to the account balance for that month.

If the payee is entitled to reimbursement of an underpayment from PBGC, the underpayment will be paid in accordance with PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments**. If a payee has been overpaid, the overpayment may be recouped or recovered as provided under PBGC Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**.

Example D-1: A participant is entitled to \$1,400.00 per month from 01/01/2015 (DOPT, DOTR and OACD) through 06/01/2015 and \$800.00 per month for life thereafter. The error is corrected at (original) BD issuance. The participant was paid

- \$1,400.50 from 01/01/2015 until 04/01/2015
- \$1,400.00 from 05/01/2015 until 08/01/2015
- \$799.50 from 09/01/2015 until 10/01/2015
- \$804.00 from 11/01/2015 until 12/01/2015

As of 12/31/2015, the net monthly overpayment is \$1,207.00 (= \$1,200.00 - \$1.00 + \$8.00).

Date for Which PBGC is Netting Payments	Correct Monthly Payment	Deemed Correct Monthly Payment	Actual Monthly Payment	Overpayment/Underpayment
01/01/2015 – 04/01/2015 (4 months)	\$1,400.00	\$1,400.50	\$1,400.50	\$0.00
05/01/2015 – 06/01/2015 (2 months)	\$1,400.00	N/A	\$1,400.00	\$0.00
07/01/2015 – 08/01/2015 (2 months)	\$800.00	N/A	\$1,400.00	\$600.00 (Total o/p \$1,200.00)
09/01/2015 – 10/01/2015 (2 months)	\$800.00	N/A	\$799.50	\$1.00 (Total u/p \$1.00)
11/01/2015 – 12/01/2015 (2 months)	\$800.00	N/A	\$804.00	\$4.00 (Total o/p \$8.00)

Example D-2: Same facts as *Example D-1* above except the corrections are made after (original) BD issuance. As of 12/31/2015, the net monthly overpayment is \$1,200.00 (not \$1,207.00).

Date for Which PBGC is Netting Payments	Correct Monthly Payment	Deemed Correct Monthly Payment	Actual Monthly Payment	Overpayment/Underpayment
01/01/2015 – 04/01/2015 (4 months)	\$1,400.00	\$1,400.50	\$1,400.50	\$0.00
05/01/2015 – 06/01/2015 (2 months)	\$1,400.00	N/A	\$1,400.00	\$0.00
07/01/2015 – 08/01/2015 (2 months)	\$800.00	N/A	\$1,400.00	\$600.00 (Total o/p \$1,200.00)
09/01/2015 – 10/01/2015 (2 months)	\$800.00	\$799.50	\$799.50	\$0.00
11/01/2015 – 12/01/2015 (2 months)	\$800.00	\$804.00	\$804.00	\$0.00

PBGC will not offset a post-OACD net overpayment from a pre-termination liability that is payable on or after DOPT. Nor will PBGC offset a pre-OACD net overpayment from a net underpayment payable on or after DOPT. See *Example D-3* below.

Example D-3: A participant was receiving a straight life annuity of \$500.00 per month until BD issuance. PBGC discovered that for ten full years before DOPT, the plan underpaid the participant by \$100.00 per month and that as a result of PBGC's Title IV limitations, the participant was entitled to only \$300.00 per month. PBGC will not offset amounts owed before DOPT from overpayments made after OACD. If plan assets are available, PBGC will pay the pre-termination liability of \$12,000.00 (120 months x \$100.00 per month) plus interest. PBGC will also seek repayment by recoupment for any monthly overpayments made after OACD.

2. Estimated Interest

If PBGC adds interest at the rate of the most recent month (other than the current month) for which the applicable interest rate is available, interest will generally be considered to be properly paid. However, if PBGC recomputes the cumulative account balance as a result of a subsequent overpayment or underpayment in the payment stream, then PBGC will use the most current available rates for all months in which older rates were used and adjust accordingly the cumulative account balance as of the end of each month. See *Example D-4* below.

Example D-4: On May 1, a participant received a one-time backpayment consisting of \$1,000.00 principal and \$30.00 interest. The interest was calculated in February, so February rates were used for March and April. (Had March and April rates been available, PBGC would have determined that only \$28.00 interest was owed.) PBGC subsequently discovered that the participant was also entitled to \$500.00 principal and \$14.00 interest, payable December 1. (The interest of \$14.00 was calculated with current rates.) Because PBGC has to recompute the entire payment stream, PBGC will treat the payment made on May 1 as including a \$2.00 overpayment (\$30.00 - \$28.00) and will adjust the December 1 payment accordingly.

E. Benefits from Related Plans

If a payee was paid from the wrong plan and, as a result, has received a net overpayment with respect to one plan but is entitled to a reimbursement of a net underpayment from a related plan (i.e., the two plans were sponsored by members of the same controlled group), PBGC generally will offset the overpayments in one plan by the underpayments in the other plan. Before applying this policy provision, contact PPD.

Example E-1: The employer sponsored two plans, an hourly plan and a salaried plan (i.e., the plans are related). PBGC trustee both plans. The payee was entitled to \$1,000.00 per month from the salaried plan and \$0.00 from the hourly plan. For three months, PBGC paid from the hourly plan the amount that was payable from the salaried plan. Combining the monthly payments yields no net overpayment or underpayment.

F. Benefits Related to Other Payees

1. Beneficiary entitled to continuing payments as contingent annuitant

If a contingent annuitant of a deceased participant is or was entitled to continuing payments as the survivor of the deceased payee (e.g., a surviving spouse entitled to a 50% QJSA), PBGC will compute the net overpayment or underpayment on the participant's and contingent annuitant's combined stream of payments. PBGC will reimburse, recoup, or recover in accordance with the guidance in PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments** and PBGC Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**. Contact PPD if there are multiple beneficiaries.

Example F-1: A deceased participant was underpaid \$10.00 per month for 10 months. The payee's spouse, who is receiving a 50% survivor benefit, has been underpaid \$5.00 per month for 5 months. The combined net underpayment of \$125.00 (plus interest of approximately \$5) will be reimbursed to the spouse.

2. Contingent annuitant entitled to a termination benefit in his or her own right

If a contingent annuitant of a deceased participant who has received a benefit overpayment is entitled to a termination benefit in his or her own right (e.g., the beneficiary is also a participant or is the beneficiary of another participant), PBGC will not net the benefits when assessing underpayments or overpayments, and will recoup only from the benefit with respect to which the overpayment was made.

Example F-2: A deceased participant's surviving spouse is being paid survivor benefits under the QJSA elected by the participant. The surviving spouse is also a participant in the plan and is currently receiving his/her own benefit. The deceased participant was overpaid. The overpayment will only be recouped from the surviving spouse benefit payable under the QJSA. The overpayment will not be recouped from the surviving spouse's own retirement benefit.

Concurrence, Endorsement, and Approval

Policy 6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments (5th Edition)		
Concurrence	Initials	Date
OBA/ASTD/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	02/22/2018
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	02/22/2018
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	02/22/2018
OBA/PSD: Jennifer Messina, Director	J.M.	02/22/2018
OGC: Joseph Krettek, Assistant General Counsel	J.K.	02/22/2018
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	02/26/2018
Chief Financial Officer: Patricia Kelly	P.K.	02/27/2018

Approval		
Chief of Benefits Administration: Cathy Kronopolus	C.K.	02/26/2018
<p><i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on Transmittal 2018-06.</i></p>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_4_3_5th.htm
(03/29/2018).

Previous Editions

[6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments 1st Ed. - Outdated](#)

[6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments 2nd Ed. - Outdated](#)

[6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments 3rd Ed. - Outdated](#)

[6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments 4th Ed. - Outdated](#)

[Top of Page](#)

6.5-2 ERISAfication

Edition	1st Edition
Issue Date	04/10/1985
Transmittal	Transmittal 5
Contact	ASK PPD

In this policy

- A. Purpose
- B. Scope
- C. Mandatory Provisions of ERISA Required by MPPAA
- D. Phase-in of ERISA Amendments

A. Purpose

This policy incorporates into the manual a policy which was established on March 29, 1983, by a letter from the Executive Director to OMB stating that PBGC would administratively implement the ERISAfication policy in accordance with a proposed regulation.

B. Scope

The ERISAfication policy applies to non-ERISAfied, partially ERISAfied or improperly ERISAfied plans which terminate on or after September 26, 1980 (the effective date of MPPAA).

C. Mandatory Provisions of ERISA Required by MPPAA

Certain essential requirements of Title I will be read into plans. The requirements are as follows (please refer to the proposed regulation when applying the provision to cases):

A. Minimum Participation Standards

Participants are defined as employees who "during the 12 months preceding the date of plan termination, met the plan's participation requirements except for age and years of service." Therefore, the age and years service requirements for participation purposes will be **read out** of a plan in the following determinations (B, C, and D).

B. Minimum Vesting Standards

The vesting schedule that will most benefit plan participants will be read into each terminating plan that does not meet the minimum vesting standards in section 203(a) of the Act. In order to determine which schedule to use, the percentage of vesting for each participant (other than substantial owners) is to be added under each of the vesting schedules and the vesting schedule that will produce the highest total percentage in the aggregate is to be used for all participants. In the following example, the "Rule of 45" is to be used.

Participant	Age	Service	10-Yr. Cliff	5-15 Graded	Rule of 45
A	42	13	100%	80%	100%
B	31	6	0%	30%	0%
C	48	15	100%	100%	100%
D	40	9	0%	45%	70%
E	50	10	100%	50%	100%
			300%	305%	370%

For vesting purposes, years of service are determined using the elapsed time method. Under this method, service is determined with reference to the total period of time that elapses from the date hired to the earlier of date of separation or plan termination.

C. Benefit Accrual Requirements

The computation of a participant's accrued benefit would be made as of the date of plan termination under the fractional rule in ERISA section 204(b)(1)(C) without the special limiting exceptions in (D). Under the fractional or "pro rata" rule, a participant's projected normal retirement benefit would be multiplied by a fraction, the numerator of which is the participant's years of participation in the plan to the date of plan termination (DOPT) and the denominator of which is the number of years of participation the participant would have had if he or she had continued in the plan until normal retirement age. Years of participation would be determined using the elapsed time method as in the vesting rules.

D. Forms of the Benefit

1. Joint and Survivor Annuity

An automatic actuarially equivalent 50% joint and survivor annuity for participants married at DOPT will be read into plans that provide an annuity form of benefit. Married participants, however, will not be given an opportunity to elect to receive benefits in the annuity form payable to unmarried participants after DOPT.

2. Pre-retirement Survivor Annuity

ERISA's section 205(c) provides that a married participant must be given the option to elect a survivor annuity to be paid if the participant dies, while still employed by the plan sponsor before retiring but after meeting the eligibility requirements for early retirement. A participant who would have been eligible to elect this benefit if offered, and who died while employed before DOPT but after becoming eligible for early retirement, will be deemed to have elected the benefit. Therefore, the benefit should have been in pay status before DOPT and the spouse of the deceased participant will be entitled to an actuarially equivalent survivor annuity (50%).

3. Early Retirement Benefit

A plan that provides for early retirement based on age and service requirements cannot require that the participant be employed at the early retirement age in order to be eligible for an early retirement benefit. Rather, pursuant to Section 206 of ERISA, the plan must provide that a participant who has fulfilled the service requirements, but who terminated employment before meeting the age requirement, is entitled to an actuarially reduced early retirement benefit upon reaching the age requirement. This provision will be read into plans with early retirement provisions that have not been amended, that have been improperly amended, or not timely amended, to comply with the Act. Employer consent before DOPT will not be required. The actuarially reduced early PBGC retirement benefit will be calculated using the reduction factor under 29 CFR 2621.4c.

D. Phase-in of ERISA Amendments

A. Mandatory Provisions

All minimum provisions mandated by ERISA will be phased-in as of the applicable Section 211 effective date.

B. Non-Mandatory or More Favorable Provisions (Amount in excess of ERISA Requirements)

All non-mandatory ERISA amendments, including the portion of any amendment in excess of minimum ERISA requirements (i.e., 5 year as opposed to 10 year cliff vesting) will be phased-in under the PBGC's normal requirements. Specifically, any such amendments or portions will be phased-in based on the latter of the amendment's adopted or effective date.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_5_2_1st.htm
(04/10/1985)

6.6-1 Withholding from Benefit Payments

Edition	3rd Edition
Issue Date	05/18/2006
Transmittal	Transmittal 94
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Policy

A. Background

At times ► payees, ► plan sponsors, or other organizations ask PBGC to deduct and withhold all or part of pension benefits administered by PBGC. For example, PBGC may be asked to deduct and withhold state and local income taxes, nursing home fees, insurance premiums, or other types of payments to third parties. This policy is primarily a restatement and simplification of the withholding rules that PBGC has applied since the issuance of the first edition of the policy.

B. Scope and Effective Date

This ► policy describes the rules that PBGC applies to deducting and withholding income from the pension benefits it pays and supplements the rules found in Policy **6.6-2 Assignment and Alienation of Benefits**. It does not cover deduction and withholding rules that are addressed in Policy **6.2-1 Application of Earnings Offset Provisions in PBGC-Trusted Plans**, ► Policy Bulletin **01-3 Payments to Third Parties**, or Policy **6.4-1 Recoupment of Benefit Overpayments**. This policy applies to all pension benefits paid by PBGC on and after the date of its issuance.

C. Policy

1. General Policy

- a. PBGC deducts and withholds from pension benefits to the extent required by federal law. These mandatory withholdings include federal income tax, tax levies imposed by the Internal Revenue Service (IRS), and payments due an ► alternate payee under a ► QDRO.
- b. PBGC generally does not deduct and withhold from pension benefits where not required by federal law. Amounts that PBGC does not deduct and withhold include state and local taxes; child support or alimony that is not ordered under a qualified domestic relations order (QDRO); garnishments; premiums for group or individual health or life insurance, including premiums for Medicare Part B; and union dues. However, PBGC retains discretionary authority to withhold or deduct these or other amounts as appropriate, including where the agency agreed to withhold certain amounts in specific pension plans. (PBGC will continue to withhold in accordance with these agreements.)

2. Federal Tax Withholding

- a. PBGC withholds federal income tax in amounts determined in accordance with the ► Internal Revenue Code (IRC), IRS rules, and guidance it receives from the IRS regarding PBGC-specific issues.
- b. PBGC will comply with a ► payee's request for additional withholding (i.e., beyond the required amount), only to the extent allowed under the IRC and to the extent that the amount of additional withholding does not exceed the amount that remains after PBGC has deducted and withheld all amounts it must deduct and withhold under federal law. For example, additional withholding will not be allowed to the extent it would prevent PBGC from complying with a QDRO.
- c. PBGC notifies pension plan payees about its obligation to withhold federal income tax from pension payments and about payees' rights and responsibilities under the IRC and federal tax regulations.

Previous Editions

[6.6-1 Withholding From Benefit Payments 1st Ed. - Outdated](#)

[6.6-1 Withholding from Benefit Payments 2nd Ed. - Outdated](#)

[Top of Page](#)

6.6-1 Withholding from Benefit Payments

Edition	4th Edition
Issue Date	03/30/2021
Transmittal	Transmittal 2021-04
Contact	ASK PPD

In this policy

A. Introduction

B. Scope and Effective Date

C. Policy

A. Introduction

PBGC deducts and withholds from pension benefits to the extent required by federal law. In addition, payees, plan sponsors, or other organizations may ask PBGC to deduct and withhold all or part of pension benefits administered by PBGC. For example, PBGC may be asked to deduct and withhold state and local income taxes, nursing home fees, insurance premiums, or other types of payments to third parties. With this edition, PBGC is revising the policy to clarify how net underpayments should be treated for federal tax withholding purposes.

B. Scope and Effective Date

This policy describes the rules that PBGC applies to deducting and withholding income from the pension benefits it pays and supplements the rules found in Policy [6.6-2 Assignment and Alienation of Benefits](#). It does not cover deduction and withholding rules that are addressed in Policy [6.2-1 Application of Earnings Offset Provisions](#) or Policy [6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#). This policy applies to all pension benefits processed by PBGC on and after April 1, 2021.

C. Policy

1. General Policy

- a. PBGC deducts and withholds from pension benefits to the extent required by federal law. These mandatory withholdings include, but are not limited to, federal income tax, tax levies imposed by the Internal Revenue Service (“an IRS levy”), garnishments under the Mandatory Victims Restitution Act (MVRA), and payments due an alternate payee under a QDRO.
- b. PBGC generally does not deduct and withhold from pension benefits where not required by federal law. Amounts that PBGC does not deduct

and withhold include state and local taxes; child support or alimony that is not ordered under a qualified domestic relations order (QDRO); garnishments; premiums for group or individual health or life insurance, including premiums for Medicare Part B; and union dues. However, PBGC retains discretionary authority to withhold or deduct these or other amounts as appropriate, including where the agency agreed to withhold certain amounts in specific pension plans. (PBGC will continue to withhold in accordance with these agreements.)

2. Federal Tax Withholding

- a. PBGC withholds federal income tax in amounts determined in accordance with the Internal Revenue Code (IRC), IRS rules, and guidance it receives from the IRS regarding PBGC-specific issues.
- b. PBGC will comply with a payee's request for additional withholding on payments (i.e., beyond the required amount), only to the extent allowed under the IRC and to the extent that the amount of additional withholding does not exceed the amount that remains after PBGC has deducted and withheld all amounts it must deduct and withhold under federal law. For example, additional withholding will not be allowed to the extent it would prevent PBGC from complying with a QDRO.
- c. Withholding on periodic and nonperiodic payments will follow IRC rules. PBGC will request a withholding certificate from a participant when the participant applies for benefits and will follow IRC guidance on default withholding if no election is made. Payees receiving periodic payments may change their withholding election or opt out of withholding at any time by filing a new withholding certificate.
- d. Reimbursement of net underpayments ([see 6.4-3 Computation and Netting of Post-DOPT Overpayments and Underpayments](#)) will be treated similarly to supplemental wage payments under the IRC, and will be subject to a flat withholding rate of 20%, irrespective of the withholding election on the underlying periodic payment. Payees may not elect a different withholding rate or to opt out of withholding on these payments.
- e. To the extent any payment which is treated as an eligible rollover distribution, as defined under § 402(f)(2)(A) of the IRC is not directly rolled over to another plan or IRA, PBGC will withhold 20% mandatory federal tax withholding.
- f. PBGC notifies pension plan payees about its obligation to withhold federal income tax from pension payments and about payees' rights and responsibilities under the IRC and federal tax regulations.

Policy 6.6-1 Withholding from Benefit Payments, 4th Ed.

Concurrence

OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2021.03.30 10:24:25 -04'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	 Digitally signed by LAURA STEPHENS Date: 2021.03.30 10:09:10 -04'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	 MICHELE GRAY Digitally signed by MICHELE GRAY Date: 2021.03.30 14:12:01 -04'00'
OBA/PSD: Jennifer Messina, Director	 Digitally signed by JENNIFER MESSINA Date: 2021.03.31 07:50:43 -04'00'
OGC: Joseph Krettek, Assistant General Counsel	 JOSEPH KRETTEK Digitally signed by JOSEPH KRETTEK Date: 2021.03.31 09:26:21 -04'00'

Endorsements

General Counsel: F. Russell Dempsey	 FREDRICK DEMPSEY Digitally signed by FREDRICK DEMPSEY Date: 2021.03.31 10:47:17 -05'00'
Chief Financial Officer: Patricia Kelly	 PATRICIA KELLY Digitally signed by PATRICIA KELLY Date: 2021.03.31 08:57:25 -04'00'

Approval

Chief of Benefits Administration: David Foley	 DAVID FOLEY Digitally signed by DAVID FOLEY Date: 2021.03.30 15:28:18 -04'00'
--	--

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on **Transmittal 2021-04**.*

6.6-2 Assignment or Alienation of Benefits

Edition	2nd Edition
Issue Date	06/17/2008
Transmittal	Transmittal 2008-04
Contact	ASK PPD

In this policy

- A. Introduction
- B. Scope and Effective Date
- C. General Rule: Assignment or Alienation of Benefits
- D. Exceptions to the General Rule
- E. Spousal Consent

A. Introduction

This [policy](#) describes how PBGC implements [ERISA's](#) rule against assigning or alienating pension benefits. Assigning a benefit means giving away the right to receive one's future benefits - for example, if it were not prohibited, a [participant](#) might give (assign) the right to receive his or her future benefits from the pension plan to a lender in exchange for a loan. Alienating a benefit has a similar meaning - any action that has the effect of transferring to another party the right to receive from a pension plan a participant's or beneficiary's future benefits. More generally, IRS regulations interpret ERISA's (and the [Internal Revenue Code's](#)) assignment and alienation rules as prohibiting levies, garnishments, and any other direct or indirect arrangement by which a party acquires a right - enforceable against the pension plan - to a participant's or [beneficiary's](#) future benefits.

There are a limited number of specific exceptions to the assignment and alienation rules set forth in the law and IRS regulations. Probably the most well known of these is the exception for payments to an alternate payee under a [qualified domestic relations order](#) (QDRO), but there are a few other exceptions, which are described in this policy.

After plan termination, PBGC generally follows the rules about assignment and alienation applicable to ongoing plans. This policy provides specifics on how we do so.

B. Scope and Effective Date

This [policy statement](#) establishes rules for assignment or alienation of benefits in PBGC-trusted plans, and for alternative treatment of majority owners' benefits in any distress or involuntary termination. Except as provided in [section D.6](#), it is effective upon issuance.

C. General Rule: Assignment or Alienation of Benefits

PBGC will not honor any arrangement under which a party acquires a right to receive directly from PBGC all or any part of a [benefit](#) payment that is or may become payable to a [participant](#), [beneficiary](#) or [alternate payee](#) except as specifically described in [section D](#) of this policy. Examples of arrangements that will not be honored include assignments to creditors, garnishment orders and benefit waivers.

Arrangements that are not considered assignment or alienation of a benefit include: tax withholding; recoupment and recovery of benefit overpayments, whether pre-[DOPT](#) or post-DOPT; and direct deposit of benefit payments to an account bearing the name of the participant, beneficiary or alternate payee. Contact [PPD](#) for a determination regarding any arrangement not specifically described in this policy.

D. Exceptions to the General Rule

1. Alternative Treatment of Majority Owner's Benefit

In a plan undergoing a [distress termination](#), an individual who is a [majority owner](#) may elect to forgo receipt of all or a portion of his or her benefit if the conditions for doing so in PBGC's distress termination regulation are met. See 29 [CFR § 4041.47\(d\)](#) and [4041.21\(b\)\(2\)](#) for those conditions. For alternative treatment of a majority owner's benefit in an [involuntary termination](#), the same rules apply. [OCC](#) concurrence is required for any alternative treatment permitted under this section.

2. IRS Tax Levies

PBGC will honor federal tax levies against a benefit upon receipt of a notice of levy from the Internal Revenue Service. If the benefit is not in pay status when the levy is received, PBGC will not unilaterally place the benefit in pay status unless the **► participant**, **► beneficiary**, or **► alternate payee** under a separate interest **► QDRO** is entitled to go into pay status and the IRS specifically asks PBGC to put the person into pay status.

3. Qualified Domestic Relations Orders (QDROs)

PBGC will pay all or a portion of a participant's benefit to an alternate payee pursuant to a QDRO. See PBGC Operating Policy **6.6-3 Qualified Domestic Relations Orders**.

4. Payments to Third Parties

a. **General.** A PBGC payee may have 100% of his or her future benefit payments directed to another person or to an account that is not in his or her name in accordance with the following rules:

1. the arrangement must be revocable at any time;
2. the third party must acknowledge in writing that he, she or it has no enforceable right to the PBGC payee's benefit; and
3. the PBGC payee must complete and sign a "Direction to Third Party" agreement.

The holder of a durable power of attorney may execute a third-party payment agreement on behalf of an incompetent PBGC payee. (See PBGC Operating Policy **8.4-1 Power of Attorney**, for rules relating to durable powers of attorney.)

b. **Incarcerated payees.** A request to have the benefit of an incarcerated payee directed to a warden or an account established to offset the cost of incarceration will be honored only if the incarcerated payee requests the change in writing. If the account is not in the name of the payee, the redirection will occur only if the requirements of subsection 4.a., above, are met.

c. **Cessation.** Payments to the third party will cease upon receipt of written notice of revocation of the agreement from the person who executed it, or upon a finding that the PBGC payee who executed an agreement has become incompetent.

5. Plan Loans

PBGC will offset (permanently reduce) a benefit by the amount of an unpaid loan balance at **► DOPT** in accordance with PBGC Operating Policy **6.6-4 Plan Loans**.

6. Fiduciary Breach and Related Offsets

This section applies to judgments, orders, decrees, or settlement agreements made on and after August 5, 1997. Any offset under this section must have OCC concurrence. The benefit offset under this section is treated as a distribution for purposes of federal income taxation.

a. **Conditions for offset.** PBGC will offset against a participant's benefit an amount the participant is ordered or required to pay to the plan where the following conditions are met.

1. The order or requirement to pay to the plan arises—
 - from a conviction of a crime involving the plan;
 - under a court order in a civil case involving a violation (or alleged violation) of the fiduciary-responsibility provisions of Title I of **► ERISA**; or
 - under a settlement agreement between the participant and either PBGC or the Department of Labor involving a violation (or alleged violation) of the fiduciary-responsibility provisions of Title I of ERISA;
2. The applicable judgment, order, decree, or settlement agreement expressly provides for the offset against the participant's benefit; **and**
3. If the participant has a spouse on the effective date of the order or agreement that provides for the offset —
 - the spouse is not entitled to a survivor benefit (e.g., because the participant is receiving a benefit and the spouse was not married to the participant on the annuity starting date, or because the amount of the participant's benefit was *de minimis* under plan rules);

- the spouse waived the ►QJSA, in accordance with all applicable requirements, at the participant's ►annuity starting date and the participant did not elect any other ►joint-and-survivor annuity with the spouse as the beneficiary;
 - the spouse consented in writing to the offset and the consent is witnessed by a notary public or representative of the plan;
 - the spouse is ordered or required under the same judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation (or alleged violation) of the fiduciary-responsibility provisions of Title I of ERISA (PBGC may decide not to rely on this condition if the spouse is only ordered to pay a nominal amount and the amount of the protected survivor annuity with respect to the offset benefit is large.); or
 - the judgment, order, decree, or settlement provides that the spouse retains the right to receive the survivor benefit as though the participant's benefit were not reduced under this paragraph (i.e., a protected survivor annuity, as described below.) If the order is silent in this regard, PBGC will provide a protected survivor annuity.
- b. **Protected survivor annuity.** If the spouse described in section 6.a.(3), above, does not provide required consent, his or her minimum survivor benefit with respect to the amount of the benefit offset will be protected. See sections 4.d and E of PBGC Operating Policy **6.6-4 Plan Loans**, for rules regarding protecting a survivor annuity, but substitute a 50% QJSA and a 50% ►QPSA for the plan QJSA and QPSA. Note that the protected survivor annuity will be paid to this spouse only if he or she is still married to the participant at the participant's annuity starting date or, if earlier, date of death.
- c. **QDROs.** PBGC will not offset against an alternate payee's benefit under a separate-interest QDRO that became effective before the date of the crime or violation (or alleged violation) described in section 6.a.(1). PBGC may offset against an alternate payee's benefit under any other separate-interest QDRO or under a shared-payment QDRO. (Of course, to the extent an alternate payee has a right to a survivor benefit at the effective date of the order or agreement, that person is treated as a spouse for purposes of that survivor benefit, and the spousal consent rules in this section apply.)
- d. **Method of offset.** An offset for a fiduciary breach under this section is offset in the same manner as a pre-DOPT or post-DOPT distribution (see section 7, below), based on the effective date of the offset.

7. Other Distributions

- a. **Pre-DOPT distributions to participants.** If a participant alleges to have taken an undocumented loan from a plan that does not allow participant loans, or is otherwise determined to have received plan assets other than by a bona fide loan, an actual distribution of the participant's benefit occurs. The distribution occurs as of the date of the transfer of funds from the plan to the participant, reducing the participant's benefit and creating taxable income in the amount of the distribution. However, if the plan administrator has not taken action to notify the participant and the IRS of the distribution, PBGC will do so as soon as practicable after the date of trusteeship of the participant's plan. PBGC will report it as a distribution, for federal tax purposes, in the year of such notification. The distribution is treated as having taken place before DOPT for purposes of asset allocation and benefit determination.
- If the participant was married to the same person at the time of the distribution and at DOPT, the spouse did not consent to the distribution, and the distribution was not de minimis under the plan's rules, PBGC will seek spousal consent as soon as practicable after it becomes trustee. If the spouse does not consent, his or her survivor benefit with respect to the amount distributed will be protected. See **section C.4.d** and **section E** of PBGC Operating Policy **6.6-4 Plan Loans**, for rules regarding protecting a survivor annuity. Note that the protected survivor annuity will be paid to this spouse only if he or she is still married to the participant at the participant's annuity starting date or, if earlier, date of death.
- b. **Post-DOPT distributions to participants.** If, after DOPT, a participant alleges to have taken an undocumented loan from a plan that does not allow participant loans, or is otherwise determined to have received plan assets other than by a bona fide loan or benefit payment by the plan, an actual distribution of the participant's benefit occurs. The distribution occurs as of the date of the transfer of funds from the plan to the participant, reducing the participant's benefit and creating taxable income in the amount of the distribution. If the plan administrator has not taken action to notify the participant and the IRS of the distribution, PBGC will do so as soon as practicable after the date of trusteeship of the participant's plan. PBGC will report it as a distribution, for federal income tax purposes, in the year of such notification. The distribution is disregarded for purposes of the plan valuation. The participant's termination

benefit is subsequently permanently reduced by the annuity equivalent of the amount taken, discounted back to DOPT.

If the participant was married to the same person at the time of the distribution and at DoTR, the spouse did not consent to the distribution, and the distribution was not de minimis under the plan's rules, PBGC will seek spousal consent as soon as practicable after it becomes trustee. If the spouse does not consent, his or her survivor benefit with respect to the amount distributed will be protected. See **section C.4.d** and **section E** of PBGC Operating Policy **6.6-4 Plan Loans**, for rules regarding protecting a survivor annuity. Note that the protected survivor annuity will be paid to this spouse only if he or she is still married to the participant at the participant's annuity starting date or, if earlier, date of death.

- c. **To others.** If plan assets are improperly transferred directly to a person who is not a participant or to an entity (including the employer that sponsors the plan), the transfer is not a (permissible or impermissible) distribution that will affect directly a participant's benefit. The action is probably a fiduciary breach and the fiduciary responsible, as well as the receiving person, may be sued for recovery. PBGC's claim is a plan asset and, because of the difficulties inherent in collecting from an individual, in many if not most cases it will be valued as uncollectible (i.e., as having zero value). Note that if the fiduciary is a plan participant, benefit offset may occur if the requirements of **section D.6**, above, are met.

E. Spousal Consent

► Spousal consent required or obtained under this ► policy must meet the requirements of **5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities.)**

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_6_2nd.htm
(06/17/2008)

Previous Editions

[6.6-2 Assignment and Alienation of Benefits 1st Ed. - Outdated](#)

[Top of Page](#)

6.6-2 Assignment or Alienation of Benefits

Edition	3rd Edition
Issue Date	06/21/2021
Transmittal	Transmittal 2021-06
Contact	ASK PPD

In this policy

- [A. Introduction](#)
- [B. Scope and Effective Date](#)
- [C. General Rule: Assignment or Alienation of Benefits](#)
- [D. Exceptions to the General Rule](#)
- [E. Spousal Consent](#)

A. Introduction

This ► [policy](#) describes how PBGC implements ► [ERISA's](#) rule against assigning or alienating pension benefits. Assigning a benefit means giving away the right to receive one's future benefits - for example, if it were not prohibited, a ► [participant](#) might give (assign) the right to receive his or her future benefits from the pension plan to a lender in exchange for a loan. Alienating a benefit has a similar meaning - any action that has the effect of transferring to another party the right to receive from a pension plan a participant's or beneficiary's future benefits. More generally, IRS regulations interpret ERISA's (and the ► [Internal Revenue Code's](#)) assignment and alienation rules as prohibiting levies, garnishments, and any other direct or indirect arrangement by which a party acquires a right - enforceable against the pension plan - to a participant's or ► [beneficiary's](#) future benefits.

There are a limited number of specific exceptions to the assignment and alienation rules set forth in the law and IRS regulations. Probably the most well known of these is the exception for payments to an alternate payee under a ► [qualified domestic relations order](#) (QDRO), but there are a few other exceptions, which are described in this policy.

After plan termination, PBGC generally follows the rules about assignment and alienation applicable to ongoing plans. This policy provides specifics on how we do so.

This third edition of the policy adds one more exception to the assignment and alienation rules to allow garnishment of PBGC benefits pursuant to a court order under the Mandatory Victims Restitution Act.

B. Scope and Effective Date

This ► [policy statement](#) establishes rules for assignment or alienation of benefits in PBGC-trusted plans, and for alternative treatment of majority owners' benefits in any distress or involuntary termination. It is effective upon issuance.

C. General Rule: Assignment or Alienation of Benefits

PBGC will not honor any arrangement under which a party acquires a right to receive directly from PBGC all or any part of a ► [benefit](#) payment that is or may become payable to a ► [participant](#), ► [beneficiary](#) or ► [alternate payee](#) except as specifically described in [section D](#) of this policy. Examples of arrangements that will not be honored include assignments to creditors, garnishment orders and benefit waivers.

Arrangements that are not considered assignment or alienation of a benefit include: tax withholding; recoupment and recovery of benefit overpayments, whether pre-► [DOPT](#) or post-DOPT; and direct deposit of benefit payments to an account bearing the name of the participant, beneficiary or alternate payee. Contact ► [PPD](#) for a determination regarding any arrangement not specifically described in this policy.

D. Exceptions to the General Rule

1. Alternative Treatment of Majority Owner's Benefit

In a plan undergoing a ► [distress termination](#), an individual who is a ► [majority owner](#) may elect to forgo receipt of all or a portion of his or her benefit if the conditions for doing so in PBGC's distress termination regulation are met. See 29 ► [CFR § 4041.47\(d\)](#) and 4041.21(b)(2) for those conditions. For alternative treatment of a majority owner's benefit in an ► [involuntary termination](#), the same rules apply. ► [OCC](#) concurrence is required for any alternative treatment permitted under this section.

2. IRS Tax Levies

PBGC will honor federal tax levies against a benefit upon receipt of a notice of levy from the Internal Revenue Service. If the benefit is not in pay status when the levy is received, PBGC will not unilaterally place the benefit in pay status unless the ► [participant](#), ► [beneficiary](#), or ► [alternate payee](#) under a separate interest ► [QDRO](#) is entitled to go into pay status and the IRS specifically asks PBGC to put the person into pay status.

3. Mandatory Victims Restitution Act Orders

PBGC will comply with garnishment orders issued by a United States District Court judge when made pursuant to the Mandatory Victims' Restitution Act ("MVRA"), 18 U.S.C. § 3613(a), subject to the conditions below. Refer any MVRA garnishment orders to PPD for review. PPD will refer any deviations from the conditions below to OGC for guidance.

- a. The order must state that it is made pursuant to the MVRA. The order should also specify the pension plan and contain instructions on delivering the garnished

benefit. Typically, an MVRA order will instruct the payor to deliver the money to the Office of the Clerk (“Clerk”) for the relevant Federal District Court.

- b. The participant subject to the MVRA order must be in pay status.
- c. If the participant is due only a *de minimis* lump sum benefit, PBGC may comply with the order by delivering the entire benefit to the Clerk.
- d. If the participant is receiving a benefit in the form of a life-time annuity or any other form of benefit paid in monthly installments, PBGC will only garnish 25 percent of the participant’s monthly benefit and will continue to pay the participant 75 percent of his or her benefit.
- e. A surviving spouse will not be subject to any MVRA garnishment unless there is an order specifying that the spouse was separately found guilty of a crime covered by the MVRA. After the death of the participant, the surviving spouse will receive their survivor benefits as normal.
- f. Any benefits being paid to an alternate payee of the participant or any benefits payable in the future to an alternate payee pursuant to a separate interest QDRO, are unaffected by the garnishment order and should continue, or be put into pay status at the appropriate time as provided in the QDRO. Further, if a QDRO requires the participant to elect a QJSA with the alternate payee as the spouse, the survivor portion payable to the alternate payee will not be subject to any MVRA garnishment unless there is an order specifying that the alternate payee was separately found guilty of a crime covered by the MVRA. An alternate payee under a shared payment QDRO that assigns a portion or percentage of the benefit paid to the participant to the alternate payee will receive a portion of the participant’s benefit that remains after it has been reduced by any MVRA garnishment. However, if a shared payment QDRO assigns a flat dollar amount or otherwise indicates that the amount payable to the alternate payee under the QDRO should not be reduced for post-QDRO events, the amount payable to the alternate payee will generally not be reduced by the MVRA garnishment.

4. Qualified Domestic Relations Orders (QDROs)

PBGC will pay all or a portion of a participant's benefit to an alternate payee pursuant to a QDRO. See PBGC Operating Policy [6.6-3 Qualified Domestic Relations Orders](#).

5. Payments to Third Parties

- a. **General.** A PBGC payee may have 100% of his or her future benefit payments directed to another person or to an account that is not in his or her name in accordance with the following rules:
 1. the arrangement must be revocable at any time;
 2. the third party must acknowledge in writing that he, she or it has no enforceable right to the PBGC payee’s benefit; and

3. the PBGC payee must complete and sign a “Direction to Third Party” agreement.

The holder of a durable power of attorney may execute a third-party payment agreement on behalf of an incompetent PBGC payee. (See PBGC Operating Policy [8.4-1 Power of Attorney](#), for rules relating to durable powers of attorney.)

- b. **Incarcerated payees.** A request to have the benefit of an incarcerated payee directed to a warden or an account established to offset the cost of incarceration will be honored only if the incarcerated payee requests the change in writing. If the account is not in the name of the payee, the redirection will occur only if the requirements of subsection 5.a., above, are met.
- c. **Cessation.** Payments to the third party will cease upon receipt of written notice of revocation of the agreement from the person who executed it, or upon a finding that the PBGC payee who executed an agreement has become incompetent.

6. Plan Loans

PBGC will offset (permanently reduce) a benefit by the amount of an unpaid loan balance at ▶ [DOPT](#) in accordance with PBGC Operating Policy [6.6-4 Plan Loans](#).

7. Fiduciary Breach and Related Offsets

This section applies to judgments, orders, decrees, or settlement agreements made on and after August 5, 1997. Any offset under this section must have OCC concurrence. The benefit offset under this section is treated as a distribution for purposes of federal income taxation.

- a. **Conditions for offset.** PBGC will offset against a participant’s benefit an amount the participant is ordered or required to pay to the plan where the following conditions are met.
 1. The order or requirement to pay to the plan arises—
 - from a conviction of a crime involving the plan;
 - under a court order in a civil case involving a violation (or alleged violation) of the fiduciary-responsibility provisions of Title I of ▶ [ERISA](#); **or**
 - under a settlement agreement between the participant and either PBGC or the Department of Labor involving a violation (or alleged violation) of the fiduciary-responsibility provisions of Title I of ERISA;
 2. The applicable judgment, order, decree, or settlement agreement expressly provides for the offset against the participant’s benefit; **and**
 3. If the participant has a spouse on the effective date of the order or agreement that provides for the offset —

- the spouse is not entitled to a survivor benefit (e.g., because the participant is receiving a benefit and the spouse was not married to the participant on the annuity starting date, or because the amount of the participant's benefit was *de minimis* under plan rules);
 - the spouse waived the ►QJSAs, in accordance with all applicable requirements, at the participant's ►annuity starting date and the participant did not elect any other ►joint-and-survivor annuity with the spouse as the beneficiary;
 - the spouse consented in writing to the offset and the consent is witnessed by a notary public or representative of the plan;
 - the spouse is ordered or required under the same judgment, order, decree, or settlement to pay an amount to the plan in connection with a violation (or alleged violation) of the fiduciary-responsibility provisions of Title I of ERISA (PBGC may decide not to rely on this condition if the spouse is only ordered to pay a nominal amount and the amount of the protected survivor annuity with respect to the offset benefit is large.); **or**
 - the judgment, order, decree, or settlement provides that the spouse retains the right to receive the survivor benefit as though the participant's benefit were not reduced under this paragraph (i.e., a protected survivor annuity, as described below.) If the order is silent in this regard, PBGC will provide a protected survivor annuity.
- b. **Protected survivor annuity.** If the spouse described in section 7.a.(3), above, does not provide required consent, his or her minimum survivor benefit with respect to the amount of the benefit offset will be protected. See sections 4.d and E of PBGC Operating Policy **6.6-4 Plan Loans**, for rules regarding protecting a survivor annuity, but substitute a 50% QJSAs and a 50% ►QPSAs for the plan QJSAs and QPSAs. Note that the protected survivor annuity will be paid to this spouse only if he or she is still married to the participant at the participant's annuity starting date or, if earlier, date of death.
- c. **QDROs.** PBGC will not offset against an alternate payee's benefit under a separate-interest QDRO that became effective before the date of the crime or violation (or alleged violation) described in section 7.a.(1). PBGC may offset against an alternate payee's benefit under any other separate-interest QDRO or under a shared-payment QDRO. (Of course, to the extent an alternate payee has a right to a survivor benefit at the effective date of the order or agreement, that person is treated as a spouse for purposes of that survivor benefit, and the spousal consent rules in this section apply.)

- d. **Method of offset.** An offset for a fiduciary breach under this section is offset in the same manner as a pre-DOPT or post-DOPT distribution (see section 8, below), based on the effective date of the offset.

8. Other Distributions

- a. **Pre-DOPT distributions to participants.** If a participant alleges to have taken an undocumented loan from a plan that does not allow participant loans, or is otherwise determined to have received plan assets other than by a bona fide loan, an actual distribution of the participant's benefit occurs. The distribution occurs as of the date of the transfer of funds from the plan to the participant, reducing the participant's benefit and creating taxable income in the amount of the distribution. However, if the plan administrator has not taken action to notify the participant and the IRS of the distribution, PBGC will do so as soon as practicable after the date of trusteeship of the participant's plan. PBGC will report it as a distribution, for federal tax purposes, in the year of such notification. The distribution is treated as having taken place before DOPT for purposes of asset allocation and benefit determination.

If the participant was married to the same person at the time of the distribution and at DOPT, the spouse did not consent to the distribution, and the distribution was not de minimis under the plan's rules, PBGC will seek spousal consent as soon as practicable after it becomes trustee. If the spouse does not consent, his or her survivor benefit with respect to the amount distributed will be protected.

See [section C.4.d](#) and [section E](#) of PBGC Operating Policy [6.6-4 Plan Loans](#), for rules regarding protecting a survivor annuity. Note that the protected survivor annuity will be paid to this spouse only if he or she is still married to the participant at the participant's annuity starting date or, if earlier, date of death.

- b. **Post-DOPT distributions to participants.** If, after DOPT, a participant alleges to have taken an undocumented loan from a plan that does not allow participant loans, or is otherwise determined to have received plan assets other than by a bona fide loan or benefit payment by the plan, an actual distribution of the participant's benefit occurs. The distribution occurs as of the date of the transfer of funds from the plan to the participant, reducing the participant's benefit and creating taxable income in the amount of the distribution. If the plan administrator has not taken action to notify the participant and the IRS of the distribution, PBGC will do so as soon as practicable after the date of trusteeship of the participant's plan. PBGC will report it as a distribution, for federal income tax purposes, in the year of such notification. The distribution is disregarded for purposes of the plan valuation. The participant's termination benefit is subsequently permanently reduced by the annuity equivalent of the amount taken, discounted back to DOPT.

If the participant was married to the same person at the time of the distribution and at the date of PBGC trusteeship, the spouse did not consent to the distribution, and the distribution was not de minimis under the plan's rules, PBGC will seek spousal

consent as soon as practicable after it becomes trustee. If the spouse does not consent, his or her survivor benefit with respect to the amount distributed will be protected. See [section C.4.d](#) and [section E](#) of PBGC Operating Policy [6.6-4 Plan Loans](#), for rules regarding protecting a survivor annuity. Note that the protected survivor annuity will be paid to this spouse only if he or she is still married to the participant at the participant's annuity starting date or, if earlier, date of death.

- c. **To others.** If plan assets are improperly transferred directly to a person who is not a participant or to an entity (including the employer that sponsors the plan), the transfer is not a (permissible or impermissible) distribution that will affect directly a participant's benefit. The action is probably a fiduciary breach and the fiduciary responsible, as well as the receiving person, may be sued for recovery. PBGC's claim is a plan asset and, because of the difficulties inherent in collecting from an individual, in many if not most cases it will be valued as uncollectible (i.e., as having zero value). Note that if the fiduciary is a plan participant, benefit offset may occur if the requirements of [section D.7](#), above, are met.

E. Spousal Consent

►[Spousal consent](#) required or obtained under this ►[policy](#) must meet the requirements of [5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities\)](#).

Policy 6.2-2 Assignment and Alienation of Benefits, 3rd Ed.	
Concurrence	
OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2021.06.15 13:23:01 -04'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	 Digitally signed by LAURA STEPHENS Date: 2021.06.15 08:02:59 -04'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	 Digitally signed by MICHELE GRAY Date: 2021.06.15 13:54:47 -04'00'
OBA/PSD: Jennifer Messina, Director	 Digitally signed by MICHELE GRAY Date: 2021.06.15 13:55:58 -04'00'
OGC: Joseph Krettek, Assistant General Counsel	 Digitally signed by JOSEPH KRETTEK Date: 2021.06.16 10:49:02 -04'00'
Endorsement	
General Counsel: F. Russell Dempsey	 Digitally signed by FREDRICK DEMPSEY Date: 2021.06.16 10:30:48 -05'00'
Approval	
Chief of Benefits Administration: David Foley	 Digitally signed by DAVID FOLEY Date: 2021.06.16 09:45:39 -04'00'
<i>This policy may not take effect without the written and dated endorsement of the General Counsel and the written and dated approval of the Chief of Benefits Administration on Transmittal 2021-06.</i>	

6.6-3 Qualified Domestic Relations Orders

Edition	5th Edition
Issue Date	11/01/2012
Transmittal	Transmittal 2013-01
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions
- D. Types of Domestic Relations Orders
- E. PBGC Qualification Requirements and Administration Issues
- F. Reviewing Orders; Suspending Payments; Revising Orders
- G. Special Rules
- H. Taxation of Payments to Alternate Payees

A. Background

Pension benefits generally may not be assigned or alienated. ►ERISA and the ►Internal Revenue Code (Code), however, provide an exception for certain ►domestic relations orders that relate to child support, alimony payments, or marital property rights of an ►alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order (order) meets the specific legal requirements to be a ►qualified domestic relations order (QDRO). ERISA and the Code also provide procedures for administration of benefits while an order is being reviewed to determine whether it is a QDRO.

B. Scope and Effective Date

This ►policy statement provides guidance for determining whether an order relating to the benefit of a participant in a PBGC-trusted plan is a ►QDRO. It also provides guidance on application of PBGC's special rules and limitations to QDROs and administration of benefits while PBGC is reviewing an order.

This policy statement applies to all orders issued with respect to benefits in PBGC-trusted plans, including both orders submitted to PBGC after PBGC has become trustee and orders issued before PBGC trusteeship (whether or not the order was qualified by the plan administrator).

This policy statement is effective on and after November 1, 2012.

C. Definitions

1. **Alternate payee** means a ►participant's spouse, former spouse, child, or other dependent who, under a ►qualified domestic relations order, has a right to receive all or a portion of the participant's pension benefits under a plan. PBGC will generally accept the determination by a court or appropriate entity that a person designated in an order as an alternate payee meets the definition of an alternate payee under ►ERISA.
2. **Contingent alternate payee** means a person who qualifies as an alternate payee and whose benefit is contingent upon the death of the alternate payee. If the order provides a separate interest, the contingent alternate payee will receive the benefit only if the alternate payee dies before commencing benefits. If the order provides a shared payment, the contingent alternate payee will start the benefit upon the death of the alternate payee (if payments have started), and the benefit will continue until the earlier of the participant's or contingent alternate payee's death or some other event specified in the order. A contingent alternate payee who is not a former spouse of the participant cannot receive a surviving spouse benefit (►QJSA or ►QPSA). If a contingent alternate payee is designated, the alternate payee's benefit may be actuarially adjusted to reflect the possibility of payment to a contingent alternate payee.
3. **Court or Appropriate Entity** means a state court or other appropriate entity, including, but not limited to, a state agency with the authority to issue judgments, decrees, or orders pursuant to state domestic relations law.
4. **Domestic Relations Order (order)** means any judgment, decree, or order (including approval of a property settlement) issued by a court or appropriate entity (see **section C.3** above). To be a domestic relations order, the order must relate to child

support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant and be issued pursuant to state domestic relations law. There is no PBGC requirement that the participant or alternate payee sign or otherwise endorse or approve the order. A wage withholding, garnishment, or other type of order may also be a domestic relations order if it meets the criteria of this paragraph. For orders that are not domestic relations orders or that are not issued by a state court or appropriate entity, see [section G.5](#) below.

5. **Draft Domestic Relations Order (draft order)** means an order, in draft form, which a court or other appropriate entity has not issued.
6. **Qualified Domestic Relations Order (QDRO)** means a domestic relations order that gives an alternate payee the right to receive all or a portion of the benefits (including disability pension benefits) payable with respect to a participant under the plan, and meets certain other legal requirements concerning the information and benefits provided. A plan administrator determines whether an order is qualified. However, after PBGC trusteeship, PBGC determines whether an order is qualified under PBGC rules.
7. **State** means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

D. Types of Domestic Relations Orders

PBGC recognizes two basic types of orders: separate interest orders and ►[shared payment orders](#).

A separate interest order generally provides that the ►[alternate payee](#) is to receive a portion or all of the value of the ►[participant's](#) benefit with payments calculated based on the lifetime of the alternate payee. The benefit is payable without regard to the participant's benefit form or payment status.

A shared payment order provides to the alternate payee a portion or all of each of the participant's pension payments while the participant lives or for a specified shorter period.

If the alternate payee is the participant's spouse or former spouse, an order may provide that the spouse or former spouse will be treated as the participant's spouse for purposes of survivor benefits (►[QPSA](#) and/or ►[QJSA](#)) when the participant dies.

E. PBGC Qualification Requirements and Administration Issues

PBGC will qualify an order only if it meets the following requirements:

1. Identification of Plan, Participant, and Alternate Payees

Qualification

The order must provide the name of each ►[plan](#), the name and address of the ►[participant](#), and the name and address of each ►[alternate payee](#) (including each contingent alternate payee) covered by the order. (PBGC will not reject an order that misstates or omits some of this information if PBGC records clearly contain the correct information.)

If the alternate payee is a minor or legally incompetent, the order must provide the name and address of the guardian or other legal representative to whom PBGC will send payments on behalf of the minor or legally incompetent person.

Administration

A plan may merge with another plan or may change its name after the order has been filed and qualified by the former plan administrator. If it is unclear whether the plan named in the order is the same as that trusted by PBGC, ►[OBA](#) will contact ►[PPD](#) for guidance.

2. Amount of Benefit to be paid to the Alternate Payee

Qualification

The order must clearly state the amount of ►[benefit](#) to be paid to the alternate payee. If an order is written in a way that requires PBGC to calculate the alternate payee's benefit, the order must contain sufficient information to enable PBGC to make the calculation. For ►[surviving spouse](#) benefits, see [section E.9](#) below.

The combined value of benefits of the participant and alternate payee may not exceed the value of the participant's benefit under the plan and may not exceed the value of the participant's ►[termination benefit](#).

a. Shared Payment Domestic Relations Order

A ►[shared payment order](#) may specify that the alternate payee will receive a specified dollar amount or percentage of each monthly payment to the participant.

The order may provide a formula for computing how the amount or percentage will be determined (for example, as of a particular date or based on all or a portion of the participant's service under the plan). The order also may provide for the benefit to change on a given date (for example, 5 years from the date the order goes into effect) or upon the occurrence of a particular event (for example, termination of the alternate payee's benefits upon the alternate payee's remarriage or upon reaching the age of majority).

b. Separate Interest Domestic Relations Order

PBGC will qualify a separate interest order only if, when the order is submitted to PBGC for review, neither PBGC nor the plan has started paying the participant the benefit to which the order applies.

A separate interest order may specify that the alternate payee will receive a benefit that is actuarially equivalent to a given amount or percentage of the participant's benefit. The order may provide a formula for computing how the amount or percentage will be determined (for example, as of a particular date or based on all or a portion of the participant's service under the plan).

An order providing for payment of an actuarially equivalent benefit must state the date as of which the actuarial value of the participant's benefit is to be determined. In general, if the order does not specify the basis for actuarially equivalent benefits, PBGC will use plan factors. If plan factors are unknown or unreasonable, PBGC will generally use PBGC factors. Alternatively, the order may provide that the alternate payee will receive a specified payment amount, for example, a specified monthly amount for the life of the alternate payee.

c. Alternate Payees as QPSA and QJSA Recipients

If the alternate payee is a former or current spouse, the order may provide for that person to be treated as a surviving spouse. See [section E.9](#) below.

d. Early Retirement Subsidy

(1) Separate Interest Domestic Relations Order

PBGC will not fail to qualify a separate interest order solely because the order provides for payment of all or a portion of the participant's plan-provided early retirement subsidy to an alternate payee.

(2) Shared Payment Domestic Relations Order

Unless the shared payment order specifies otherwise, if the alternate payee is assigned a percentage share of the participant's benefit, the alternate payee's share will automatically include a portion of the early retirement subsidy if the participant retires with an early retirement subsidy.

If an alternate payee is assigned a dollar amount of the participant's benefit, PBGC will pay the alternate payee the dollar amount specified unless the order states the alternate payee is to receive a different dollar amount if the participant retires with an early retirement subsidy.

Administration

Early Retirement Subsidy in Separate Interest QDROs

PBGC will comply with separate interest ►QDROs that provide that all or part of the participant's early retirement subsidy be paid to the alternate payee. However, PBGC will not pay any portion of the participant's early retirement subsidy to an alternate payee unless and until the participant retires early.

PBGC will seek repayment of any post-►DOPT subsidy amounts paid to the alternate payee before the participant retired early. See PBGC Policy [6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#).

If the QDRO provides that all or part of the participant's early retirement subsidy be paid to the alternate payee and the alternate payee commences benefits before the participant, the alternate payee's benefit will be recalculated, in accordance with PBGC's actuarial principles and practices, when the participant retires with an early retirement subsidy. The alternate payee's share of the early retirement subsidy will be adjusted for several factors including the benefit form elected by the alternate payee, the age difference between the participant and alternate payee, and when the alternate payee begins or began receiving benefits.

If a separate interest QDRO is silent about early retirement subsidies, PBGC generally will not pay any portion of the subsidy to the alternate payee. This includes all cases where PBGC qualifies the QDRO. However, there is one exception. If a separate interest QDRO was qualified by the former plan administrator prior to trusteeship and consistent plan practice was to pay

part of the subsidy to the alternate payee when the QDRO was silent about the subsidy, PBGC will pay the subsidy to the alternate payee in the same manner as the former plan administrator would have done.

3. PBGC Adjustment of Plan Benefits

Qualification

PBGC will qualify the order whether or not it specifies how to allocate between the participant and the alternate payee any benefit adjustments PBGC must make pursuant to [►Title IV](#) of [►ERISA](#) (including adjustments to estimated and final termination benefit levels).

Administration

If the order specifies how PBGC benefit adjustments are to be allocated between the participant and alternate payee, PBGC will follow the order to the extent that PBGC can make the required Title IV benefit adjustments.

If an order offers no guidance on how PBGC will allocate the Title IV benefit adjustments between the participant and alternate payee, PBGC will adjust benefits as follows:

- (1) If the QDRO awards a specified percentage of the participant's benefit amount or value to the alternate payee, PBGC will proportionally adjust the benefits to both the participant and the alternate payee to reflect PBGC's adjustments to the participant's total benefit.
- (2) If a QDRO awards a specified dollar amount of the participant's benefit to the alternate payee, PBGC will first modify the participant's benefit to reflect PBGC's adjustment. The specified dollar amount awarded to the alternate payee will not be adjusted for an increase and will be reduced only if the total decrease to be made exceeds the participant's benefit.

4. When Benefit Payments Start

Qualification

The order must either specify a date the alternate payee's benefit will start or provide that the alternate payee will choose a first payment date.

PBGC will not qualify an order requiring an annuity starting date that conflicts with [section F](#) of PBGC Policy [**5.2-4 Annuity Starting Dates**](#).

a. Shared Payment Domestic Relations Order

PBGC will not qualify a shared payment order that specifies an alternate payee's first payment date that is earlier than the later of (1) the date PBGC receives the order that is ultimately qualified or (2) the participant's first payment date.

b. Separate Interest Domestic Relations Order

PBGC will not qualify a separate interest order that specifies an alternate payee's first payment date that is earlier than the date PBGC receives the order that is ultimately qualified.

If the participant is not yet in pay status, PBGC will not qualify a separate interest order requiring the alternate payee's earliest first payment date to be earlier than the later of (1) the participant's earliest PBGC retirement date (EPRD) or (2) the date that the participant reaches age 50. For EPRD, see PBGC Policy [**6.1-2 Earliest PBGC Retirement Date**](#).

Administration

In addition to the above restrictions, PBGC will generally not start benefit payments to an alternate payee before the alternate payee applies for benefits.

5. Benefit Form

Qualification

The order must specify the benefit payment form available to the alternate payee or state that the alternate payee may select the benefit form at the time the alternate payee applies for benefits from PBGC.

a. PBGC Qualification of Domestic Relations Orders

An order must meet the following benefit form requirements to be qualified by PBGC:

(1) Shared Payment Domestic Relations Order

All shared payment orders must provide for the alternate payee to receive part or all of each payment that would otherwise be made to the participant. However, the order may provide for payments to the alternate payee to begin later and/or end sooner than the participant's payments.

(2) Separate Interest Domestic Relations Order

All separate interest orders must provide for payment to the alternate payee in the automatic form payable to unmarried participants under the plan or in any of PBGC's optional single-life annuity forms.

PBGC will not qualify a separate interest order that provides for payment of a joint-life annuity to the alternate payee and his or her [►beneficiary](#). In the unlikely event that the plan provides that the plan will automatically pay an alternate payee a form that is different from the plan's automatic form for unmarried participants, OBA will contact PPD.

PBGC also will qualify an order that pays a temporary life annuity for child support or alimony.

Administration

Regardless of the plan's terms or the QDRO's terms, an alternate payee entitled to separate interest benefits may elect any PBGC optional single-life annuity form. For paying de minimis lump sums to an alternate payee, see PBGC Policy [5.4-9 Lump Sum Benefit Payments](#).

b. Pre-Trusteeship Domestic Relations Orders

PBGC will comply with the annuity benefit form provided to the alternate payee in an order qualified by the former plan administrator or pending at the time of trusteeship if the benefit form is one provided under the plan regardless of whether the benefit form is a PBGC optional form.

As in the case of post-trusteeship orders, a shared payment order may specify that the alternate payee's benefit starts later and/or ends sooner than the participant's benefit.

c. Alternate Payees as QPSA and QJSA Recipients

The order may provide for an alternate payee who is the former spouse of the participant to receive surviving spouse benefits ([►QJSA](#) and/or [►QPSA](#)) upon the participant's death, regardless of whether the participant has subsequently remarried. See [section E.9](#) below.

If PBGC receives an order after the participant's first payment date, PBGC will not qualify the order if the order requires that the participant's benefit form or designated beneficiary of a joint-and-survivor annuity be changed. For example, if the participant is already receiving a straight-life annuity or a joint-life annuity with a subsequent spouse, PBGC will not qualify an order changing the benefit form to a joint-life annuity with the alternate payee.

6. When Benefits Stop

Qualification

An order must indicate when payments to the alternate payee will stop. The terms of the order, the type of order, or the benefit form of the participant and/or alternate payee may indicate when the alternate payee's benefits stop.

a. Shared Payment Domestic Relations Order

Under a shared payment order, payments to the alternate payee must stop no later than when payments to the participant stop. An order may also provide for benefits to stop upon the occurrence of a specified event, such as remarriage of the alternate payee or the date a child reaches a specified age.

If payments will stop upon a specified event, the order should require the affected parties to notify PBGC in writing of the occurrence of the event. If the order does not specify that the parties must provide written notice to PBGC, the qualification determination letter will communicate this requirement to them. See [section G.3](#) below.

b. Separate Interest Domestic Relations Order

Under a separate interest order, payments to the alternate payee will stop consistent with the alternate payee's benefit form.

c. Alternate Payees as QPSA and QJSA Recipients or Beneficiaries

Under certain circumstances, the order may provide for the alternate payee to be treated as a surviving spouse (see [section E.9](#) below) or a beneficiary (see [section E.7](#) below).

7. Death of Participant

Qualification

An order may, but is not required to, specify what happens to payments when the participant predeceases the alternate payee.

a. Shared Payment Domestic Relations Order

Shared payments to the alternate payee stop upon the participant's death (or never start if the participant dies before entering pay status).

b. Separate Interest Domestic Relations Order

The participant's death does not affect payments under the alternate payee's separate interest.

c. Alternate Payees as QPSA and QJSA Recipients

A shared payment or a separate interest order may provide for an alternate payee who is the former spouse of the participant to be treated as the participant's surviving spouse (even if the participant remarries) for the purpose of receiving surviving spouse benefits (a QPSA or QJSA). See [section E.9](#) below.

d. Certain and Continuous Annuities

A shared payment or a separate interest order may designate the alternate payee as the beneficiary under a [► certain-and-continuous \(C&C\) annuity](#). The C&C beneficiary designation under the QDRO will supersede any prior C&C beneficiary designation.

Administration

If the order is silent as to what happens to payments when the participant predeceases the alternate payee, PBGC will apply [section E.7.a](#) for a shared payment order and [section E.7.b](#) for a separate interest order.

8. Death of Alternate Payee

Qualification

The order may, but is not required to, specify what happens to payments when the alternate payee predeceases the participant.

a. Shared Payment Domestic Relations Order

A shared payment order may provide for continuation of payments to a contingent alternate payee named in the order upon the death of the alternate payee. If the alternate payee (and any contingent alternate payee) dies before the participant, PBGC will return the participant's monthly benefit payments to the amount that the participant would have been receiving had there been no order. An order cannot provide for an alternate payee's payments to continue to an alternate payee's surviving spouse or to an estate upon the alternate payee's death.

b. Separate Interest Domestic Relations Order

A separate interest order may provide for either of the following to occur upon the death of an alternate payee [who dies before entering pay status under the order](#): (1) payment of the separate interest to a contingent alternate payee; or (2) reversion of the separate interest to the participant, thereby increasing the participant's payment to the level it would have been without the order.

If the [alternate payee dies after entering pay status](#) under the order, the benefit form of the separate interest benefit chosen will govern. For example, under a single life annuity, payments end. Under a period certain and continuous annuity, payments continue to the alternate payee's designated beneficiary.

PBGC will not qualify a separate interest order that provides for the alternate payee's benefit to revert to the participant if the alternate payee dies [after](#) the alternate payee's first payment date.

Administration

If the QDRO is silent on what happens if the alternate payee dies before the alternate payee's benefits begin, PBGC will treat the separate interest as reverting to the participant.

If the alternate payee's separate interest would revert to the participant but the participant is also deceased at the alternate payee's death, the benefit will revert to PBGC because the order cannot provide for any further assignment.

9. Spousal Rights of Alternate Payee

Qualification

If a participant is married when benefit payments begin and if the spouse has not waived his or her right to a ►QJSA, the spouse will retain the right to the survivor annuity regardless of whether the participant and spouse later divorce. See PBGC Policy **5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)** and PBGC Policy **5.4-7 Annuity Benefit Forms**.

PBGC will not qualify an order under which the alternate payee would relinquish the surviving spouse benefit ("reverse QDRO") under a joint-and-survivor annuity after the first payment date.

PBGC will qualify an order awarding an alternate payee surviving spouse benefits (QPSA and/or QJSA) only if –

- (1) PBGC receives the order before the participant's first payment date and
- (2) the alternate payee is a current or former spouse of the participant

The alternate payee may be treated as the participant's spouse with respect to all or a portion of the participant's accrued benefit (in the case of a shared payment order) or with respect to all or a portion of the accrued benefit in which the participant retains a separate interest (in the case of a separate interest order). These survivor benefits are in addition to any separate interest or shared payments the alternate payee has a right to receive under the order.

PBGC will pay survivor benefits in accordance with the terms of the QDRO regardless of whether, before or after the order was issued, the participant remarried or designated a different beneficiary on another form.

A plan may provide for survivor benefits in addition to the survivor benefits required by ERISA (for example, a steel plan "Free Surviving Spouse Benefit"). A QDRO may provide that a part or all of such other survivor benefits will be paid to an alternate payee (rather than to the person who otherwise would be entitled to receive such death benefits under the plan) regardless of whether the alternate payee meets the definition of a widow/widower under the plan.

F. Reviewing Orders; Suspending Payments; Revising Orders

1. Review of Domestic Relations Orders

a. Regular Processing

PBGC will formally qualify an order only if PBGC receives an original order or a copy certified or otherwise authenticated under state domestic relations procedures. For ►domestic relations orders not issued by a state court or other appropriate entity and for orders that are not domestic relations orders, see **section G.5** below.

PBGC will inform the interested parties in writing of its formal qualification determination. Interested parties include the parties named in the order, their legal counsel, and any representatives designated in writing by the parties.

PBGC's formal qualification determination will explain why PBGC failed to qualify the order or of how PBGC will comply with the ►QDRO. The ►participant and alternate payee will have the right to appeal PBGC's formal qualification determination.

The qualification status of an order will become final when the appeal period ends. If no extension to file an appeal is granted and if no appeal is filed, the appeal period usually ends 45 days after PBGC sends a formal qualification determination to the interested parties. For correcting and revising a formal qualification determination, see PBGC Policy **5.8-1 Benefit Changes**.

PBGC will not qualify a draft order. However, PBGC will informally review a draft order and advise the parties whether the draft, if submitted as an order, would satisfy ►ERISA's qualification requirements. This review aims to assist interested parties in drafting an order that the parties will submit to a court or appropriate entity. PBGC's informal review of a draft order will not constitute a formal qualification determination.

b. Post-Mortem Orders

A participant or ►alternate payee may die before an order is issued by a court or appropriate entity. Such orders are post-mortem domestic relations orders.

PBGC will not fail to qualify a post-mortem order solely for the reason that the order was issued by a court or appropriate entity on or after the participant's death. However, if the participant is married at his or her death or has

already begun receiving benefits, PBGC will not qualify the order.

PBGC will impose no time limit on the submission of post-mortem orders.

If a participant already received all benefits payable under the plan, PBGC will not qualify a shared payment order or a separate interest order that would assign benefits to an alternate payee. For example, if a participant who was receiving a ► **straight life annuity** dies, PBGC will not qualify a post-mortem order because no participant benefits remain to assign to an alternate payee.

2. Suspending Payments while Reviewing an Order

a. Orders Submitted after PBGC Becomes Trustee

While PBGC determines whether an order is qualified, PBGC will suspend payments to the participant of any amounts that PBGC reasonably determines the order would assign to the alternate payee. For draft orders, see **section F.2.a.3** below.

Generally, the suspension will be effective with the monthly payments for the next month after PBGC receives the order unless the order specifies otherwise.

If payment suspension is delayed for administrative reasons, PBGC will seek repayment of any resulting overpayments. See PBGC Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**.

(1) Order Qualified

If the order is qualified, PBGC will begin making payments (including any suspended benefit payments) to the alternate payee as soon as the qualification status is final and the alternate payee has submitted a valid benefit application. See **section F.1.a** above and **section F.2.a.4** below.

The alternate payee's first payment date cannot be earlier than the benefit suspension date.

(2) Order Not Qualified

If the order is not qualified, PBGC will continue suspending payments to the participant until the qualification status is final. See **section F.1.a** above.

However, the suspension of payments will continue if, before the qualification status is final, –

- An interested party appeals the qualification determination. PBGC will continue suspending payment while the appeal is pending. If PBGC determines on appeal that the order is not qualified, PBGC will suspend payment for an additional 60 days from the date PBGC notifies the interested parties in writing that PBGC has made a decision on the appeal.
- Either party notifies PBGC in writing that the parties will submit a revised order to PBGC for qualification. PBGC will continue suspending payment for an additional 60 days from the date of the parties' written notification to PBGC.
- PBGC receives a copy of a court scheduling order or a written statement by the participant or alternate payee (or his or her attorney or representative) that the court will not review an amended order until after more than 60 days has passed. PBGC will grant an extension of the suspension period based on the facts and circumstances.

If PBGC receives an amended order before the benefit suspension period has ended, PBGC will continue suspending payments while reviewing the amended order for qualification. Depending on the qualification determination, PBGC will continue suspending payments as described above.

If PBGC receives no amended order before the benefit suspension period has ended, PBGC will stop suspending benefits and pay any suspended benefit payments to the participant. See **section F.2.a.4** below.

(3) Draft Orders

PBGC will not suspend all or a portion of a participant's benefit payments solely because PBGC receives a draft order submitted for informal review by PBGC.

However, if the participant submits a valid benefit application (or has a pending benefit application) while PBGC is reviewing a draft order, PBGC will delay the participant's first payment date for up to 60

days.

- The 60-day period will allow the parties time to submit the draft (as revised to address any problems noted by PBGC) for review by a court and to obtain a signed order or a certified or authenticated copy.
- The 60-day period will generally begin on the date PBGC notifies the interested parties in writing of the result of the informal review.
- If PBGC receives a copy of a court scheduling order or a written statement by the participant or alternate payee (or his or her attorney or representative) that the court will not review the order until after the 60 days has elapsed, PBGC will continue to delay the participant's first payment date based on the facts and circumstances.

If PBGC receives an original order or a certified or authenticated copy before the participant's first payment delay ends, PBGC will continue to delay the participant's first payment date while reviewing the order for qualification.

- If PBGC qualifies the order, see [section F.2.a.1](#) above. PBGC will generally honor an alternate payee's annuity starting date that is no earlier than the first of the month following the receipt of the order.
- If PBGC does not qualify the order, see [section F.2.a.2](#) above.

If PBGC receives no order before the participant's first payment delay ends, PBGC will pay any delayed benefit payments to the participant. See [section F.2.a.4](#) below.

PBGC will treat any order submitted to PBGC electronically, such as by email or fax, as a draft order until PBGC receives the original order or a certified or authenticated copy.

(4) Suspended or Delayed Benefit Payments

PBGC will pay any suspended or delayed benefit payments owed to the participant or alternate payee in a single payment with interest (if applicable). See PBGC Policy [6.3-1 Underpayment Reimbursement and Interest Payments](#).

(5) Maximum Benefit Suspension Period

In no event will PBGC suspend or delay benefit payments to a participant for more than 18 months from the alternate payee's earliest possible first payment date under the order.

If PBGC does not complete a formal qualification determination within the 18-month period, PBGC will pay any suspended amounts to the participant.

PBGC will apply the same 18-month limit on benefit payment suspensions for orders (1) submitted to the prior plan administrator for qualification or (2) awaiting a formal qualification determination.

b. Orders Qualified before PBGC Trusteeship

To ensure proper administration, PBGC will review orders qualified before PBGC trusteeship. During this review, PBGC will not suspend payments to a participant or alternate payee. After this review, PBGC will contact the participant or alternate payee only if PBGC cannot interpret or comply with the terms of the order.

PBGC will generally not change QDRO benefits in pay before PBGC trusteeship. However, PBGC may change QDRO benefits if the prior plan administrator's qualification, interpretation, or enforcement of the order conflicts with ERISA, plan provisions, terms of the order, or PBGC policy.

PBGC will not enforce the terms of a QDRO, including a QDRO that the prior plan administrator qualified before PBGC trusteeship, unless PBGC has on file the original order or a certified or authenticated copy of the order.

c. Orders Pending Qualification at PBGC Trusteeship

PBGC will review orders that were awaiting a qualification determination by the plan administrator at trusteeship and determine whether they meet the requirements for a QDRO under the rules in [section E](#) above.

PBGC will suspend or continue to suspend payments to a participant or alternate payee while it is reviewing such orders and may seek repayment of any resulting overpayments. See PBGC Policy [6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#).

d. Multiple Domestic Relations Orders

PBGC will generally qualify a subsequent order between the same or different parties from an earlier QDRO. If PBGC receives a subsequent order, PBGC will determine whether the order is qualified under the rules in **section E** above as well as the rules below.

(1) Orders Vacating Separate Interest QDROs

If the parties decide that the participant's benefits will no longer be subject to a separate interest QDRO, PBGC must receive a subsequent order before the alternate payee's first payment date. A state court or appropriate entity must issue a subsequent order vacating or nullifying the original separate interest QDRO.

(2) Prospective Benefit Changes

When PBGC receives a subsequent order changing an existing QDRO, PBGC will review the subsequent order as a new order. PBGC will suspend benefit payments to the participant and/or the alternate payee affected by the subsequent order.

If PBGC qualifies the subsequent order, PBGC will change the participant's and/or alternate payee's benefits, as appropriate. However, PBGC will make changes prospectively only. If the terms of the subsequent order direct PBGC to make changes retroactively (that is, before the submission date), PBGC will not qualify the subsequent order.

(a) Changes Prohibited after Alternate Payee's First Payment Date

For a separate interest QDRO after the alternate payee's first payment date, PBGC will not qualify a subsequent order changing, vacating, or correcting the alternate payee's separate interest benefit amount or form provided in the original QDRO.

(b) Changes Prohibited after Participant's First Payment Date

After the participant's first payment date, PBGC will not qualify any order changing the participant's benefit form or joint-life beneficiary.

For example, after the participant's first payment date, PBGC will not qualify an order changing the participant's designated joint-life beneficiary from the participant's former spouse to a current spouse (or vice versa).

(3) Multiple Alternate Payees or Orders

If more than one alternate payee submits an order to PBGC (or if one alternate payee submits more than one order) for qualification and for the same participant's benefit, PBGC will review the orders in the order PBGC receives them. If PBGC qualifies the first order received, PBGC will apply it to the participant's benefit. If PBGC also qualifies the second order, PBGC will apply it to the participant's benefit that remains after applying the first order.

However, if the first order already assigned the participant's entire benefit and no participant benefits remain that can be assigned, PBGC will not qualify the second order.

► OBA will contact ► PPD if there are unusual circumstances regarding the receipt of orders from more than one alternate payee.

G. Special Rules

1. QDRO Payments to Participant and Alternate Payee

Generally, pension benefits subject to a ► QDRO may be paid only to the ► participant and the ► alternate payee (for example, payments may not be made directly to an attorney for attorneys' fees).

2. Aggregate Maximum Guarantee (ERISA Sec 4022B)

PBGC will not consider an individual as subject to the aggregate maximum guarantee limitation under ► ERISA section 4022B and Part 4022B of PBGC's regulations solely because the individual is entitled to benefits under a given plan as both a participant and an alternate payee. See PBGC Policy **5.13-1 Aggregate Limit on Benefits Payable from PBGC Funds**.

3. Change of Entitlement to Benefits

If the occurrence of an event, such as remarriage of the alternate payee, affects benefits that PBGC is paying, PBGC is not obligated to change the payment of benefits to reflect the event until PBGC receives written notification of the event.

PBGC will consider proper any payments made prior to written notification. After PBGC receives written notification, if PBGC makes payments that do not reflect the event, PBGC may seek repayment of any resulting overpayments. See PBGC Policy **6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery**.

PBGC will pay any resulting underpayments in a single payment with interest (if applicable). See PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments**.

4. Benefit Determination Letters and Appeal Rights

PBGC will issue separate ►benefit determination letters to the participant and alternate payee regardless of whether the QDRO awards all or a portion of the participant's benefit to the alternate payee. A participant and alternate payee each will have the right to appeal a benefit determination that affects his or her own benefit regardless of the type of QDRO.

Benefit determinations to alternate payees will not contain confidential information about the participant and vice versa.

5. Orders that are not Domestic Relations Orders

a. Orders Not Issued by a State

PBGC generally will not review an order unless the order was issued by a state court or appropriate entity. See **section C.7** above. However, if a state court, under a treaty or other process, incorporates a foreign order into a state order, PBGC will review the order in its entirety on the same basis as a state order and will determine whether the order is a QDRO.

►OBA will refer orders not issued by a state court or appropriate entity (for example, a foreign court) to ►PPD.

b. Joinders

Joinder is a procedure that developed in California to protect spouses under community property law before ERISA was amended to provide for QDROs. A joinder makes a pension plan a party to a divorce action between a plan participant and his or her spouse usually for the limited purpose of dividing the participant's benefit under the plan. PBGC is not bound by such a joinder because it is preempted by ERISA.

If the participant submits a valid benefit application (or has a pending benefit application) after PBGC receives a joinder, PBGC will delay the participant's first payment date for a period of up to 60 days from the date of PBGC's written acknowledgement that PBGC has received the joinder request.

c. Other Non-Domestic Relations State Orders

PBGC may receive orders that are not ►domestic relations orders. For example, a creditor owed money by a participant may send a writ of garnishment or other order directing PBGC to garnish the pension, as could be done with the individual's wages. Anti-alienation rules under ERISA prohibit the garnishment of pensions. Because such orders are not domestic relations orders and cannot be qualified, PBGC will not comply with such orders.

H. Taxation of Payments to Alternate Payees

PBGC applies federal tax withholding and reporting to payments made under a ►QDRO in accordance with the ►Internal Revenue Code. A distribution that is paid to a spouse or former spouse who is an ►alternate payee under a QDRO is taxed to such spouse or former spouse. A distribution that is paid to a child or other dependent under a QDRO is taxed to the plan ►participant.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_6_3_5th.htm
(11/01/2012)

Previous Editions

- 6.6-3 Qualified Domestic Relations Orders 1st Ed. - Outdated
- 6.6-3 Qualified Domestic Relations Orders 2nd Ed. - Outdated
- 6.6-3 Qualified Domestic Relations Orders 3rd Ed. - Outdated
- 6.6-3 Qualified Domestic Relations Orders 4th Ed. - Outdated

[Top of Page](#)

6.6-3 Qualified Domestic Relations Orders

Edition	6th Edition
Issue Date	09/16/2022
Transmittal	Transmittal 2022-05
Last Review Date	N/A
Signed Policy	6.6-3 Qualified Domestic Relations Orders
Contact	OPD

In this policy

- [A. Background](#)
 - [B. Scope and Effective Date](#)
 - [C. Definitions](#)
 - [D. Types of Domestic Relations Orders](#)
 - [E. PBGC Qualification of Orders](#)
 - [F. Reviewing Orders; Suspending Payments; Revising Orders](#)
 - [G. Special Rules](#)
 - [H. Taxation of Payments to Alternate Payees](#)
- [Appendix A: Orders Qualified before PBGC Trusteeship](#)
- [Appendix B: Application of Title IV Limitations to Plan Benefits with Early Retirement Subsidies](#)

A. Background

Pension benefits generally may not be assigned or alienated. ▶ [ERISA](#) and the ▶ [Internal Revenue Code](#) (Code), however, provide an exception for certain ▶ [domestic relations orders](#) that relate to child support, alimony payments, or marital property rights of an ▶ [alternate payee](#) (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order (order) meets the specific legal requirements to be a ▶ [qualified domestic relations order](#) (QDRO). ERISA and the Code also provide procedures for administration of benefits while an order is being reviewed to determine whether the order is a QDRO.

Among the changes to the sixth edition of this policy are—

- Clarifying that PBGC has established reasonable procedures governing its determination of the qualified status of an order and the administration of QDROs in the publication “Qualified Domestic Relations Orders and PBGC” (see [section B](#))
- Clarifying PBGC’s qualification of orders with respect to: (1) the amount of benefit to be paid to the alternate payee under a shared payment order (see [section E.2.a](#)); (2) guidance on early retirement subsidies (see [section E.2.d](#)); (3) when benefit payments start (see [section E.4](#)); (4) the benefit form (see [section E.5](#)); (5) when the alternate payee’s benefit “commences” for the purposes of determining whether the benefit reverts to the participant (see [section E.8](#)); (6) spousal rights of certain alternate payees (see [section E.9](#))
- Extending to 120 days the following periods: (1) upon non-qualification by PBGC of a signed order, the period that PBGC will suspend all or a portion of the participant’s

- benefit or that PBGC will delay commencement of the participant's benefits (see [**section F.2.a.2**](#)); (2) upon review of a draft order or upon written notification of a pending order, the period that PBGC will delay commencement of the participant's benefits (see [**section F.2.a.3**](#)); (3) upon receipt of a joinder, the period that PBGC will delay commencement of the participant's benefits (see [**section G.5.b**](#))
- Clarifying special rules with respect to: (1) QDRO payments to an alternate payee (see [**section G.1**](#)); (2) payment arrangements made by the parties that are not included in the terms of the order (see [**section G.3**](#)); and (3) the issuance of benefit determination letters with appeal rights to participants and alternate payees including, but not limited to, a child or other dependent of the participant (see [**section G.4**](#))
 - Clarifying that under no circumstances will PBGC enforce the terms of a QDRO unless PBGC has on file the original order or a certified or authenticated copy of the order (see [**section G.6**](#))
 - Moving to an appendix guidance for orders qualified by the prior plan administrator that was formerly in section E.5.b and section F.2.b (see [**Appendix A**](#))

B. Scope and Effective Date

This ▶ [**policy statement**](#) provides guidance for determining whether an order relating to the benefit of a participant in a PBGC-trusteed plan is a ▶ [**QDRO**](#). This ▶ [**policy statement**](#) also provides guidance on application of PBGC's special rules and limitations to QDROs and administration of benefits while PBGC is reviewing an order.

This policy statement applies to all orders issued with respect to benefits in PBGC-trusteed plans, including both orders submitted to PBGC after PBGC has become trustee and orders issued before PBGC trusteeship (whether or not the order was qualified by the plan administrator).

Consistent with section 206(d)(3)(G)(ii) of ERISA, PBGC has established reasonable procedures governing its determination of the qualified status of an order and the administration of QDROs. These procedures are provided and maintained in the publication "Qualified Domestic Relations Orders and PBGC." This policy statement reflects the procedures set forth in that publication. In any situation where this policy statement conflicts with that publication, the publication will control.

This policy statement is effective upon issuance.

C. Definitions

1. **Alternate payee** means a ▶ [**participant's**](#) spouse, former spouse, child, or other dependent who, under a ▶ [**qualified domestic relations order**](#), has a right to receive all or a portion of the participant's pension benefits under a plan. PBGC will generally accept the determination by a court or appropriate entity that a person designated in an order as an alternate payee meets the definition of an alternate payee under ▶ [**ERISA**](#).

2. **Contingent alternate payee** means a person who qualifies as an alternate payee and whose benefit is contingent upon the death of the alternate payee. If the order provides a separate interest, the contingent alternate payee will receive the benefit only if the alternate payee dies before commencing benefits. If the order provides a shared payment, the contingent alternate payee will start the benefit upon the death of the alternate payee (if payments have started), and the benefit will continue until the earlier of the participant's or contingent alternate payee's death or some other event specified in the order. A contingent alternate payee who is not a former spouse of the participant cannot receive a surviving spouse benefit (a qualified joint-and-survivor annuity ([QJSA](#)) or a qualified pre-retirement survivor annuity ([QPSA](#))). If a contingent alternate payee is designated, the alternate payee's benefit may be actuarially adjusted to reflect the possibility of payment to a contingent alternate payee.
3. **Court or Appropriate Entity** means a state court or other appropriate entity, including, but not limited to, a state agency with the authority to issue judgments, decrees, or orders pursuant to state domestic relations law.
4. **Domestic Relations Order (order)** means any judgment, decree, or order (including approval of a property settlement) issued by a court or appropriate entity (see [section C.3](#) above). To be a domestic relations order, the order must relate to child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant and be issued pursuant to state domestic relations law. There is no PBGC requirement that the participant or alternate payee sign or otherwise endorse or approve the order. A wage withholding, garnishment, or other type of order may also be a domestic relations order if the criteria of this paragraph are met. For orders that are not domestic relations orders or that are not issued by a state court or appropriate entity, see [section G.5](#) below.
5. **Draft Domestic Relations Order (draft order)** means an order, in draft form, which a court or other appropriate entity has not issued.
6. **Qualified Domestic Relations Order (QDRO)** means a domestic relations order that gives an alternate payee the right to receive all or a portion of the benefits (including disability pension benefits) payable with respect to a participant under the plan and meets certain other legal requirements concerning the information and benefits provided. A plan administrator determines whether an order is qualified. However, after PBGC trusteeship, PBGC determines whether an order is qualified under PBGC rules.
7. **State** means any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, and the Canal Zone.

D. Types of Domestic Relations Orders

PBGC recognizes two basic types of orders: separate interest orders and [shared payment orders](#).

A separate interest order generally provides that the ► [alternate payee](#) is to receive a portion or all of the value of the ► [participant's](#) benefit with payments calculated based on the lifetime of the alternate payee. The benefit is payable without regard to the participant's benefit form or payment status.

A shared payment order provides to the alternate payee a portion or all of each of the participant's pension payments while the participant lives or for a specified shorter period.

If the alternate payee is the participant's spouse or former spouse, an order may provide that the spouse or former spouse will be treated as the participant's spouse for purposes of survivor benefits (► [QPSA](#) and/or ► [QJSA](#)) when the participant dies.

E. PBGC Qualification Requirements and Administration Issues

This [section E](#) provides the guidelines PBGC follows when an order is submitted to PBGC for qualification. PBGC will qualify a submitted order only if the order meets the requirements set forth in the paragraphs in this section and in [Technical Procedure \(TP\) 13.2 Review Domestic Relations Orders](#) of the [OBA Operations Manual](#). The "QDRO checklist" in TP 13.2 is a distillation of legal requirements found in ERISA, regulations thereunder, DOL guidance, and in case law, and any updates to the checklist will be by joint OBA-OGC decision. For guidance regarding QDROs that were qualified by the prior plan administrator, see [Appendix A](#) below.

1. Identification of Plan, Participant, and Alternate Payees

Qualification

The order must provide the name of each ► [plan](#), the name and address of the ► [participant](#), and the name and address of each ► [alternate payee](#) (including each contingent alternate payee) covered by the order. (PBGC will not reject an order that misstates or omits some of this information if PBGC records clearly contain the correct information.)

If the alternate payee is a minor, the order must provide the name and address of the guardian or other legal representative to whom PBGC will send payments on behalf of the minor.

Administration

A plan may merge with another plan or may change its name after the order has been filed and qualified by the former plan administrator. If it is unclear whether the plan named in the order is the same as that trustee by PBGC, contact ► [OPD](#).

2. Amount of Benefit to be paid to the Alternate Payee

Qualification

The order must clearly state the amount of ► [benefit](#) to be paid to the alternate payee. If an order is written in a way that requires PBGC to calculate the alternate payee's benefit, the order must contain sufficient information to enable PBGC to make the calculation. If an order contains both a formula and a specified dollar

amount, PBGC will accept the dollar amount specified in the order. For ▶ [surviving spouse](#) benefits, see [section E.9](#) below.

The combined value of benefits of the participant and alternate payee may not exceed the value of the participant's benefit under the plan and may not exceed the value of the participant's ▶ [PBGC termination benefit](#).

a. Shared Payment Domestic Relations Order

A ▶ [shared payment order](#) may specify that the alternate payee will receive a specified dollar amount or percentage of each monthly payment to the participant.

The order may provide a formula for computing how the amount or percentage will be determined (for example, as of a particular date or based on all or a portion of the participant's service under the plan). The order also may provide for the benefit to change on a given date (for example, 5 years from the date the order goes into effect) – or upon the occurrence of a particular event – without specifying the actual date (for example, termination of the alternate payee's benefits upon the alternate payee's remarriage or upon reaching the age of majority but without specifying that date or exact age).

If the order does not specify the future date or if PBGC cannot determine the future date with respect to a change of the alternate payee's benefit, then, in accordance with the terms of the order, the parties will be responsible for notifying PBGC in writing of that date or for submitting an amended domestic relations order, specifying the change to the alternate payee's benefit, in order for PBGC to implement the change to the benefit. See also [section G.3](#) below.

b. Separate Interest Domestic Relations Order

PBGC will qualify a separate interest order only if, when the order is submitted to PBGC for determination of its initial qualified status, neither PBGC nor the plan made a payment to the participant for the benefit to which the order applies.

A separate interest order may specify that the alternate payee will receive a benefit that is actuarially equivalent to a given amount or percentage of the participant's benefit. The order may provide a formula for computing how the amount or percentage will be determined (for example, as of a particular date or based on all or a portion of the participant's service under the plan).

An order providing for payment of an actuarially equivalent benefit must state the date as of which the actuarial value of the participant's benefit is to be determined. In general, if the order does not specify the basis for actuarially equivalent benefits, PBGC will use plan

factors. If plan factors are unknown or unreasonable, PBGC will generally use PBGC factors. Alternatively, the order may provide that the alternate payee will receive a specified payment amount, for example, a specified monthly amount for the life of the alternate payee.

c. Alternate Payees as QPSA and QJSA Recipients

An order may provide that a spouse or former spouse is to be treated as a surviving spouse for all or a portion of the participant's benefit. See [section E.9](#) below.

d. Early Retirement Subsidy

(1) Separate Interest Domestic Relations Order

PBGC will not fail to qualify a separate interest order solely because the order provides for payment of all or a portion of the participant's plan-provided early retirement subsidy to an alternate payee.

(2) Shared Payment Domestic Relations Order

Unless the shared payment order specifies otherwise, if the alternate payee is assigned a percentage share of the participant's benefit, the alternate payee's share will automatically include a portion of the early retirement subsidy if the participant retires with an early retirement subsidy.

If an alternate payee is assigned a dollar amount of the participant's benefit, PBGC will pay the alternate payee the dollar amount specified unless the order states the alternate payee is to receive a different dollar amount if the participant retires with an early retirement subsidy.

Administration

Early Retirement Subsidy in Separate Interest QDROs

PBGC will comply with separate interest ► [QDROs](#) that provide that all or part of the participant's early retirement subsidy be paid to the alternate payee. However, PBGC will not pay any portion of the participant's early retirement subsidy to an alternate payee unless and until the participant retires early. However, if the alternate payee is assigned the entirety of the plan benefit including, but not limited to, all survivor benefits otherwise payable to a surviving spouse, then PBGC will treat the participant's benefit, for purposes of the early retirement subsidy, as having commenced on the alternate payee's annuity starting date.

PBGC will seek repayment of any post-► [DOPT](#) subsidy amounts paid to the alternate payee before the participant retired early. See PBGC Policy [6.4-1 Repayment of](#)

Benefit Overpayments through Administrative Correction, Recoupment, and Recovery.

If the QDRO provides that all or part of the participant's early retirement subsidy be paid to the alternate payee and the alternate payee commences benefits before the participant, the alternate payee's benefit will be recalculated, in accordance with PBGC's actuarial principles and practices, when the participant retires with an early retirement subsidy. The alternate payee's share of the early retirement subsidy will be adjusted for several factors including the benefit form elected by the alternate payee, the age difference between the participant and alternate payee, and when the alternate payee begins or began receiving benefits. For the application of Title IV limitations to plan benefits with early retirement subsidies, see [**Appendix B**](#) below.

If the alternate payee goes into pay and has died before the participant goes into pay, the early retirement subsidy will remain with the participant because the subsidy is no longer assignable following the alternate payee's death, regardless of whether all or a portion of the subsidy was assigned to the alternate payee.

If the alternate payee has gone into pay and the participant subsequently dies before going into pay, the early retirement subsidy will no longer be a payable plan benefit. However, the early retirement subsidy (if any) on the QPSA with respect to the participant's remaining separate interest will remain a payable plan benefit to the surviving spouse.

If a separate interest QDRO is silent about early retirement subsidies, PBGC generally will not pay any portion of the subsidy to the alternate payee. This includes all cases where PBGC qualifies the QDRO. However, if a separate interest QDRO was qualified by the former plan administrator prior to trusteeship, see [**Appendix A**](#) below.

3. PBGC Adjustment of Plan Benefits

Qualification

PBGC will qualify the order whether or not the order specifies how to allocate between the participant and the alternate payee any benefit adjustments PBGC must make pursuant to ▶ [**Title IV**](#) of ▶ [**ERISA**](#) (including adjustments to estimated and final termination benefit levels).

Administration

If the order specifies how PBGC benefit adjustments are to be allocated between the participant and alternate payee, PBGC will follow the order to the extent that PBGC can make the required Title IV benefit adjustments.

If an order offers no guidance on how PBGC will allocate the Title IV benefit adjustments between the participant and alternate payee, PBGC will adjust benefits as follows:

(1) If the QDRO awards a specified percentage of the participant's benefit amount or value to the alternate payee, PBGC will adjust in an actuarially proportional manner the benefits to both the participant and the alternate payee to reflect PBGC's adjustments to the participant's total benefit. This generally involves: (i) treating each party as having been assigned the entire plan benefit; (ii) applying all applicable Title IV limitations to that plan benefit amount (for example, determining the minimum of (a) the Maximum Insurance Limitation adjusted for the alternate payee's (or participant's) age and form and (b) the plan benefit that would be payable over the alternate payee's (or participant's) lifetime); and (iii) multiplying the total monthly termination benefit calculated in (ii) by the percentage of the benefit, specified in the QDRO, assigned to the alternate payee (or participant). However, based on the terms of the QDRO and relevant facts and circumstances, PBGC may employ alternative methods to ensure that the Title IV limitations have been applied to each party's plan benefit in an actuarially proportional manner. For the application of Title IV limitations to plan benefits with early retirement subsidies, see [**Appendix B**](#) below.

(2) If a QDRO awards a specified dollar amount of the participant's benefit to the alternate payee, PBGC will first modify the participant's benefit to reflect PBGC's adjustment. The specified dollar amount awarded to the alternate payee will not be adjusted for an increase and will be reduced only if the total decrease to be made exceeds the participant's benefit.

4. When Benefit Payments Start

Qualification

The order must either specify a date the alternate payee's benefit will start or provide that the alternate payee will choose a first payment date.

PBGC will not qualify an order requiring an annuity starting date that conflicts with [**section F**](#) of PBGC Policy [**5.2-4 Annuity Starting Dates**](#).

a. Shared Payment Domestic Relations Order

PBGC will not qualify a shared payment order that specifies an alternate payee's first payment date that is earlier than the later of (1) the date PBGC receives the order that is ultimately qualified or (2) the participant's first payment date. If PBGC policy or the QDRO requires an alternate payee to begin his or her benefit as of a specific date (for example, no later than the date the participant commences benefits), PBGC will generally also enforce this provision in accordance with in [**section F.2**](#) of PBGC Policy [**5.2-4 Annuity Starting Dates**](#).

b. Separate Interest Domestic Relations Order

PBGC will not qualify a separate interest order that specifies an alternate payee's first payment date that is earlier than the date PBGC receives the order that is ultimately qualified.

If the participant is not yet in pay status, PBGC will not qualify a separate interest order requiring the alternate payee's earliest first payment date to be earlier than the later of (1) the participant's earliest PBGC retirement date (EPRD) or (2) the date that the participant reaches age 50. For EPRD, see PBGC Policy [**6.1-2 Earliest PBGC Retirement Date.**](#)

Administration

In addition to the above restrictions, PBGC will generally not start benefit payments to an alternate payee before the alternate payee applies for benefits.

5. Benefit Form

Qualification

The order must specify the benefit payment form available to the alternate payee or state that the alternate payee may select the benefit form at the time the alternate payee applies for benefits from PBGC.

a. PBGC Qualification of Domestic Relations Orders

An order must meet the following benefit -form requirements to be qualified by PBGC:

(1) Shared Payment Domestic Relations Order

All shared payment orders must provide for the alternate payee to receive part or all of each payment that would otherwise be made to the participant. However, the order may provide for payments to the alternate payee to begin later and/or end sooner than the participant's payments.

(2) Separate Interest Domestic Relations Order

All separate interest orders must provide for payment to the alternate payee in the automatic form payable to unmarried participants under the plan or in any of PBGC's optional single-life annuity forms.

PBGC will not qualify a separate interest order that provides for payment of a joint-life annuity to the alternate payee and his or her [► beneficiary](#). In the unlikely event that the plan provides that the plan will automatically pay an alternate payee a form that is different from the plan's automatic form for unmarried participants, contact [► OPD](#).

PBGC also will qualify an order that pays a temporary life annuity for child support or alimony.

Administration

Regardless of the plan's terms or the QDRO's terms, an alternate payee entitled to separate interest benefits may elect any PBGC optional single-life annuity form. For paying de minimis lump sums to an alternate payee, see PBGC Policy [**5.4-9 Lump Sum Benefit Payments.**](#)

b. Pre-Trusteeship Domestic Relations Orders

See [**Appendix A**](#) below.

c. Alternate Payees as QPSA and QJSA Recipients

The order may provide for an alternate payee who is the former spouse of the participant to receive surviving spouse benefits ([**► QJSA**](#) and/or [**► QPSA**](#)) upon the participant's death, regardless of whether the participant has subsequently remarried. See [**section E.9**](#) below.

PBGC will not disqualify a domestic relations order solely because the order requires the alternate payee to be treated as surviving spouse for part (but not all) of the participant's benefit.

If the QDRO includes such a provision, PBGC will treat the applicable part of the participant's benefit as payable to the plan participant married to the alternate payee (for example, payable in the form of a QJSA unless waived by the participant with the alternate payee's consent) and the remaining portion unaffected by the terms of the order, payable in another form of annuity (such as a straight life annuity (SLA) or QJSA with the subsequent spouse). Although the participant's benefit is payable in two benefit forms, the participant's benefit will otherwise be treated as a single benefit. For example, each portion of the participant's benefit (i.e., the portion subject to the treat-as-spouse provision and the portion unaffected) will be subject to the same annuity starting date. (If the alternate payee waives his or her right to surviving spouse benefits, then the participant's benefit will be unaffected by the terms of the QDRO with respect to the form of benefit.)

If PBGC receives an order after the participant's first payment date, PBGC will not qualify the order if the order requires that the participant's benefit form or designated beneficiary of a joint-and-survivor annuity be changed. For example, if the participant is already receiving a straight-life annuity or a joint-life annuity with a

subsequent spouse, PBGC will not qualify an order changing the benefit form to a joint-life annuity with the alternate payee.

If the alternate payee was to be treated as a participant's surviving spouse under the QDRO and the alternate payee has died before the participant's first payment date, those terms of the QDRO under which the alternate payee would be treated as surviving spouse will no longer have effect (i.e., PBGC would not pay a joint-life annuity with an already-deceased contingent annuitant).

6. When Benefits Stop

Qualification

An order must indicate when payments to the alternate payee will stop. The terms of the order, the type of order, or the benefit form of the participant and/or alternate payee may indicate when the alternate payee's benefits stop.

a. Shared Payment Domestic Relations Order

Under a shared payment order, payments to the alternate payee must stop no later than when payments to the participant stop. An order may also provide for benefits to stop upon the occurrence of a specified event, such as remarriage of the alternate payee or the date a child reaches a specified age.

If payments will stop upon a specified event, the order should require the affected parties to notify PBGC in writing of the occurrence of the event. If the order does not specify that the parties must provide written notice to PBGC, the qualification determination letter will communicate this requirement to them. See [section G.3](#) below.

b. Separate Interest Domestic Relations Order

Under a separate interest order, payments to the alternate payee will stop consistent with the alternate payee's benefit form.

c. Alternate Payees as QPSA and QJSA Recipients or Beneficiaries

Under certain circumstances, the order may provide for the alternate payee to be treated as a surviving spouse (see [section E.9](#) below) or a beneficiary (see [section E.7](#) below).

7. Death of Participant

Qualification

An order may, but is not required to, specify what happens to payments when the participant predeceases the alternate payee.

a. Shared Payment Domestic Relations Order

Shared payments to the alternate payee stop upon the participant's death (or never start if the participant dies before entering pay status).

b. Separate Interest Domestic Relations Order

The participant's death does not affect payments under the alternate payee's separate interest.

c. Alternate Payees as QPSA and QJSA Recipients

A shared payment or a separate interest order may provide for an alternate payee who is the former spouse of the participant to be treated as the participant's surviving spouse (even if the participant remarries) for the purpose of receiving surviving spouse benefits (a QPSA or QJSA). See [section E.9](#) below.

d. Certain and Continuous Annuities

A shared payment or a separate interest order may designate the alternate payee as the beneficiary under a ► [certain-and-continuous \(C&C\) annuity](#). The C&C beneficiary designation under the QDRO will supersede any prior C&C beneficiary designation.

Administration

If the order is silent as to what happens to payments when the participant predeceases the alternate payee, PBGC will apply [section E.7.a](#) for a shared payment order and [section E.7.b](#) for a separate interest order.

8. Death of Alternate Payee

Qualification

The order may, but is not required to, specify what happens to payments when the alternate payee predeceases the participant.

a. Shared Payment Domestic Relations Order

A shared payment order may provide for continuation of payments to a contingent alternate payee named in the order upon the death of the alternate payee. If the alternate payee (and any contingent alternate payee) dies before the participant, PBGC will return the participant's monthly benefit payments to the amount that the participant would have been receiving had there been no order. An order cannot provide for an alternate payee's payments to continue to an alternate payee's surviving spouse or to an estate upon the alternate payee's death.

b. Separate Interest Domestic Relations Order

A separate interest order may provide for either of the following to occur upon the death of an alternate payee who dies before the

alternate payee's benefits commence (see below): (1) payment of the separate interest to a contingent alternate payee; or (2) reversion of the separate interest to the participant, thereby increasing the participant's payment to the level the participant's payment would have been without the order including, but not limited to, reimbursing the participant for payments that were reduced on account of the order.

If the alternate payee dies after entering pay status under the order, the benefit form of the separate interest benefit chosen will govern. For example, under a single life annuity, payments end. Under a period certain and continuous annuity, payments continue to the alternate payee's designated beneficiary.

PBGC will not qualify a separate interest order that provides for the alternate payee's benefit to revert to the participant if the alternate payee dies after the alternate payee's first payment date.

Administration

If the QDRO is silent on what happens if the alternate payee dies before the alternate payee's benefits commence, PBGC will treat the separate interest as reverting to the participant. For purposes of this section E.8, a benefit payable to the alternate payee "commences" on the alternate payee's annuity starting date. The annuity starting date is a date selected by the alternate payee when applying for benefits, or another date on which benefits must commence under the QDRO, under the Plan, or by law (including the Required Beginning Date).

If the alternate payee's separate interest would revert to the participant but the participant is also deceased at the alternate payee's death, the benefit will revert to PBGC because the order cannot provide for any further assignment.

9. Spousal Rights of Certain Alternate Payees

Surviving spouse rights must be explicitly assigned in the order and cannot be assigned to any class of alternate payees other than to a spouse and/or to a former spouse.

Qualification

If a participant is married when benefit payments begin and if the spouse has not waived his or her right to a ► QJSA, the spouse will retain the right to the survivor annuity regardless of whether the participant and spouse later divorce. See PBGC Policy 5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities) and PBGC Policy 5.4-7 Annuity Benefit Forms.

PBGC will not qualify an order under which the alternate payee would relinquish the surviving spouse benefit ("reverse QDRO") under a joint-and-survivor annuity after the first payment date.

PBGC will qualify an order awarding an alternate payee surviving spouse benefits (QPSA and/or QJSA) only if –

- (1) PBGC receives the order before the participant's first payment date and
- (2) the alternate payee is a current or former spouse of the participant

The alternate payee may be treated as the participant's spouse with respect to all or a portion of the participant's accrued benefit (in the case of a shared payment order) or with respect to all or a portion of the accrued benefit in which the participant retains a separate interest (in the case of a separate interest order).

These survivor benefits are in addition to any separate interest or shared payments the alternate payee has a right to receive under the order.

Administration

PBGC will pay survivor benefits in accordance with the terms of the QDRO regardless of whether, before or after the order was issued, the participant remarried or designated a different beneficiary on another form.

A plan may provide for survivor benefits in addition to the survivor benefits required by ERISA (for example, a steel plan "Free Surviving Spouse Benefit"). A QDRO may provide that a part or all of such other survivor benefits will be paid to an alternate payee (rather than to the person who otherwise would be entitled to receive such death benefits under the plan) regardless of whether the alternate payee meets the definition of a widow/widower under the plan.

F. Reviewing Orders; Suspending Payments; Revising Orders

1. Review of Domestic Relations Orders

a. Regular Processing

PBGC will formally qualify an order only if PBGC receives an original order or a copy certified or otherwise authenticated under state domestic relations procedures. PBGC will impose no time limit on the submission of orders. For ▶ domestic relations orders not issued by a state court or other appropriate entity and for orders that are not domestic relations orders, see section G.5 below.

PBGC will inform the interested parties in writing of its formal qualification determination. Interested parties include the parties named in the order, their legal counsel, and any representatives designated in writing by the parties.

PBGC's formal qualification determination will explain why PBGC did not qualify the order, if not qualified, or how PBGC will comply with the ▶ QDRO, if qualified. The ▶ participant and alternate payee will have the right to appeal PBGC's formal qualification determination.

The qualification status of an order will become final when the appeal period ends. If no extension to file an appeal is granted and if no appeal is filed, the appeal period usually ends 45 days after PBGC sends a formal qualification determination to the interested parties. For correcting and revising a formal qualification determination, see PBGC Policy [**5.8-1 Benefit Changes**](#).

PBGC will not qualify a draft order. However, PBGC will conduct an informal review of a draft order and advise the parties whether the draft, if submitted as an order, would satisfy ►[ERISA's](#) qualification requirements. This informal review is a courtesy to the parties that aims to assist interested parties in drafting an order that the parties will submit to a court or appropriate entity. PBGC's informal review of a draft order does not constitute a formal qualification determination, does not include the right to appeal, and is not binding on PBGC.

b. **Post-Mortem Orders**

A participant or ►[alternate payee](#) may die before an order is issued by a court or appropriate entity. Such orders are post-mortem domestic relations orders.

PBGC will not fail to qualify a post-mortem order solely for the reason that the order was issued by a court or appropriate entity on or after the participant's death. However, if the participant was married at death or has already begun receiving benefits, PBGC will not qualify the order.

As with other domestic relations orders (see [**section F.1.a**](#) above), PBGC will impose no time limit on the submission of post-mortem orders.

If a participant already received all benefits payable under the plan, PBGC will not qualify a shared payment order or a separate interest order that would assign benefits to an alternate payee. For example, if a participant who was receiving a ►[straight life annuity](#) dies, PBGC will not qualify a post-mortem order because no participant benefits remain to assign to an alternate payee.

2. Suspending Payments while Reviewing an Order

a. **Orders Submitted after PBGC Becomes Trustee**

While PBGC determines whether an order is qualified, PBGC will suspend payments to the participant of any amounts that PBGC reasonably determines the order would assign to the alternate payee. For draft orders or written notification of pending domestic relations orders, see [**section F.2.a.3**](#) below.

Generally, the suspension will be effective with the monthly payments for the next month after PBGC receives the order unless the order specifies otherwise.

If payment suspension is delayed for administrative reasons, PBGC will seek repayment of any resulting overpayments. See PBGC Policy [6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#).

(1) Order Qualified

If the order is qualified, PBGC will begin making payments (including any suspended benefit payments) to the alternate payee as soon as the qualification status is final and the alternate payee has submitted a valid benefit application. See [section F.1.a](#) above and [section F.2.a.4](#) below.

The alternate payee's first payment date cannot be earlier than the benefit suspension date.

(2) Order Not Qualified

If the order is not qualified, PBGC will continue suspending payments to the participant until the qualification status is final. See [section F.1.a](#) above.

However, the suspension of payments will continue if, before the qualification status is final:

- An interested party appeals the qualification determination. PBGC will continue suspending payment while the appeal is pending. If PBGC decides on appeal that the order is not qualified, PBGC will suspend payment for an additional 120 days from the date PBGC notifies the interested parties in writing that PBGC has made a decision on the appeal.
- Either party notifies PBGC in writing that the parties will submit a revised order to PBGC for qualification. PBGC will continue suspending payment for an additional 120 days from the date of the parties' written notification to PBGC.
- PBGC receives a copy of a court scheduling order or a written statement by the participant or alternate payee (or his or her attorney or representative) that the court will not review an amended order until after more than 120 days has passed. PBGC will grant an extension of the suspension period based on the facts and circumstances.

If PBGC receives an amended order before the benefit suspension period has ended, PBGC will continue suspending payments while reviewing the amended order

for qualification. Depending on the qualification determination, PBGC will continue suspending payments as described above.

If PBGC receives no amended order before the benefit suspension period has ended, PBGC will stop suspending benefits and pay any suspended benefit payments to the participant. See [section F.2.a.4](#) below.

(3) Draft Orders or Written Notification of Pending Order

PBGC will not suspend all or a portion of a participant's benefit payments solely because PBGC receives a draft order submitted for informal (i.e., non-binding) review by PBGC or solely because PBGC receives written notice (such as, but not limited to, a letter, fax, email, or a benefit application indicating a pending or final QDRO exists) from an interested party of a pending domestic relations order.

However, if PBGC receives the participant's valid benefit application (or if the participant already has a benefit application pending with PBGC) while PBGC is reviewing a draft order or after PBGC receives written notice (such as, but not limited to, a letter, fax, email, or a benefit application indicating a pending or final QDRO exists), PBGC will delay the participant's first payment date for up to 120 days.

- The 120-day period will allow the parties time to submit the draft (such as an initial draft or a revised draft to address any problems previously noted by PBGC) for review by a court and to obtain a signed order or a certified or authenticated copy.
- The 120-day period will generally begin on the date PBGC notifies the interested parties in writing of the result of the informal review.
- If PBGC receives a copy of a court scheduling order or a written statement by the participant or alternate payee (or his or her attorney or representative) that the court will not review the order until after the 120 days has elapsed, PBGC will continue to delay the participant's first payment date based on the facts and circumstances.

If PBGC receives an original order or a certified or authenticated copy before the participant's first payment delay ends, PBGC will continue to delay the participant's

first payment date while reviewing the order for qualification.

- If PBGC qualifies the order, see [section F.2.a.1](#) above. PBGC will generally honor an alternate payee's annuity starting date that is no earlier than the first of the month following the receipt of the order. See also [section E.4](#) above and [section F of PBGC Policy 5.2-4 Annuity Starting Dates](#).
- If PBGC does not qualify the order, see [section F.2.a.2](#) above.

If PBGC receives no order before the participant's first payment delay ends, PBGC will pay any delayed benefit payments to the participant. See [section F.2.a.4](#) below.

PBGC will treat any order submitted to PBGC electronically, such as by email or fax, as a draft order until PBGC receives the original order or a certified or authenticated copy.

(4) **Suspended or Delayed Benefit Payments**

PBGC will pay any suspended or delayed benefit payments owed to the participant or alternate payee in a single payment with interest (if applicable). See PBGC Policy [6.3-1 Underpayment Reimbursement and Interest Payments](#).

(5) **Maximum Benefit Suspension Period**

In no event will PBGC suspend or delay benefit payments to a participant for more than 18 months from the alternate payee's earliest possible first payment date under the order.

If PBGC does not complete a formal qualification determination within the 18-month period, PBGC will pay any suspended amounts to the participant.

PBGC will apply the same 18-month limit on benefit payment suspensions for orders (1) submitted to the prior plan administrator for qualification or (2) awaiting a formal qualification determination.

b. **Orders Qualified before PBGC Trusteeship**

To ensure proper administration, PBGC will evaluate orders qualified before PBGC trusteeship. See [Appendix A](#) below.

c. **Orders Pending Qualification at PBGC Trusteeship**

PBGC will review orders that were awaiting a qualification determination by the plan administrator at trusteeship and determine whether they meet the requirements for a QDRO under the rules in [section E](#) above.

PBGC will suspend or continue to suspend payments to a participant or alternate payee while PBGC is reviewing such orders and may seek repayment of any resulting overpayments. See PBGC Policy [6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#).

d. **Multiple Domestic Relations Orders**

PBGC will determine the qualification status of a subsequent order seeking to amend an earlier QDRO under the rules in [section E](#) above as well as the rules below.

(1) **Orders Vacating Separate Interest QDROs**

If the parties decide that the participant's benefits will no longer be subject to a separate interest QDRO, PBGC must receive a subsequent order before the alternate payee's first payment date. A state court or appropriate entity must issue a subsequent order vacating or nullifying the original separate interest QDRO.

If the participant's benefit commenced on a reduced basis reflecting the terms of an order that is subsequently vacated before the alternate payee's payments commenced, then upon PBGC's review and approval of the vacate order, PBGC will increase the participant's payment to the level the payment would have been without the order, including but not limited to reimbursing the participant for payments that were reduced on account of the order but not paid to the alternate payee.

However, if PBGC receives the vacate order for a separate interest order after the alternate payee's ► [Required Beginning Date](#) and before the alternate payee's first payment date, contact ► [OPD](#).

(2) **Prospective Benefit Changes**

When PBGC receives a subsequent order changing an existing QDRO, PBGC will review the subsequent order as a new order. PBGC will suspend benefit payments to the participant and/or the alternate payee affected by the subsequent order.

If PBGC qualifies the subsequent order, PBGC will change the participant's and/or alternate payee's benefits, as

appropriate. However, PBGC will make changes prospectively only. If the terms of the subsequent order direct PBGC to make changes retroactively (i.e., before the submission date), PBGC will not qualify the subsequent order.

(a) **Changes Prohibited after Alternate Payee's First Payment Date**

For a separate interest QDRO after the alternate payee's first payment date, PBGC will not qualify a subsequent order changing, vacating, or correcting the alternate payee's separate interest benefit amount or form provided in the original QDRO.

(b) **Changes Prohibited after Participant's First Payment Date**

After the participant's first payment date, PBGC will not qualify any order changing the participant's benefit form or joint-life beneficiary.

For example, after the participant's first payment date, PBGC will not qualify an order changing the participant's designated joint-life beneficiary from the participant's former spouse to a current spouse (or vice versa).

(3) **Multiple Alternate Payees or Orders**

If more than one alternate payee submits an order to PBGC (or if one alternate payee submits more than one order) for qualification and for the same participant's benefit, PBGC will review the orders in the order PBGC receives them. If PBGC qualifies the first order received, PBGC will apply the first order to the participant's benefit. If PBGC also qualifies the second order, PBGC will apply the second order to the participant's benefit that remains after applying the first order.

However, if the first order already assigned the participant's entire benefit and no participant benefits remain that can be assigned, PBGC will not qualify the second order.

Contact ▶ [OPD](#) if there are unusual circumstances regarding the receipt of orders from more than one alternate payee.

G. Special Rules

1. QDRO Payments to Participant and Alternate Payee

Generally, pension benefits subject to a ▶ [QDRO](#) may be paid only to the ▶ [participant](#) and the ▶ [alternate payee](#) (for example, payments may not be made directly to an attorney for attorneys' fees). Payments made to an alternate payee may be made only in the alternate payee's name, including in instances when payments are sent to a child support agency or to the guardian or other legal representative on behalf of a minor or legally incompetent person.

2. Aggregate Maximum Guarantee (ERISA Sec 4022B)

PBGC will not consider an individual as subject to the aggregate maximum guarantee limitation under ▶ [ERISA](#) section 4022B and Part 4022B of PBGC's regulations solely because the individual is entitled to benefits under a given plan as both a participant and an alternate payee. See PBGC Policy [5.13-1 Aggregate Limit on Benefits Payable from PBGC Funds](#).

3. Change of Entitlement to Benefits

If the occurrence of an event, such as remarriage of the alternate payee, affects benefits that PBGC is paying, PBGC is not obligated to change the payment of benefits to reflect the event unless and until PBGC receives written notification (in accordance with the terms of the QDRO) of the event.

If the order does not specify the future date or if PBGC cannot determine the future date with respect to a change of the alternate payee's benefit, then, in accordance with the terms of the order, the parties will be responsible for notifying PBGC in writing of that date or for submitting an amended domestic relations order, specifying the change to the alternate payee's benefit, in order for PBGC to implement the change to the benefit. See also [section E.2.a](#) above.

Otherwise, PBGC will consider proper any payments made prior to written notification. After PBGC receives written notification, if PBGC makes payments that do not reflect the event, PBGC may seek repayment of any resulting overpayments. See PBGC Policy [6.4-1 Repayment of Benefit Overpayments through Administrative Correction, Recoupment, and Recovery](#).

PBGC will pay any resulting underpayments in a single payment with interest (if applicable). See PBGC Policy [6.3-1 Underpayment Reimbursement and Interest Payments](#).

PBGC will generally not enforce or modify the terms of a QDRO to reflect any payment arrangements made by a participant and alternate payee that are not included in the terms of the QDRO. Parties who wish to have the terms of a QDRO reflect such arrangements must seek an amended QDRO.

4. Benefit Determination Letters and Appeal Rights

PBGC will issue separate ▶ [benefit determination letters](#) to the participant and alternate payee regardless of whether the QDRO awards all or a portion of the

participant's benefit to the alternate payee. A participant and alternate payee each will have the right to appeal a benefit determination that affects his or her own benefit regardless of the type of QDRO and regardless of whether the alternate payee is the spouse, former spouse, child, or other dependent of the participant. This also applies to participants who received an initial benefit determination before the QDRO was qualified. These participants will, therefore, receive a revised benefit determination letter.

Benefit determinations to alternate payees will not contain confidential information about the participant and vice versa.

5. Orders that are not Domestic Relations Orders

a. Orders Not Issued by a State

PBGC generally will not review an order unless the order was issued by a state court or appropriate entity. See [section C.7](#) above. However, if a state court, under a treaty or other process, incorporates a foreign order into a state order, PBGC will review the order in its entirety on the same basis as a state order and will determine whether the order is a QDRO.

Refer orders not issued by a state court or appropriate entity (for example, a foreign court) to ▶ [OPD](#).

b. Joinders

A joinder is an order by a state court that makes or seeks to make a pension plan a party to a divorce action between a plan participant and his or her spouse usually for the limited purpose of dividing the participant's benefit under the plan. PBGC is not bound by such a joinder because the joinder is preempted by ERISA. Refer joinders to the ▶ Office of General Council ([OGC](#)).

If the participant submits a valid benefit application (or has a pending benefit application) after PBGC receives a joinder, PBGC will delay the participant's first payment date for a period of up to 120 days from the date of PBGC's written acknowledgement that PBGC has received the joinder request.

c. Other Non-Domestic Relations State Orders

PBGC may receive orders that are not ▶ [domestic relations orders](#). For example, a creditor owed money by a participant may send a writ of garnishment or other order directing PBGC to garnish the pension, as could be done with the individual's wages. Anti-alienation rules under ERISA prohibit the garnishment of pensions. Because such orders are not domestic relations orders and cannot be qualified, PBGC will not comply with such orders.

6. QDRO in PBGC's Records

To enforce the terms of a QDRO, including a QDRO that the prior plan administrator qualified before PBGC trusteeship, the original order or a certified or authenticated copy of the order must be on file with PBGC. This applies even if PBGC records contain a qualification and/or interpretation from the plan or if the prior plan administrator already started enforcing the terms of the order by reducing the participant's benefit and/or commencing payments to the alternate payee.

H. Taxation of Payments to Alternate Payees

PBGC applies federal tax withholding and reporting to payments made under a ▶ [QDRO](#) in accordance with the ▶ [Internal Revenue Code](#). A distribution that is paid to a spouse or former spouse who is an ▶ [alternate payee](#) under a QDRO is taxed to such spouse or former spouse. A distribution that is paid to a child or other dependent under a QDRO is taxed to the plan ▶ [participant](#).

Appendix A: Orders Qualified before PBGC Trusteeship

To ensure proper administration, PBGC will evaluate orders qualified before PBGC trusteeship. During this review, PBGC will not suspend payments to a participant or alternate payee. After this evaluation process, PBGC will contact the participant or alternate payee only if PBGC cannot interpret or comply with the terms of the order.

If the terms of an order have been implemented or enforced by the plan administrator, PBGC will presume the plan followed proper qualification procedures – even if PBGC records do not contain in its records from the plan a written qualification or interpretation issued by the prior plan administrator. Contact ▶ [OPD](#) before revising the qualified status of any domestic relations order that was qualified by the plan administrator prior to PBGC trusteeship.

With respect to orders qualified (or treated as qualified) by the plan administrator before PBGC trusteeship, PBGC will generally NOT issue a formal qualification letter with appeal rights. PBGC will, however, issue a formal benefit determination letter, with appeal rights and reflecting the assignment of plan benefits to the alternate payee, to both the participant and the alternate payee.

Administration

PBGC will generally follow the administration guidelines set forth in [section E](#) above in administering QDROs qualified before trusteeship. However, if the prior plan administrator's interpretation of the QDRO conflicts with PBGC's general administration guidelines (evidenced by the plan documents, communications with the parties, or details of the benefit already in pay), PBGC will adhere to the prior plan administrator's interpretation, except as described below.

Notwithstanding the application of ERISA's Title IV limitations and/or the correction of errors with respect to how the total plan benefit was calculated by the prior plan administrator, PBGC will generally not change QDRO benefits in pay before PBGC trusteeship. However, PBGC may change QDRO benefits (including the prior plan administrator's interpretation of benefits not in pay as of plan trusteeship) if the prior plan administrator's qualification, interpretation, or

enforcement of the order conflicts with ERISA, plan provisions, terms of the order, or PBGC policy. In extreme cases, PBGC may need to notify the parties that the prior plan administrator's qualification of their order was in error and that the order is not qualified. This action can be approved only by ► [OPD](#) in coordination with ► [OGC](#).

If the QDRO requires an alternate payee to begin his or her benefit as of a specific date (for example, no later than the date the participant commences benefits), PBGC will generally enforce this provision, which may entitle the alternate payee to a retroactive annuity starting date.

PBGC will comply with the annuity benefit form provided to the alternate payee in an order qualified by the former plan administrator or pending at the time of trusteeship if the benefit form is one provided under the plan regardless of whether the benefit form is a PBGC optional form. See [section F](#) above. However, under no circumstances will PBGC enforce, or continue to enforce, a provision in an order (including, but not limited to, an order qualified by the prior plan administrator) allowing an alternate payee to receive a joint-life annuity with a contingent annuitant who is the alternate payee's subsequent spouse.

If a separate interest QDRO was qualified by the former plan administrator prior to trusteeship and consistent plan practice (as of when the parties commenced benefits or, if neither party is in pay, as of the time of qualification) was to pay part of the subsidy to the alternate payee when the QDRO was silent about the subsidy, PBGC will pay the subsidy to the alternate payee in the same manner as the former plan administrator would have done.

As in the case of post-trusteeship orders, PBGC will enforce a shared payment order that specifies that the alternate payee's benefit starts later and/or ends sooner than the participant's benefit.

Appendix B: Application of Title IV Limitations to Plan Benefits with Early Retirement Subsidies

With a separate interest QDRO, it is possible for the benefit of the participant to be impacted by the Maximum Insurance Limitation (MIL) while the benefit of the alternate payee remains intact. This is particularly true when the QDRO assigns the entire early retirement subsidy to the participant. For example, assume:

- Benefits are paid monthly and subsidized by the plan for early retirement
- QDRO awards 50% of participant's accrued benefit and none of early retirement subsidy to alternate payee
- QDRO provides that Title IV limits are applied pro rata to plan benefit
- Total early retirement benefit = \$3,000.00
- Unsubsidized early retirement benefit = \$2,000.00
- Participant and alternate payee are the same age, commence benefits with the same annuity starting date, and are paid in the same benefit form
- MIL adjusted for participant's age and benefit form = \$2,800.00
- MIL adjusted for alternate payee's age and benefit form = \$2,800.00

Absent the QDRO

The guaranteed benefit absent the QDRO is \$2,800.00:

\$3,000.00	(total plan early retirement benefit)
<u>\$2,800.00</u>	(MIL adjusted for age and form)
\$2,800.00	(guaranteed benefit – lesser of the two amounts)

The guaranteed benefit comprises two parts: a guaranteed unsubsidized benefit and a guaranteed subsidy.

- a. The guaranteed unsubsidized benefit is \$2000.00:

\$2,800.00	(guaranteed benefit)
<u>\$2,000.00</u>	(unsubsidized early retirement benefit)
\$2,000.00	(guaranteed unsubsidized benefit – lesser of the two amounts)

- b. The guaranteed subsidy is \$800.00:

\$2,800.00	(guaranteed benefit)
<u>-\$2,000.00</u>	(guaranteed unsubsidized benefit)
\$800.00	(guaranteed subsidy – not less than \$0.00)

The QDRO awarded the alternate payee 50% of the accrued benefit but none of the subsidy. This means that the QDRO awarded the alternate payee 50% of the unsubsidized early retirement benefit and 0% of the subsidy.

Applying the QDRO

The participant's guaranteed benefit after applying the QDRO is \$1800.00:

- a. \$2,000.00 (guaranteed unsubsidized benefit)
x 50% (percent of accrued benefit awarded to participant)
\$1,000.00 (participant's guaranteed unsubsidized benefit)
- b. \$800.00 (guaranteed subsidy)
x 100% (percent of subsidy awarded to participant)
\$800.00 (participant's guaranteed subsidy)
- c. \$1,000.00 (participant's guaranteed unsubsidized benefit)
+\$800.00 (participant's guaranteed subsidy)
\$1,800.00 (participant's guaranteed benefit)

The alternate payee's guaranteed benefit is \$1000.00:

- a. \$2,000.00 (guaranteed unsubsidized benefit)
x 50% (percent of accrued benefit awarded to alternate payee)
\$1,000.00 (alternate payee's guaranteed unsubsidized benefit)

- b. \$800.00 (guaranteed subsidy)
 - x 0% (percent of subsidy awarded to alternate payee)
 - \$0.00 (alternate payee's guaranteed subsidy)

- c. \$1,000.00 (alternate payee's guaranteed unsubsidized benefit)
 - + \$0.00 (alternate payee's subsidy)
 - \$1,000.00 (alternate payee's guaranteed benefit)

The sum of the guaranteed benefits payable to the participant and alternate payee is \$2,800.00:

- \$1,800.00 (participant's guaranteed benefit)
- + \$1,000.00 (alternate payee's guaranteed benefit)
- \$2,800.00 (sum of guaranteed benefits)

In this example, the sum of the guaranteed benefits payable to the participant and alternate payee equals the guaranteed benefit absent the QDRO (see above).

Note that, depending on the terms of an individual QDRO as well as on when the participant and alternate payee (1) commence benefits with different annuity starting dates, (2) elect different benefit forms, and/or (3) other Title IV limitations impact the plan benefit, the sum of the monthly guaranteed benefits payable to the participant and alternate payee will not necessarily equal the monthly guaranteed benefit absent the QDRO.

Concurrency, Endorsement, and Approval

Policy 6.6-3 Qualified Domestic Relations Orders, 6th Ed.	
Concurrency	
OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2022.09.13 19:08:04 -04'00'
OBA/PSD/OPD: Laura Stephens, Supervisory Management Analyst	 Digitally signed by LAURA STEPHENS Date: 2022.09.13 14:19:32 -04'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	 Digitally signed by MICHELE GRAY Date: 2022.09.14 11:06:43 -04'00'
OGC: Joseph Krettek, Assistant General Counsel	 Digitally signed by JOSEPH KRETTEK Date: 2022.09.14 13:28:13 -04'00'
Endorsement	
General Counsel: Karen Morris	 Digitally signed by KAREN MORRIS Date: 2022.09.19 09:26:29 -04'00'
Approval	
Chief of Benefits Administration: David Foley	 Digitally signed by DAVID FOLEY Date: 2022.09.19 09:40:37 -04'00'
<i>This policy may not take effect without the written and dated endorsement of the General Counsel and the written and dated approval of the Chief of Benefits Administration on Transmittal 2022-05.</i>	

6.6-4 Plan Loans

Edition	1st Edition
Issue Date	06/17/2008
Transmittal	Transmittal 2008-03
Contact	ASK PPD

In this policy

- [A. Background](#)
 - [B. Scope and Effective Date](#)
 - [C. Policy](#)
 - [D. Calculations and Valuation](#)
 - [E. Benefit Administration](#)
 - [F. Effect of Personal Bankruptcy](#)
 - [G. Taxation](#)
- [Attachment 1](#)
- [Attachment 2](#)

A. Background

Ongoing pension plans may allow [► participants](#) to take loans (generally, of up to \$50,000) secured by the value of their benefits. Under Internal Revenue Service rules, money a participant receives from a pension plan generally is considered a distribution of his or her benefit and taxed accordingly. However, an amount received by a participant as a loan from an ongoing pension plan is not treated as an actual distribution of a benefit if specified conditions are met. These conditions include rules covering the terms of repayment, restrictions on the amount of the loan, and a requirement that there be an enforceable written loan agreement.

IRS rules also require spousal consent for a loan to a married participant. If [► spousal consent](#) is not obtained at the time the loan is made, and if the participant is married to the same spouse when the benefit starts, the IRS rules require that the spousal benefit relating to the loan amount be protected.

This [► policy](#) describes the conditions that must be met for PBGC to consider a plan loan properly documented and the rules for handling such loans, in addition to those that are not properly documented. It also establishes rules for PBGC treatment of such loans, including repayment options, treatment of the loan in the plan valuation, and reporting the loan as income.

B. Scope and Effective Date

This [► policy](#) applies to [► participants](#) and beneficiaries in PBGC-trusted plans. It is effective upon issuance.

C. Policy

1. General Rule

PBGC generally treats as loans all loans that met the IRS rules (see [section C.3](#)), as well as certain loans that failed to meet those rules in the ways described in [section C.4](#). Other payments that may resemble loans but that departed from the IRS rules in major ways will be treated as pre-DOPT distributions under the policy on Assignment or Alienation of Benefits (see [section C.4.e](#), below).

PBGC will not make new plan loans after it becomes trustee of a plan, and it generally will not accept periodic repayments on prior loans after PBGC trusteeship. Thus, all plan loans taken before trusteeship but not fully repaid will be treated as due and payable as of DOPT. Borrowers will be given the opportunity to repay the unpaid loan balance at DOPT, including accrued interest, in a single payment. If the borrower does not repay the full amount (see [section C.2](#)), PBGC will offset the participant's benefit by the annuity equivalent of the unpaid loan balance at DOPT (see [section C.3](#) and see [section C.4](#)). [section D](#) of this policy contains rules for calculating the "unpaid loan balance at DOPT" and for offsetting benefits by the unpaid loan balance at DOPT.

2. Repayment Option

As soon as practicable after the date of trusteeship (DoTR), PBGC will notify the borrower of the amount of the unpaid loan balance at DOPT and that his or her benefit will be offset by the annuity equivalent of that amount as of DOPT unless he or she repays the entire unpaid loan balance at DOPT within a reasonable time (generally 60 days from the date of the letter). If spousal consent was needed but not obtained at the time of the loan, this notice will also describe the spousal consent rules in [section C.4.d.\(3\)](#), below.

3. Offset of properly documented loans

A properly documented loan is one that was consistent with plan provisions and/or IRS rules, including loans that were:

- documented by a written loan agreement;
- made at the interest rate provided in the plan;
- made in an amount that did not exceed the maximum loan amount allowed by the plan;
- made with a repayment period that did not exceed the maximum allowable repayment period allowed by the plan; and
- if made to a participant married at the time the loan was made and the participant's accrued benefit was not *de minimis*, made with proper spousal consent. Generally, if the proper consent was obtained at the time the loan was made, or consent was not required to be obtained, the benefit may be offset regardless of the participant's marital status at any later date.

"Proper documentation" does not depend on whether payments have been made as required by the loan agreement (i.e., the loan may be in default).

If a loan is properly documented and not fully repaid under [section C.2](#), the borrower's benefit will be offset by the unpaid loan balance at DOPT.

4. Offset of loans that are not properly documented

A loan is considered improperly documented if it was inconsistent with plan provisions and/or IRS rules. This includes, but is not limited to, loans that were:

- not evidenced by a written loan agreement but there is a clear indication that a loan was made;
- made at an interest rate below the plan rate;
- made in an amount in excess of the maximum loan amount permitted under the plan;
- made with a repayment period that exceeded the maximum allowable repayment period under the plan;
- made under a plan that did not provide for loans; and
- made to a married participant without required written spousal consent.

If a loan is not properly documented and not fully repaid under [section C.2](#), the borrower's benefit will be treated as described below.

- a. **No written loan agreement.** If a participant alleges that he or she took a loan under a plan that allows participant loans, but there is no written loan agreement, PBGC will treat the loan as if it were properly documented if the participant attests that there was a written loan agreement **and** there are other indications that a debtor relationship exists, e.g., repayments made or correspondence indicating a debtor relationship. Otherwise, the amount distributed to the participant will be treated as a pre-DOPT distribution under [section D.7](#) of PBGC Operating Policy [6.6-2 Assignment or Alienation of Benefits](#).
- b. **Improper interest rate, amount or term of loan.** If a participant took a documented loan under a plan that allows participant loans, but the loan was not at the interest rate or for the term specified in the plan or was more than the maximum amount allowed, PBGC will calculate the unpaid loan balance at DOPT, using the loan terms (interest rate and payment due dates) specified in the plan document and offset the benefit.
- c. **No plan loan provision.** If a participant alleges that he or she took a loan under a plan that does not allow participant loans, but there is a written loan agreement, PBGC will calculate the unpaid loan balance at DOPT using the loan terms specified in the loan agreement and offset the benefit. If the plan does not allow plan loans and there is no written loan agreement, the unpaid amount will be treated as a pre-DOPT distribution under [section D.7](#) of PBGC Operating Policy [6.6-2 Assignment or Alienation of Benefits](#).
- d. **Spousal consent**

Generally, if the proper consent was obtained at the time the loan was made, or was not required to be obtained because the borrower was not married at that time, all necessary consent has been obtained for the loan. No consent will be needed at a later date, regardless of the participant's marital status. Of course, normal rules regarding benefit forms will apply to the participant's remaining benefit at retirement.

If required consent was not obtained at the time of the loan and the participant is married to the same spouse at DOPT, PBGC will seek consent when it becomes trustee. If the spouse does not consent, his or her survivor benefit with respect to the loan amount must be protected. See below for specific rules. An example of how a benefit will be calculated and paid under these rules is provided in [Attachment 1](#).

- 1) Consent not required.** If a borrower was not married at the time the loan was made, or if at the time of the loan the participant's accrued plan benefit was less than the amount of the plan's *de minimis* cashout limit, no spousal consent is required for PBGC to offset the benefit, even if the borrower is married either at DOPT or annuity starting date.
- 2) Consent required and obtained.** If a participant was married at the time the loan was made and his or her spouse consented to the loan, no further spousal consent is required at a later date for PBGC to offset the benefit, even if, at DOPT or annuity starting date, the borrower is married to a person other than the spouse who consented at the time the loan was made.
- 3) Consent required but not obtained.** If a borrower was married at the time the loan was made, there is no evidence that the borrower's spouse consented to the loan, and the borrower is married to the same spouse at DOPT, PBGC will ask the spouse for consent as soon as practicable after DoTR as described in Section C.1, above.

Note: an alternate payee who is being treated as a spouse under a QDRO will be considered a spouse for this policy only if he or she was married to the participant at the time the loan was made or the QDRO was in effect at the time the loan was made.

- If the spouse consents, PBGC will offset the benefit.
- If the spouse does not provide written consent to the loan, PBGC will still offset the benefit but will provide the spouse a survivor annuity. This "protected" survivor annuity is equal to the plan's automatic QJSA for the annuity equivalent of the unpaid loan balance at DOPT at the death of the borrower, providing the spouse was still married to the borrower at his or her annuity starting date.

Any remaining benefit payable to the borrower will be reduced by the cost of providing this "protected" survivor annuity. The remaining benefit will be paid in such form as the borrower elects at retirement under normal rules regarding benefit form. If there is no remaining benefit payable to the borrower, the annuity starting date for calculating this protected survivor annuity is the borrower's normal retirement date, or date of death, if earlier.

If, at his or her annuity starting date, the borrower is not married to the person to whom he or she was married at DOPT, no survivor annuity will be paid as a result of the preceding paragraph. As a result, PBGC will increase the borrower's benefit to the amount he or she would have received if the DOPT spouse had consented. (If the participant is married to a different person at retirement, the benefit will be paid following PBGC's joint-and-survivor annuity rules.)

Spousal consent required or obtained under this policy must meet the requirements of [5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities.\)](#)

- e. **Other Improprieties.** If there was an express or tacit understanding that the loan would not be repaid or an amount taken was not otherwise a bona fide loan, the unpaid amount will generally be treated as a pre-►DOPT distribution under [section D.7 of 6.6-2 Assignment or Alienation of Benefits](#). If plan assets are paid directly to someone who is not a ►participant in the plan (including any corporate entity), the transferred amount is not a loan. The transfer may, however, be a fiduciary breach.

D. Calculations and Valuation

1. **Determination of unpaid loan balance at DOPT.** PBGC will calculate the unpaid loan balance at ►DOPT, including accrued interest, generally using the terms specified in the loan document and/or the plan document. Any payments made after DOPT will be discounted back to DOPT at the interest rate specified for the loan. If the loan document and the plan do not

specify an interest rate, the rate at which PBGC credits underpayments in [►PACS](#) will be used. This rate is the "applicable federal mid-term rate" and it is described in PBGC's recoupment regulation (29 CFR § 4022.81(c)(3)(i)).

2. **Plan asset and liability valuations.** The full amount of the unpaid loan balance at DOPT is a plan asset and is valued as fully collectible. The full amount of the borrower's accrued benefit (*i.e.*, as if no loan had been made) is included in the plan's benefit liabilities. If the borrower's [►termination benefit](#) is later determined to be less than the annuity equivalent of the unpaid loan balance at DOPT, PBGC reserves the right to attempt to collect the difference from the borrower.
3. **Benefit offset.** PBGC will calculate the borrower's termination benefit as of DOPT without regard to the loan, and then reduce it by the annuity equivalent of the unpaid loan balance at DOPT, determined using the rates PBGC uses to value immediate and deferred annuities.

E. Benefit Administration

The rules in this [►policy](#) regarding benefit administration are described in [Attachment 2](#).

F. Effect of Personal Bankruptcy

Personal bankruptcy proceedings do not preclude PBGC from offsetting a benefit by the amount of an unpaid loan balance at [►DOPT](#).

G. Taxation

Generally, the offset of a benefit for a plan loan that is not repaid within the 60-day period described in [section C.2.](#), above, is treated as a distribution for purposes of federal income taxation. The total amount of the unpaid loan balance at [►DOPT](#) will be reported to the IRS for the year in which the offset is communicated to the borrower.

Attachment 1

Spousal Consent Example

Assumptions:

- Unpaid loan balance at [►DOPT](#) is \$100,000
- Unpaid loan balance at DOPT is equivalent to \$1,000 per month as an [►SLA](#)
- [►Participant's](#) [►termination benefit](#) is \$5,000 per month
- Plan's automatic form for married participants is a J&50%S
- Plan's automatic form for unmarried participants is an SLA
- All calculations are made as of [►NRA](#); participant and spouse are the same age
- Participant elects a J&100%S benefit at retirement, with [►spousal consent](#)
- J&S factors are: .9 for [►J&50%S](#) (plan factor) and .93 for J&100%S (PBGC factor for converting a plan J&50%S to a PBGC J&100%S)

Scenario 1: Participant is unmarried, either at time of loan or at retirement

- Participant's benefit is reduced by \$1,000 per month for the loan; participant gets \$4,000 per month as an SLA (PBGC optional forms are available)

Scenario 2: Participant is married and proper consent was obtained

Participant's benefit is reduced by \$1,000 per month for the loan; participant's \$4,000 per month SLA benefit, converted to the plan's automatic form, a J&50%S, is \$3,600 (4,000 x .9). PBGC optional forms are available with spousal consent.

- Participant & spouse elect a J&100S. Participant gets \$3,348 for life; spouse gets \$3,348 for life if she survives the participant. (Plan automatic form, J&50%S, is converted by PBGC (PACS) factor for J&100%S: \$3,600 x .93 = \$3,348)

Scenario 3: Spousal consent required but not obtained

Part 1: Spouse's protected survivor annuity

Spouse is entitled to a 50% survivor annuity (the plans automatic form) on the annuity equivalent of the unpaid loan balance at DOPT, \$1,000 benefit as an SLA.

- Spouse gets \$450 per month upon the participant's death (SLA benefit multiplied by plan J&50% factor, then by 50%: \$1,000 x .9 x .5 = \$450)

Part 2: Remaining benefit

Participant's SLA benefit is reduced by \$1,000 per month for the loan and \$100 per month (an assumed amount) for the cost of the protected survivor annuity: \$4,000 - \$100 = \$3900; This \$3,900 per month SLA benefit is \$3,510, paid as a J&50%S, the plan's automatic form. (SLA benefit multiplied by plan J&50% factor: \$3,900 x .9 = \$3,510). PBGC optional forms are available with spousal consent.

- Participant & spouse elect a J&100S (\$3,510 x .93 = \$3,264). Participant gets \$3,264 for life; spouse gets \$3,264 for life if she survives the Participant.
- Spouse also gets the protected survivor annuity of \$450 per month for life for a total benefit of \$3,714 per month, payable only after the participant's death.

Attachment 2

Plan Loans and Benefit Administration

Time of Loan Marital Status & Spousal Consent	DOPT Marital Status & Spousal Consent	DOPT Benefit Calculation & Offset	QPSA Payable	Marital Status at ASD ²	Benefits Administration at ASD
Unmarried, consent not required	Does not matter	Benefit is offset by unpaid loan balance at ► DOPT	Plan ► QPSA using reduced benefit	Does not matter	Reduced benefit is paid. ³
Married & spouse consented	Does not matter	Benefit is offset by unpaid loan balance at DOPT	Plan QPSA using reduced benefit	Does not matter	Reduced benefit is paid. ³
Married & spouse did not consent	Unmarried or different spouse, consent not needed	Benefit is offset by unpaid loan balance at DOPT	Plan QPSA using reduced benefit	Does not matter	Reduced benefit is paid. ³
Married & spouse did not consent ¹	Same spouse & spouse consents to offset	Benefit is offset by unpaid loan balance at DOPT	Plan QPSA using reduced benefit	Does not matter	Reduced benefit is paid. ³
Married & spouse did not consent ¹	Same spouse & spouse does not consent to offset	A "protected 50% survivor annuity is carved out for the DOPT spouse & the remaining benefit is offset by unpaid loan balance at DOPT plus cost of the survivor annuity.	Plan QPSA based on the pre-offset benefit less the cost of protection ⁴	Same spouse	Benefit is paid in a form that provides the spouse a "protected" 50% survivor annuity equivalent of the unpaid loan balance at DOPT. The participant is paid a benefit reduced for the offset and the cost of the survivor annuity (see

					Scenario 3 in Attachment 1).
Married & spouse did not consent ¹	Same spouse & spouse does not consent to offset	A "protected" 50% survivor annuity is carved out for the DOPT spouse. The remaining benefit is offset by unpaid loan balance at DOPT plus cost of the survivor annuity.	Same spouse: Plan QPSA based on the pre-offset benefit less the cost of protection ⁴ Different Spouse: Plan QPSA using reduced benefit	Unmarried or different spouse	Protected benefit for DOPT spouse is disregarded. Reduced benefit is paid. ³

Note 1: If required, PBGC will ask for consent as soon as practicable after DoTR; see **section C.1**.

Note 2: If the participant has no remaining benefit after the offset of the benefit, the ▶ **ASD** is the first of the month following attainment of normal retirement age or, if earlier, the first of the month following the date of the participant's death to calculate the survivor benefit.

Note 3: The plan's automatic forms for unmarried and married participants are paid based on marital status at ASD; PBGC optional forms are available.

Note 4: The cost of protection is a reduction to the participant's monthly benefit to pay for the protected survivor annuity.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_6_4_1st.htm
(06/17/2008)

[Top of Page](#)

6.7-1 4022(c) Amounts

Edition	4th Edition
Issue Date	07/09/2015
Transmittal	Transmittal 2015-05
Last Review Date	N/A
Signed Policy	6.7-1 4022(c) Amounts
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. Determining the Plan 4022\(c\) Amount](#)
- [E. Determination of the SPARR](#)
- [F. Determining Individual 4022\(c\) Amounts in PBGC-Trusteed Plans](#)
- [G. Paying Individual 4022\(c\) Amounts in PBGC-Trusteed Plans](#)
- [H. Special Rule for GB-Sufficient Non-Trusteed Plans](#)
- [I. Special Rule for Subsequent Insufficiencies](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

Section 4022(c) was added to [► ERISA](#) by the [► Pension Protection Act of 1987](#) (PPA 1987). Section 4022(c) requires PBGC to share with [► participants](#) a portion of its recoveries of its employer liability claim against the [► plan sponsor](#) and other liable parties. This additional payment is intended to make up a portion of participants' losses of unfunded [► non-guaranteed benefits](#) (UNGB). Where a plan's UNGB exceed \$20 million, the total amount paid under 4022(c) depends on PBGC's actual recoveries in that case. In all other cases, the amount paid is determined by an average of PBGC's recoveries over a five-year period. This average is known as the [► Small Plan Average Recovery Ratio](#) (SPARR). Under [► PPA 1987](#), the five-year period consisted of the five fiscal years before the fiscal year in which termination was initiated for the plan in which benefits are being determined.

The [► Pension Protection Act of 2006](#) (PPA 2006) changed the five-year period for the SPARR. Under PPA 2006, the five-year period consists of the five full fiscal years ending with the third fiscal year before the fiscal year in which termination was initiated for the plan in which benefits are being determined. For example, if termination of a plan was initiated in 2010, the five-year period consists of fiscal years 2003 through 2007 (that is, the five-year period starting on October 1, 2002, and ending on September 30, 2007).

In this policy, we refer to plans subject to PPA 1987, but not subject to PPA 2006, as PPA 1987 Plans. Plans subject to PPA 2006 are referred to as PPA 2006 Plans. Both, together, are referred to simply as PPA Plans.

This policy statement provides rules for calculation and payment of section 4022(c) benefits for all PPA Plans. This edition of the policy revises [section G. Paying Individual 4022\(c\) Amounts in PBGC-Trusteed Plans](#) to conform with recent changes in Policy [5.4-9 Lump-Sum Benefit Payments](#).

B. Scope and Effective Date

This policy applies to plans with [► termination initiation dates](#) ("TID") after December 17, 1987. This edition of the policy is effective upon issuance; however, the changes in [section G](#) below are effective as of November 21, 2014, the effective date of the third edition of Policy [5.4-9 Lump-Sum Benefit Payments](#).

C. Definitions

1. **4022(c) benefit** means the benefit that is paid based upon applying the individual 4022(c) amount per the rules in [section G](#).
2. **Individual 4022(c) amount** is, for a [► participant](#) in a plan, the portion of the Plan 4022(c) amount allocated to that participant in accordance with [section F](#).

3. **Non-SPARR Plan** means a PPA Plan for which (a) the total amount of unfunded nonguaranteed benefits (UNGB) as of the date of plan termination (DOPT) exceeds \$20 million or (b) the termination initiation date is after December 17, 1987, and before December 18, 1990, regardless of the amount of UNGB. In determining whether UNGB exceed \$20 million, recovery of DUEC is determined under Policy **8.2-1 Valuation and Allocation of Recoveries**.
4. **Plan 4022(c) amount** is the total amount to be allocated to participants and beneficiaries of a plan under ERISA section 4022(c).
5. **PPA plan** means a single-employer plan whose termination initiation date is after December 17, 1987.
6. **PPA 1987 plan** means a PPA Plan whose termination initiation date is after December 17, 1987 and before September 16, 2006.
7. **PPA 2006 plan** means a PPA Plan whose termination initiation date is after September 15, 2006.
8. **SPARR** means small plan average recovery ratio (see **section E**).
9. **SPARR Calculation Date** means the date as of which the SPARR is determined. Effective beginning with fiscal year 2011, the SPARR is determined as of the January 31 in the fiscal year and is applicable to a SPARR plan with a TID during that fiscal year.

Fiscal Year	SPARR Calculation Date
2011	01/31/2011
2012	01/31/2012
2013	01/31/2013

10. The SPARR Calculation Date has changed over time, with different rules applicable for prior fiscal years. All SPARR Calculation Dates (for all PPA 1987 Plans) are provided in the **OBA Operations Manual**.
11. **SPARR Period** means the period used to determine the SPARR for a fiscal year. Effective for PPA 2006 plans, the SPARR Period means the 5 full fiscal year period ending with the third fiscal year preceding the fiscal year in which the TID occurs. All SPARR Periods are provided in the **OBA Operations Manual**.
12. **SPARR Plan** means a PPA Plan for which (a) the total amount of UNGB as of DOPT does not exceed \$20 million; and (b) the termination initiation date is on or after December 18, 1990. In determining whether UNGB exceed \$20 million, recovery of DUEC is determined under Policy **8.2-1 Valuation and Allocation of Recoveries**.
13. **Termination benefit** means the sum of a participant's (or beneficiary's) Title IV benefit and his or her 4022(c) benefit.
14. **Termination initiation date ("TID")** means —
 - a. for a plan that terminates in a distress termination under ERISA section 4041(c), the last date on which any notice of intent to terminate is issued to any affected party other than PBGC; or
 - b. for a plan that terminates in an involuntary termination under ERISA section 4042 (even if the plan administrator had filed a notice of intent to terminate the plan in a distress termination), the date on which PBGC issues a notice of determination that the plan will be involuntarily terminated. In the absence of such a notice, the termination initiation date is the date on which PBGC's Director, or his or her designee, authorizes the initiation of proceedings to terminate the plan under ERISA section 4042.
15. **Title IV benefit** means the guaranteed benefit plus any additional benefits to which plan assets are allocated pursuant to ERISA section 4044 and 29 CFR part 4044.
16. **Unfunded benefit liabilities ("UBL")** means the excess, as of the DOPT, of (a) the total value of a plan's benefit liabilities determined in accordance with 29 CFR part 4044, subpart B, or other applicable law, over (b) the fair market value of the plan's assets determined in accordance with ERISA section 4044(a) and 29 CFR 4044.41(b).
17. **Unfunded nonguaranteed benefits ("UNGB")** means the excess, as of the DOPT, of (a) the total value of a plan's benefit liabilities determined in accordance with 29 CFR part 4044, subpart B, or other applicable law, over (b) the total value of the plan's Title IV benefits determined in accordance with ERISA sections 4022(a) and (b) and 4044, and 29 CFR parts 4022, subparts A and B, and 4044.
18. **Valuation UNGB** means the UNGB that is determined using the Small Plan DUEC Recovery Ratio (SPDRR) determined under Policy **6.7-2 DUEC Recovery Amounts**. Valuation UNGB is used for a Plan 4022(c) Amount for a PPA 2006 Plan that is a

SPARR Plan.

D. Determining the Plan 4022(c) Amount

The Plan 4022(c) amount is determined as follows:

For PPA 2006 ► SPARR Plans, the amount is determined by multiplying (a) the Valuation ► UNGB for the plan by (b) the section 4062(b) recovery ratio.

For all other plans, the amount is determined by multiplying (a) the UNGB for the plan by (b) the section 4062(b) recovery ratio.

The section 4062(b) recovery ratio is determined as follows:

1. **Non-SPARR Plan** – The section 4062(b) recovery ratio for a non-SPARR plan is the ratio of PBGC's recoveries on its employer liability claims for ► UBL for that plan to the total UBL for that plan.

a. Numerator

The numerator of the recovery ratio for a non-SPARR plan will be the value, as of the plan's DOPT, of PBGC's recovery on its employer liability claims under sections 4062(b), 4063, or 4064 for the plan, as determined in accordance with Policy **8.2-1 Valuation and Allocation of Recoveries**.

b. Denominator

The denominator of the recovery ratio for a non-SPARR plan will be the amount, as of the plan's DOPT of the PBGC's employer liability claims under sections 4062(b), 4063, or 4064 for the plan, as determined in accordance with **section G.2.c of 8.2-1 Valuation and Allocation of Recoveries**.

2. **SPARR Plan** – The section 4062(b) recovery ratio is the "Small Plan Average Recovery Ratio" ("SPARR"). The SPARR is determined using the PBGC's employer liability recovery experience over the SPARR Period (see **section E**).

PBGC still completes the valuation and allocation of recoveries for every plan pursuant to Policy **8.2-1 Valuation and Allocation of Recoveries**. The DOPT values generated by this process provide the data for the determination of SPARRs that will be used by PBGC in subsequent fiscal years.

E. Determination of the SPARR

The ► SPARR for a particular plan is calculated using the PBGC's actual recovery experience for all plans for which (1) the ► TID falls during the applicable SPARR Period and (2) PBGC has determined the value of its recoveries under Policy **8.2-1 Valuation and Allocation of Recoveries** as of the ► SPARR Calculation Date.

For example, the SPARR used to determine the Plan 4022(c) Amount for a plan with a TID in FY 2007 is calculated using the PBGC recovery experience in fiscal years 2000 through 2004.

$$\text{The SPARR for a fiscal year} = \frac{\text{Sum of the PBGC's recoveries on its employer liability claims under 4062(b), 4063, or 4064 for all plans in the SPARR Period}}{\text{Sum of the PBGC's employer liability claims under 4062(b), 4063, or 4064 for all plans in the SPARR Period}}$$

The "SPARR for a fiscal year" applies to all SPARR plans with a TID in that fiscal year.

Once the SPARR for a fiscal year is calculated, it is fixed. It will not, for example, be updated to include an additional plan for which the recovery determination is completed after the SPARR calculation date. Recoveries for any such plan will be included in subsequent SPARR calculations. Additionally, the SPARR will not be adjusted to reflect a subsequent adjustment to the value of any recovery for a plan. Instead, such adjustment will be reflected in SPARR calculations made after the date of the adjustment. PBGC reserves the right to reconsider the above in the event of extenuating circumstances.

F. Determining Individual 4022(c) Amounts in PBGC-Trusted Plans

PBGC will allocate the plan 4022(c) amount, as determined under **section D** above, to the plan's ► UNGB in accordance with ► ERISA section 4044(a) and 29 CFR part 4044, subpart A, beginning with the highest priority category (i.e., lowest numbered category) in which there are UNGB. The resulting individual 4022(c) amount will be paid to the participant (or his or her beneficiary or alternate payee) according to the rules in **section G**. If, after allocating to UNGB in the highest priority category with UNGB, any of the plan 4022(c) amount remains, that remaining amount will be allocated to the next highest priority category with UNGB, etc. If the plan 4022(c) amount to be allocated in a particular priority category is not sufficient to provide in full the UNGB in that category, that amount will be allocated within the category in accordance with 29 CFR part 4044, subpart A.

G. Paying Individual 4022(c) Amounts in PBGC-Trusted Plans

PBGC will pay the individual 4022(c) amount in accordance with the rules in this section.

1. Estimated benefits In general, PBGC will not pay a ► participant or ► beneficiary an estimated 4022(c) benefit. However, if ► OBA determines that a participant or beneficiary is likely to receive a 4022(c) benefit, the Department Director (or designee) may authorize OBA to adjust or delay implementation of a benefit adjustment to the participant's estimated ► Title IV benefit if such benefit adjustment is likely to be restored by the payment of his or her 4022(c) benefit. Similarly, the Department Director (or designee) may authorize OBA to pay estimated termination benefits.

2. Final Benefits PBGC will, wherever possible, pay final 4022(c) benefits at the same time as PBGC pays final Title IV benefits.

a. Termination Benefit Is Not de Minimis

If PBGC determines that the ► lump-sum value (as of the ► DOPT) of a participant's ► termination benefit is not *de minimis*, PBGC will pay the individual 4022(c) amount only as an annuity.¹

Note 1: If (1) the Title IV benefit is determined and a benefit determination is issued before the 4022(c) benefit determination is made; and (2) the lump-sum value of the Title IV benefit is more than \$5,000 at DOPT, the 4022(c) benefit determined at a later date will be treated as a residual benefit and paid as an increase in the Title IV benefit under this policy. See **section C.4** (residual benefits) in Policy **5.4-9 Lump-Sum Benefit Payments**.

1) Annuity Value

The annuity will be determined in accordance with the allocation rules of ► ERISA section 4044 and OBA actuarial procedures.

2) Annuity Form and Amount

a) Where the individual 4022(c) amount is allocated to UNGB that are *nonforfeitable* as of DOPT (e.g., temporary supplements for which the participant had satisfied the conditions for entitlement before DOPT), PBGC will pay the individual 4022(c) amount in the form of the underlying benefit in accordance with the allocation rules of ERISA section 4044 and OBA actuarial procedures.

Example 1

A participant retired at age 55, three years before DOPT. The participant's plan benefit is guaranteed except for a temporary supplement of \$400 per month payable until age 62. This temporary supplement is not funded by plan assets. Assume that the participant's individual 4022(c) amount is equal to half of the value of the supplement. PBGC would pay the participant a temporary supplement of \$200 per month as a 4022(c) benefit.

Example 2

A retired participant's lifetime benefit is guaranteed except for \$300 per month that exceeds the maximum insurance limitation; that \$300 amount is not funded by plan assets. Assume that the participant's individual 4022(c) amount is equal to 20% of the value of the \$300 per month. PBGC would pay the participant an additional \$60 per month for life as a 4022(c) benefit.

b) Where the individual 4022(c) amount is allocated to UNGB's that are *not nonforfeitable* as of DOPT (e.g., grow-in benefits for which the participant has not satisfied the conditions for entitlement as of DOPT or certain lump-sum death benefits), PBGC will pay the individual 4022(c) amount as an increase in the participant's Title IV benefit in accordance with the allocation rules of ERISA section 4044 and OBA actuarial procedures.

Example 3

A plan has a 30-and-out benefit. At DOPT, a participant has only 28 years of service. An entitlement to a subsidized early retirement benefit is the participant's only benefit that is not guaranteed or funded by plan assets. Assume that the participant's individual 4022(c) amount allocated to this benefit is \$500; this amount is converted to an increase in the participant's monthly Title IV benefit using the applicable PBGC actuarial assumptions as of

DOPT. PBGC would *not* pay the benefit in the form of a subsidized early retirement benefit if the participant later attained 30 years of service. Instead, PBGC increases the participant's monthly Title IV benefit as described above.

Example 4

A plan provides for a lump sum preretirement death benefit that is assigned to Priority Category 6 because it exceeds the value of the ►QPSA. The entitlement to this death benefit is the participant's only benefit that is not guaranteed or funded by plan assets. Assume that the participant's individual 4022(c) amount allocated to this benefit is 10% of the value of the death benefit. This amount is converted to an increase in the participant's monthly Title IV benefit using the applicable PBGC assumptions as of DOPT. If the participant dies before benefit payments begin, PBGC would not pay the benefit in the form of a lump sum of 10% of the amount to the beneficiary. Instead, PBGC includes, in the plan's QPSA payable to the spouse, the survivor's portion of the participant's benefit increase relating to the death benefit.

b. Termination Benefit Is de Minimis

If PBGC determines that the lump-sum value (as of the DOPT) of a participant's termination benefit is *de minimis*, PBGC will pay the 4022(c) benefit (in most cases, along with the Title IV benefit) in a single installment unless the participant otherwise elects an annuity, as provided in Policy **5.4-9 Lump-Sum Benefit Payments**.² The amount of the single installment will be equal to the individual 4022(c) amount.

Note 2: If (1) the Title IV benefit is determined and a benefit determination is issued before 4022(c) benefit determinations are made; and (2) the lump-sum value of the Title IV benefit is \$5,000 or less at DOPT, the 4022(c) benefit determined at a later date will be treated as a residual benefit, payable as an additional lump-sum payment under this policy, unless the value of the individual 4022(c) amount is greater than \$5,000. See **section C.4** (residual benefits) in Policy **5.4-9 Lump-Sum Benefit Payments**.

c. Overpayments/Underpayments of 4022(c) Benefits

PBGC will treat overpayments and underpayments of 4022(c) benefits in the same manner as overpayments and underpayments of Title IV benefits.

H. Special Rule for GB-Sufficient Non-Trusted Plans

Whenever PBGC authorizes the ►plan administrator (or ►ERISA section 4042 ►trustee, if applicable) of a plan that is sufficient for ►guaranteed benefits to close out the plan in the private sector, PBGC will provide the plan administrator or trustee with the plan 4022(c) amount at or before the time the plan administrator distributes plan assets. The plan administrator or trustee will treat the payment from PBGC of the plan 4022(c) amount as if it were a plan asset and allocate this amount to participants by priority category in accordance with ERISA section 4044(a) and **section F** above as of the distribution date to determine individual 4022(c) amounts. The plan administrator or trustee will pay 4022(c) benefits in accordance with case-specific guidance from PBGC. If the plan is a ►SPARR plan and the applicable SPARR has not been determined by the date of distribution, the plan 4022(c) amount will be calculated on the basis of the most recent SPARR that has been determined.

I. Special Rule for Subsequent Insufficiencies

In the case of a ►PPA plan that PBGC initially determines to be sufficient for ►guaranteed benefits and that later proves unable to close out in the private sector, all determinations that would be required to be made as of the ►DOPT under this policy (e.g., ►UNGB, ►UBL, recovery value) will be made as of the date of the subsequent insufficiency. The date of the subsequent insufficiency is the date on which either (1) PBGC finds the plan to be insufficient or (2) the ►plan administrator notifies PBGC that the plan administrator has made such a finding, provided that PBGC then or thereafter concurs in the plan administrator's finding (see ►ERISA section 4041(c)(3)(C)(ii)).

Concurrence, Endorsement, and Approval

Policy 6.7-1 4022(c) Amounts, 4th Ed.

Concurrence	Initials	Date
ASD: Scott Young, Manager	S.Y.	05/07/2015

PPD: Janice Brown-Taylor, Manager	J.B.T.	05/11/2015
OCC: Joseph Krettek, Assistant Chief Counsel	J.K.	05/07/2015
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	05/07/2015
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	06/11/2015
Chief Financial Officer: Patricia Kelly	P.K.	06/11/2015
Approval		
Chief of Benefits Administration and Director of OBA: Cathy Kronopolus	C.K.	06/12/2015

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Director of OBA on **Transmittal 2015-05**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/6_7_1_4th.htm
(07/09/2015).

Previous Editions

[6.7-1 Calculation and Payment of Benefits Under ERISA
§4022\(c\) 1st Ed. - Outdated](#)

[6.7-1 4022\(c\) Amounts 2nd Ed. - Outdated](#)

[6.7-1 4022\(c\) Amounts 3rd Ed. - Outdated](#)

[Top of Page](#)

6.7-2 DUEC Recovery Amounts

Edition	2nd Edition
Issue Date	03/30/2011
Transmittal	Transmittal 2011-05
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions for this Policy
- D. Determination of Valuation DUEC Recovery
- E. Determination of the SPDRR

A. Background

To complete the section 4044 allocation of plan assets, PBGC must determine the value of a terminated plan's assets at DOPT. Before the Pension Protection Act of 2006 ("PPA 2006"), for any plan that had Due and Unpaid Employer Contributions ("DUEC"), PBGC would value the collectible portion of DUEC and include that value as part of the plan assets. Sometimes that value would be determined based on an adjudication of PBGC's claims (for example, in bankruptcy); more often it would be based on a settlement of those claims. Other times it would be based on an estimate of what PBGC would receive through adjudication or settlement.

In many instances this process slowed down OBA's processing of the case. PPA 2006 created a new mechanism under section 4044(e) [f] of ERISA, similar to the recovery ratio used for purposes of section 4022(c) (the SPARR), that will allow PBGC to assign a value to the collectible portion of DUEC in order to complete the valuation of the plan more quickly.

The first edition of this policy implemented this PPA 2006 provision, and is revised in this second edition only to change the SPDRR Calculation Date ([section C](#)).

B. Scope and Effective Date

This Policy applies to plans with Termination Initiation Dates on or after September 16, 2006. This second edition revises the SPDRR Calculation Date, effective for plans with termination initiation dates on or after October 1, 2010.

C. Definitions for this Policy

DUEC Recovery means the value of DUEC determined under PBGC Operating Policy [8.2-1 Valuation and Allocation of Recoveries](#).

Due and Unpaid Employer Contributions (DUEC) means the amount owed to the plan for minimum required contributions, determined in accordance with section 4062(c) of ERISA.

Non-SPDRR Plan means a plan for which the total amount of unfunded nonguaranteed benefits (UNGB) as of the date of plan termination (DOPT) exceeds \$20 million. In determining whether UNGB exceed \$20 million, recovery of DUEC is determined under PBGC Operating Policy [8.2-1 Valuation and Allocation of Recoveries](#).

SPDRR Calculation Date means the date as of which the SPDRR is determined. Effective beginning with Fiscal Year 2011, the SPDRR is determined as of the January 31st in the fiscal year and is applicable to a SPDRR plan with a TID during that fiscal year. Earlier SPDRR Calculation dates are listed below.

Fiscal Year	SPDRR Calculation Date
FY06	09/30/07
FY07	12/31/07
FY08	03/31/08
FY09	06/30/08

FY10	06/30/09
FY11	01/31/11
FY12	01/31/12

SPDRR Plan means a plan for which the total amount of UNGB as of DOPT **does not** exceed \$20 million. In determining whether UNGB exceed \$20 million, recovery of DUEC is determined under PBGC Operating Policy **8.2-1 Valuation and Allocation of Recoveries**.

Termination initiation date (“TID”) means –

- A. for a plan that terminates in a distress termination under ERISA § 4041(c), the last date on which any notice of intent to terminate is issued to any affected party other than PBGC; or
- B. for a plan that terminates in an involuntary termination under ERISA § 4042 (even if the plan administrator had filed a notice of intent to terminate the plan in a distress termination), the date on which PBGC issues a notice of determination that the plan will be involuntarily terminated. In the absence of such a notice, the termination initiation date is the date on which PBGC's Director, or his or her designee, authorizes the initiation of proceedings to terminate the plan under ERISA § 4042.

Valuation DUEC Recovery means the value defined in **section D** of this policy.

Valuation Plan Assets means the sum of (a) the Valuation DUEC Recovery, and (b) the value at DOPT of all other plan assets (i.e., stocks, bonds, accounts, and other tangible or intangible plan assets).

D. Determination of Valuation DUEC Recovery

Valuation DUEC Recovery is the value determined by multiplying (a) the DUEC for a plan by (b) the section 4062(c) recovery ratio. The Valuation DUEC Recovery is added to the plan's other assets to determine the Valuation Plan Assets, which are used for the section 4044 allocation.

The section 4062(c) recovery ratio is determined as follows:

1. Non-SPDRR Plans – The section 4062(c) recovery ratio is the DUEC Recovery divided by the plan's total DUEC.
2. SPDRR Plans – The section 4062(c) recovery ratio is the "Small Plan DUEC Recovery Ratio" ("SPDRR"). The SPDRR is determined using PBGC's DUEC recovery experience over a prior five-year period (see **section E** below).

PBGC still completes the valuation and allocation of recoveries for every plan pursuant to PBGC Operating Policy **8.2-1 Valuation and Allocation of Recoveries**. The DOPT values generated by this process provide the data for the determination of SPDRR's that will be used by PBGC in subsequent fiscal years.

E. Determination of the SPDRR

The SPDRR for a particular plan is calculated using the PBGC's actual DUEC Recovery experience for all plans for which (1) the TID falls during the five full fiscal year period ending with the third fiscal year preceding the fiscal year in which falls the TID of the plan for which the SPDRR is being determined, and (2) PBGC has determined the value of its recoveries under ERISA § 4062(c), as of the SPDRR calculation date.

For example, the SPDRR used to determine the Valuation DUEC Recovery for a plan with a TID in FY 2007 is calculated using PBGC DUEC Recovery experience in Fiscal Years 2000 through 2004.

$$\text{The SPDRR for a fiscal year} = \frac{\text{Sum of DUEC Recoveries in the SPDRR period}}{\text{Sum of DUEC in the SPDRR period}}$$

The "SPDRR for a fiscal year" applies to all SPDRR plans with a TID in that fiscal year.

The "SPDRR period" means the 5 full fiscal years ending with the third fiscal year preceding the fiscal year in which the TID occurs.

Once the SPDRR for a fiscal year is calculated, it is fixed. It will not, for example, be updated to include an additional plan for which the recovery determination is completed after the SPDRR calculation date. Recoveries for any such plan will be included in subsequent SPDRR calculations. Additionally, the SPDRR will not be adjusted to reflect a subsequent adjustment to the value of any recovery for a plan. Instead, such adjustment will be reflected in SPDRR calculations made after the date of the adjustment. PBGC reserves the right to reconsider the above in the event of extenuating circumstances.

Previous Editions

[6.7-2 DUEC Recovery Amounts 1st Ed. - Outdated](#)

[Top of Page](#)

7.2-1 Definition of Rental Property as a Trade or Business

Edition	1st Edition
Issue Date	07/29/1997
Transmittal	Transmittal 50
Contact	ASK PPD

In this policy

- [A. Scope](#)
- [B. Purpose](#)
- [C. Policy](#)

A. Scope

This policy applies in any case in which PBGC must make a controlled group determination. It was originally issued into the OPO Policy Manual on June 11, 1980; it is being re-issued into the PBGC Operating Policy Manual with no substantive changes.

B. Purpose

The purposes of this policy are:

1. To establish PBGC's definition of rental property as a trade or business for inclusion in the controlled group; and
2. To set PBGC policy for including the value of the rental property with the net worth of the controlled group.

C. Policy

1. Definition

PBGC will consider rental property as a trade or business when one or more persons owning the property claim business expense deductions and/or depreciation for the property when filing its Federal tax return.

2. Value to be Used

- a.) Where business expense deductions and/or depreciation are claimed for the entire property, the total market value of the property will be added to the net worth of the controlled group.
- b.) Where only a portion of the property is being claimed as a business expense deduction and/or depreciation, the total market value of the property will be determined and only the percentage of the total market value equal to the portion of the claim will be added to the net worth of the controlled group.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/7_2_1_1st.htm
(07/29/1997).

7.5-1 Determination and Assessment of Employer Liability Against Non-Bankrupt Liable Persons Under Terminated Single-Employer Plans

Edition	1st Edition
Issue Date	11/27/1996
Transmittal	Transmittal 42
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. Policy Statement](#)

A. Background

This policy statement establishes procedures for use in the determination and assessment of employer liability against non-bankrupt liable persons under terminated single-employer plans. This new policy expedites the determination and assessment of employer liability, while ensuring that PBGC's determinations are, from both a legal and a factual standpoint, sufficiently documented and supported.

B. Scope and Effective Date

This policy statement applies to all employer liability determinations and assessments and demands for payment that are pending on the effective date or are commenced thereafter against non-bankrupt liable persons under terminated single-employer plans. Notwithstanding any contrary indication herein, PBGC may in appropriate cases commence civil actions to recover employer liability before or after the amount of employer liability has been determined. PBGC may also make arrangements with liable persons, or potentially liable persons, for the consensual resolution of employer liability. PBGC will decide whether to commence civil actions or consider consensual arrangements on a case-by-case basis according to the facts and circumstances of each case.

This policy is effective when issued.

C. Definitions

- 1. Appeals Board** means the board established pursuant to 29 CFR part 4003.
- 2. Benefit Liabilities** means the benefits of employees and their beneficiaries under the plan as defined in section 4001(a)(16) of ERISA, and regulations promulgated thereunder.
- 3. Collective Net Worth** means the collective net worth of liable persons as provided in section 4062(d)(1) of ERISA, and regulations promulgated thereunder.
- 4. Employer Liability** means the amount of unfunded benefit liabilities ("UBLs") as defined in section 4001(a)(18) of ERISA, and regulations promulgated thereunder.
- 5. Initial Benefit Determination ("IDL")** means the determination under section 4022 of ERISA with respect to the benefit entitlement of participants and beneficiaries issued by PBGC pursuant to 29 CFR part 4003.
- 6. Liable Persons** means all persons who are, or may be treated as, contributing sponsors of terminated single-employer plans or members of their controlled groups.

D. Policy Statement

PBGC will determine and assess employer liability pursuant to the following rules:

1. Determinations of Employer Liability and Collective Net Worth

PBGC will determine employer liability pursuant to section 4001(a)(18) of ERISA; i.e., the amount of UBLs is the excess (if any) of the value of the benefit liabilities under the plan (determined on the basis of assumptions prescribed by the PBGC for purposes of section 4044 of ERISA), over the current value of the assets of the plan (determined in accordance with the requirements of 29 CFR part 4044).

PBGC need **not** postpone making this determination until after it has issued IDLs to participants and beneficiaries. Rather, PBGC may proceed in accordance with part D.2 of this policy as soon as it has developed a sufficiently documented and supported administrative record for its determination. The Office of the General Counsel will review employer liability determinations for their legal sufficiency.

PBGC will determine the collective net worth of liable persons in accordance with section 4062(d) of ERISA and regulations promulgated thereunder.

2. Assessment and Demand for Payment of Employer Liability

After PBGC has determined employer liability in accordance with part D.1 of this policy, it will, as necessary, take the following action to recover employer liability.

Step 1 PBGC will issue to each liable person a notification and request for payment of liability. PBGC will include a statement that if a liable person believes that the amount of employer liability exceeds collective net worth, then the person must notify PBGC and proceed in accordance with 29 CFR § 4062.6. PBGC will also include a statement that PBGC will prescribe commercially reasonable terms for payment of liability that exceeds thirty percent (30) of collective net worth, and a statement of administrative appeal rights under 29 CFR part 4003.

Step 2 PBGC will issue a demand letter for any unpaid liability **after** the expiration of time to file an appeal or, if an appeal is filed, **after** a liability decision by the Appeals Board is issued.¹ The demand letter will include a statement that PBGC will prescribe commercially reasonable terms for payment of liability that exceeds thirty percent (30) of collective net worth.

Note 1: PBGC will issue a demand letter **immediately** upon determining the amount of employer liability and/or initiate a civil action to collect employer liability if PBGC believes that its ability to assert or collect employer liability is in jeopardy.

Step 3 After PBGC has issued a demand letter as provided in Step No. 2, if PBGC has determined the collective net worth of liable persons, it will impose a lien upon the assets of the liable person(s). The amount of PBGC's lien, which may be as much as the amount of the liability, shall be limited to thirty percent (30) of the collective net worth.

Step 4 If a liable person fails or refuses to pay the amount of employer liability after the imposition of a lien, PBGC may bring a civil action to enforce its lien.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/7_5_1st.htm
(11/27/1996).

[Top of Page](#)

8.2-1 Valuation and Allocation of Recoveries

Edition	6th Edition
Issue Date	10/01/2012
Transmittal	Transmittal 2012-10
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. Valuation of Recoveries](#)
- [E. Claim Amounts and Priority](#)
- [F. Allocation of Recoveries](#)
- [G. Special Rules](#)
- [H. Case Processing](#)

Example

A. Background

PBGC asserts claims for [► Due and Unpaid Employer Contributions](#) ("DUEC"), [► Unfunded Benefit Liabilities](#) ("UBL"), and unpaid premiums (including Termination Premiums), against a contributing sponsor and its controlled group members with respect to terminated plans sponsored by a member of the controlled group. Recoveries on these claims reimburse PBGC for its losses and are used for determining the amounts in PBGC's financial statements. Also, PBGC shares a portion of its recoveries with plan [► participants](#) and [► beneficiaries](#), with recovery amounts used to determine their benefits.

The DUEC claim is a plan asset and is asserted on behalf of the plan under [► ERISA §§ 4042\(d\) and 4062\(c\)](#). The portion of the recovery allocated to the DUEC claim can affect (1) the value of plan assets allocated under ERISA § 4044, (2) the determination of the ERISA § 4062(c) Recovery Ratio used to calculate DUEC recovery amounts for plans with [► Unfunded Nonguaranteed Benefits](#) ("UNG") that do not exceed \$20 million (see ERISA § 4044(f)), and (3) the amount of PBGC's UBL claim under ERISA § 4062(b).

The UBL claim is a corporate asset of PBGC. Recoveries allocated to this claim can affect (1) the Section 4022(c) amount that PBGC pays to participants under ERISA § 4022(c), (2) the determination of the [► Small Plan Average Recovery Ratio](#) ("SPARR"), used to determine the Section 4022(c) amount paid under plans with UNG that do not exceed \$20 million (see ERISA § 4022(c)(3)(A-B)), and (3) PBGC's net losses for financial statements.

Unpaid premiums owed to PBGC are an asset of PBGC's revolving fund. The portion of the recovery allocated to the unpaid premium claim affects PBGC's financial statements.

PBGC's recoveries are valued and allocated among the claims pursuant to the rules in this Policy. First, PBGC determines a starting value for the recovery as of the receipt date (or expected receipt date). Then, PBGC discounts the recovery value(s) to the plan [► termination date](#). Finally, PBGC allocates the total recovery value among PBGC's claims (according to the claims' priority status and other rules) as of the plan termination date. Where two or more plans within the same controlled group terminate together (e.g., during the same bankruptcy proceeding, even if the termination dates are not the same), PBGC's claims for the various plans are generally aggregated. (See [section F.4.](#))

The values determined under this Policy may differ from those used for financial statement purposes.

B. Scope and Effective Date

This [► policy statement](#) applies to PBGC-trusteed plans. As it is primarily a restatement of existing policies, most of the rules contained herein have been effective for many years (see the [► Pension Protection Act](#) enacted as part of the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203). This sixth edition of this Policy is effective upon issuance and applies to all valuation and allocation of recoveries completed on or after the issuance date.

C. Definitions

Date of Plan Termination (DOPT) means the [termination date](#) determined in accordance with [ERISA § 4048](#).

Date of Trusteeship (DOTR) means the date on which PBGC becomes statutory trustee of a terminated plan. This is either the date of the last signature on an agreement for termination of the plan between PBGC and the plan administrator, or the entry date of the court order (or other date as established by court order) in a termination under ERISA § 4042(c).

Due and Unpaid Employer Contributions (DUEC) means the amounts required to be contributed to the plan pursuant to ERISA §§ 302 and 303 and IRC §§ 412 and 430 as of [DOPT](#), but not contributed by that date. Liability for this claim is owed to PBGC as statutory trustee upon termination of the plan, pursuant to ERISA §§ 4042(d) and 4062(c). While the literal language of ERISA § 4062(c), as amended by the Pension Protection Act of 2006 (PPA), refers to “shortfall amortization charges” and “waiver amortization charges,” PBGC believes the amended language was incorrectly drafted. Therefore, PBGC construes ERISA § 4062(c) as referring to the same liability as under the pre-[PPA](#) provision – i.e., liability for due and unpaid minimum required contributions.

Premium means any unpaid flat rate or variable rate premium amount required under ERISA § 4006(a)(3)(A)(1) and (a)(3)(E), § 4007, and applicable PBGC regulations, and includes Termination Premiums, as applicable, under [section F.2.b](#).

Recovery Valuation Group (RVG) means the interdepartmental group responsible for reviewing all large and complex recovery valuations as described in Paragraph [H](#) of this Policy.

Termination Premium means the premium owed pursuant to ERISA § 4006(a)(7) and applicable PBGC regulations, and addressed in [section F.2.b](#).

Unfunded Benefit Liabilities (UBL) means the excess, as of the DOPT, of (a) the total value of a plan's benefit liabilities determined in accordance with 29 CFR part 4044, subpart B, over (b) the fair market value of the plan's assets determined in accordance with ERISA § 4044(a) and 29 CFR § 4044.41(b). The UBL and [DUEC](#) values used for purposes of the recovery valuation and allocation process are those in the Pension Information Profile (PIP) for a plan.

D. Valuation of Recoveries

1. Determination of Starting Value.

a. **General Rule.** PBGC determines a recovery’s “starting value” using the fair market value of the recovery (or PBGC’s best estimate of such value) as of the date on which PBGC receives or expects to receive payment or on a date soon thereafter (the “Starting Value Date”). In cases in which portions of PBGC’s recovery are received on multiple, separate dates, PBGC will determine the starting value for each component of the recovery as of the date it is (or is expected to be) received. (E.g., if the recovery includes two separate cash distributions, a stock distribution, and a note payable in installments over ten years, PBGC would determine a starting value for each of these four components.) If PBGC knows, or in its best estimate expects, that it will receive no recovery, PBGC will determine a \$0 recovery value. In appropriate cases, the valuation may include estimated amounts.

In rare cases, PBGC’s staff may be able to reasonably assign a monetary value to all or a portion of its recovery but may not be able to reasonably estimate when the distribution to PBGC of that recovery will take place. In such a case, PBGC staff shall value the recovery (or the applicable portion of that recovery) using an estimated payment date that is two years after the date on which PBGC performs its valuation and allocation of recoveries (see [section H.2](#)).

b. **Offset for Expenses.** In appropriate cases the value of a recovery can be reduced by clearly identifiable, commercially reasonable expenses incurred in obtaining the recovery -- e.g., expenses that would reasonably be incurred in seeking recoveries outside of bankruptcy. These would include expenses related to assistance from outside parties, such as outside counsel, industry specialists, investment bankers, expert witnesses and actuarial contractors. Recoveries shall not be reduced by PBGC’s direct or indirect internal administrative or overhead expenses (e.g., salaries of PBGC employees). PBGC staff shall provide (1) a brief description of the service provided in obtaining the recovery, (2) the amount of payment, and (3) the date of payment. Each expense amount shall be discounted to [DOPT](#) (using the PBGC Select Rate). (If there are multiple plans with different DOPTs, the amount(s) will be discounted using the PBGC Select Rate in effect as of the DOPT of whichever plan terminated latest.)

2. Discounting of Value(s) to DOPT.

The value of a recovery under a terminated plan is discounted from the Starting Value Date to DOPT, using the PBGC Select Rate in effect as of DOPT. (The PBGC Select Rate is the rate published in 29 C.F.R. part 4044, Appendix B, first column (it) – i.e., the interest rate used for valuing benefits during the first 20-25 years after DOPT.)

In a case involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding) but do not have the same termination date, PBGC will initially discount the recovery value(s) to the DOPT of whichever plan terminated latest (“Allocation Date”), using the PBGC Select Rate in effect as of that date. PBGC will, as of that date, perform its allocation of recoveries to all plans under [section F](#) of this policy. For recoveries allocated to

plan(s) with earlier termination date(s), PBGC will discount the allocated recovery a second time to the earlier DOPT(s), using the PBGC Select Rate(s) in effect as of those earlier DOPT(s).

E. Claim Amounts and Priority

1. **In General.** The amounts of the ▶DUEC, ▶UBL, and premium claims shall be the amounts as of ▶DOPT. The claims shall be based on the best available estimates. In bankruptcy cases, each claim shall be classified by its priority.
2. **Secured Claims.** The value of a secured claim depends upon the facts and circumstances. In no event shall the amount allocated to a particular secured claim exceed the value of the collateral.
3. **Premium Claims.** Premium claims do not include penalties, and are treated as general unsecured claims.
4. **Other Plan Claims.** In general, where a plan has claims other than DUEC claims (e.g., amounts required to be contributed to the plan pursuant to legal commitments such as plan agreements, trust agreements, or collective-bargaining agreements; or a fiduciary-breach claim), these claims are treated in the same way as DUEC claims for purposes of the allocation under **section F**. However, a different treatment may be appropriate depending on the facts and circumstances.

In cases involving recoveries on plan claims other than DUEC, the amount of recovery for each type of claim (DUEC claim, fiduciary-breach claim, contract claim, or other type of plan claim) should be separately identified. Thus, even if DUEC and other plan claims of the same priority have shared in recoveries or been combined as "DUEC" in the application of **sections F.2(c), (d), and (f.i)**, they should be separated in the report of allocation results.

See also **section H.2.a**, requiring that cases involving plan claims other than DUEC be processed by the date on which ▶OBA needs recovery information to complete its actuarial case valuation.

F. Allocation of Recoveries

1. **In General.** The allocation of recoveries to claims for ▶DUEC, ▶UBL, and unpaid premiums occurs as of the plan's ▶DOPT. (See **section D.2** for cases involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding) but do not have the same termination date.)

PBGC uses the methodology described in this Paragraph F unless it is determined that the allocation rules in Paragraph F should not apply under the facts and circumstances of a particular case, in which case the recoveries may be allocated on a facts-and-circumstances basis. The RVG Chairperson must concur in any such allocation.

2. Method for Allocating Recoveries to Claims

- a. **Post-DOPT contributions.** Amounts that are paid to the plan as ordinary contributions after DOPT are treated as a recovery and are allocated entirely to the DUEC claim (first to secured DUEC, then to priority DUEC, and last to any general unsecured DUEC). If the post-DOPT contributions exceed the plan's DUEC claim, the excess is not allocated to the DUEC claims of other plans in the controlled group; instead, the excess is allocated to the plan's UBL claim.

Because ▶CFRD's calculation of the UBL claim in the PIP already takes into account any post-DOPT contributions, no further adjustment to the UBL claim is necessary for such contributions.

- b. **Termination premiums.** Termination Premiums are included as premium claims in the valuation and allocation process if PBGC has compromised its Termination Premium claims as part of a global settlement amount and either of the following apply:

- (i) The sponsor and any controlled group members have liquidated, but outside of any bankruptcy or insolvency proceeding (whether under Chapter 7 or Chapter 11 of the Bankruptcy Code or under a similar state or other law); or
- (ii) The sponsor or one or more of its controlled group members is continuing in business after a distress test 3 or distress test 4 termination or a termination that occurred during a reorganization under Chapter 11 of the Bankruptcy Code or under any similar state or other law.

Termination Premiums are excluded from the valuation and allocation process in all other cases, except (1) cases in which the total recovery exceeds 100% of all claims combined, in which case only the recovery amount above the UBL shall be allocated to the termination premium claim, or (2) other unusual cases in which the Chief of Negotiations and Restructuring ("CNR") determines that they should be included.

- c. **Secured Claims.** Recoveries shall be allocated first to any secured claims in order of their priority. If the value of the recovery is not sufficient to cover secured claims of equal priority, the value shall be allocated pro-rata based on the

amounts of such secured claims. In no event shall the amount allocated to a particular secured claim exceed the value of the collateral (or, if less, of the secured claim).

- d. **Priority Bankruptcy Claims.** Any recovery value remaining after the allocation to secured claims shall be allocated to priority bankruptcy claims in order of their priority. Except in highly unusual circumstances, the UBL claim for purposes of this allocation shall be treated as having no priority. If the value of the recovery is not sufficient to cover claims of equal priority, the value shall be allocated pro-rata based on the amounts of such claims.
- e. **Adjust UBL Claim.** Since DUEC recovery (as well as recovery on other plan claims) affects the amount of the remaining UBL, the UBL claim must be reduced by the amount of any recoveries allocated to DUEC (except post-DOPT contribution amounts) or such other claims in subparagraphs **2(c)**, and **(d)** above.
- f. **Allocate Pro-Rata to Remaining Claims.** Allocate the remaining recovery amount pro-rata among DUEC, UBL, Unpaid Premium, and any other claims (e.g., fiduciary-breach claims) as of the DOPT.
 - i. **Pro-Rata Allocation to General Unsecured DUEC.** Determine the amount of the recovery for DUEC (or other plan claims) as of the DOPT using the following equation:

$$\text{DUEC Recovery} = \frac{[\text{TC} - \sqrt{(\text{TC}^2 - 4 \times \text{TR} \times \text{DUEC})}]}{2}$$

Where:

- **TC** equals total amount of claims (DUEC, UBL and Unpaid Premiums, including Termination Premiums (where applicable)), as of the DOPT to which the recovery is being allocated.
- **TR** equals total net recovery (determined as of the DOPT) being allocated.
- **DUEC** equals the total DUEC claims (or other plan claims) as of the DOPT to which the recovery is being allocated.

- ii. **Adjust UBL Claim.** Since DUEC recovery (as well as recovery on other plan claims) affects the amount of the remaining UBL, the UBL claim must be reduced by the amount of any recovery allocated to DUEC (or such other claims) determined in Subparagraph **2(f)(i)** above.
- iii. **Allocate Remaining Recovery Amount Pro-Rata.** Allocate the remaining recovery amount pro-rata as of the DOPT between the remaining non-DUEC claims (in most cases this will be the general unsecured UBL and premium claims, including Termination Premium claims where applicable).
3. **Multiple Settlements.** When PBGC recoveries on its claims result from settlements with more than one company or bankruptcy estate, the recovery values shall be combined and allocated to PBGC's various claims as of DOPT.
4. **Multiple Plans.** For allocation of recoveries in cases involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding, even if the termination dates are not the same), PBGC will aggregate claims of the same priority, and allocate to the claims according to the methodology in **section F.2**. If, after allocation to the claims of highest priority, there is any remaining recovery value, PBGC will allocate the excess to the next priority level of claims, and so on. Thus, in a case involving two plans, with Plan A having a secured claim of \$1,000 and a priority DUEC claim of \$1,000, and Plan B having no secured claims and a priority DUEC claim of \$1,000, PBGC would allocate a recovery value of \$2,000 as follows: \$1,500 to Plan A (\$1,000 to the secured claim and \$500 to the priority DUEC claim) and \$500 to Plan B (to the priority DUEC claim).

G. Special Rules

1. **Large Plan Exception.** If the plan is a non-►SPARR plan (i.e., the plan has ►UNGB greater than \$20 million) and the value of the recovery changes significantly between the date when PBGC staff completes the valuation and allocation (see **section H.2**) and the date when PBGC computes the total Section 4022(c) amount for the plan, the CNR, in consultation with the Deputy Director for Operations ("DDO"), may decide to revalue the recovery as of a later date for the purpose of determining Title IV benefits (guaranteed benefits plus any additional benefits to which plan assets are allocated pursuant to ►ERISA section 4044 and 29 ►CFR part 4044) and the total Section 4022(c) amount for the plan. The exception for these rare cases is in addition to the exception provided in **section G.2** below.
2. **Mistake of Fact or Extraordinary Material Change of Circumstances.** Subsequent adjustments to the value of recoveries shall be made only in situations in which the valuation was based on a material mistake of fact or there has been an extraordinary material change of circumstances. An example of such a mistake would be an employer's having substantial assets that were

not taken into account at the time the recoveries were valued. An example of an extraordinary material change of circumstances would be a substantial unexpected recovery in a legal action pertaining to a terminated and trustee pension plan. The RVG shall determine whether a valuation was based on a material mistake of fact or whether there has been an extraordinary material change of circumstances concerning a valuation, and whether or not to adjust the recovery value. Where the RVG Chairperson concludes that there has been a material mistake of fact or an extraordinary material change of circumstances, and that the valuation should be changed, the RVG shall determine an adjusted recovery value. RVG determinations under this paragraph are subject to the approval of the CNR (and the DDO in the case of non-SPARR plans).

3. **Subsequent Insufficiencies.** In the case of a plan that is sufficient for guaranteed benefits as of the termination date, and subsequently becomes insufficient as described in ERISA § 4041(c)(3)(C)(ii), the value of PBGC's net recoveries on its claims for ▶ DUEC, unfunded benefit liabilities and unpaid premiums shall be determined as of the date of the subsequent insufficiency as described in ERISA § 4062(b)(1)(B) (using as the discount rate the PBGC Select Rate in effect as of that date).

H. Case Processing

1. **Responsibilities.** The Corporate Finance and Restructuring Department ("CFRD") has lead responsibility for completing the recovery valuation and allocation process. The Office of Chief Counsel ("OCC"), Financial Operations Department ("FOD"), and ▶ OBA shall provide assistance on financial, legal, and other matters as appropriate.
2. **Recovery Valuation and Allocation Due Date.** CFRD shall complete the recovery valuation and allocation for each terminated plan in the processing period first occurring after all significant uncertainties regarding the value of recoveries are removed, but in any event no later than:
 - a. For non-▶ SPARR plans (and any plans that have non-▶ DUEC plan claims, such as fiduciary-breach claims), the date when the information is needed for OBA to complete the actuarial case valuation;
 - b. For SPARR plans, 36 months after the plan's ▶ DOTR.

Processing Periods. CFRD will process cases in batches. Processing periods for completing batches of cases will occur no less frequently than annually, provided the timeframe described in **section 2.a** and **b** is met.

Excessive Uncertainties. In rare and unusual circumstances where excessive uncertainties make it unreasonable to value recoveries within the timeframe above, CFRD and OCC may prepare a recommendation to the RVG Chairperson to delay the due date. The RVG Chairperson is responsible for determining whether there are excessive uncertainties for purposes of the recovery valuation and allocation and whether to delay the due date.

3. Recovery Valuation Group

- a. The RVG consists of representatives from CFRD, OCC, OBA, FOD, and other units of PBGC as appropriate. The RVG Chairperson is designated by the CNR.
- b. RVG concurrence is required for the following cases:
 1. Cases that, as of the ▶ DOPT, involve total UBL of more than \$25 million for all terminated plans sponsored by the same controlled group (determined using the best available information as of the date when the RVG completes its valuation and allocation and assuming a zero value for DUEC);
 2. Cases presenting issues that are significant, complex, or novel.
 3. Cases involving a recovery valuation and allocation that occurs later than the due date prescribed in **section H.2.a** and **b**.

Any issues unresolved by the RVG shall be referred to the CNR for resolution.

Example

Valuation and allocation of combined recoveries from a bankrupt entity in a case involving one plan with post-DOPT contributions

A. Assumptions	<u>Plan 1</u>
1. ▶ Date of Plan Termination (DOPT)	12/31/2010
2. Select Rate at DOPT	4.48%
3. Allocation Date ¹	12/31/2010

4. Discount Factor applicable to
discount from Allocation Date to
plan's respective DOPT² 1.0000

	<u>First Combined</u> <u>Recovery</u> <u>(RECOV-1)</u>	<u>Second</u> <u>Combined</u> <u>Recovery</u> <u>(RECOV-2)</u>
5. Starting Value of Combined Recoveries	\$215.00	\$300.37
6. Starting Value Date (Date Recoveries Received)	07/01/2011	12/31/2011
7. Discount Factor Applicable to discount to Allocation Date	.9784	.9571
	<u>First Combined</u> <u>Expense</u> <u>(EXP-1)</u>	
8. Combined Expenses Incurred	\$100.00	
9. Date Expenses Incurred	07/01/2011	
10. Discount Factor Applicable to discount to Allocation Date	.9784	

Note 1: Allocation Date = DOPT, or in the case of multiple DOPTs, the latest DOPT.

Note 2: Because this example does not involve multiple plans with different DOPTs, there is no additional discounting. For purposes of completeness, the example includes the discount-factor step, applying a factor of 1.0000 to the recovery.

B. Claims (as of each plan's DOPT)	<u>Plan 1</u>
1. Gross DUEC ³	\$1,000.00
2. Secured ▶DUEC Claim (perfected 430(k) or 412(n) liens) ^{4 5}	\$0.00
3. Unsecured Priority DUEC: Administrative Priority (Code § 507(a)(2)) ⁶	\$100.00
4. Unsecured Priority DUEC: 180-Day DUEC Claim ⁷	\$0.00
5. General Unsecured UBL	\$5,000.00
6. General Unsecured Premium ⁸	\$ 50.00
7. Total Claims	\$6,050.00
8. Post-DOPT Contributions ⁹	\$100.00

Note 3: In general, where the plan has claims other than DUEC claims -- e.g., a fiduciary-breach claim -- these are included as DUEC for purposes of the valuation and allocation process. See [section E.4](#) of Policy. The pro rata allocation to each type of claim should, however, be separately identified. (Only that portion of the DUEC recovery that relates to missed required contributions is used for purposes of calculating the SPDRR under ▶ERISA § 4044(f).)

Note 4: The secured DUEC claim reflects the amount (up to the value of the collateral) perfected against total controlled group, including non-debtor controlled group members. For cases in which PBGC has a secured claim and PBGC's liens include those filed against non-bankrupt controlled group members, interest on the secured claim will continue to apply post-bankruptcy petition date of the plan sponsor.

Note 5: If there are secured claims other than DUEC, they also would be included here and in allocation step C.5. In order for the recovery methodology to work, however, RVG staff must keep track of the pro rata allocation to each type of claim, because recoveries allocated to non-DUEC are not used for reducing DUEC claims of lower priority or for adjusting the general unsecured **UBL** claim in step C.7.

Note 6: If there are priority claims other than DUEC (e.g., a priority claim for post-petition date premiums), they also would be included here and in allocation step C.6. In order for the recovery methodology to work, however, RVG staff must keep track of the pro rata allocation to each type of claim, because recoveries allocated to non-DUEC are not used for reducing DUEC claims of lower priority or for adjusting the general unsecured UBL claim in step C.7.

Note 7: For cases in which PBGC has a secured claim, the RVG will consult with **OCC** on whether that claim supersedes any 180-day DUEC priority claim that PBGC may have.

Note 8: In this example, Termination Premiums are excluded from the valuation and allocation process, as this case does not fall within the circumstances described under **section F.2.b** of the Policy.

Termination Premiums claims are included for those cases involving a global settlement and either of the following apply: The sponsor and controlled group members liquidated, but outside of any bankruptcy or insolvency proceeding; or the sponsor or one or more of its controlled group members is continuing in business after a distress test 3 or 4 or occurred during a reorganization under Chapter 11 of the Bankruptcy Code. In cases where Termination Premiums are included, the model adds the Termination Premiums amount with the regular premiums amount and allocates to the combined claim; however, for bookkeeping purposes, PBGC will keep track of the pro-rata allocations to each claim and the RVG will report to FOD the amount(s) allocated to Termination Premiums.

Note 9: Post-DOPT Contributions are not used to reduce UBL any further, as the UBL is already reduced to account for the expected DUEC recovery, which includes Post-DOPT Contributions. In this example, the \$100 of post-DOPT contributions has already been discounted to DOPT.

C. Procedures

Recovery Calculation Spreadsheet

1. Determine Total Recovery Amount at Allocation Date
 - a. Discount RECOV-1 to Allocation Date: $\$215.00 * .9784 = \210.35
 - b. Discount RECOV-2 to Allocation Date: $\$300.37 * .9571 = \287.49
 - c. Sum RECOV-1 and RECOV-2: $\$210.35 + \$287.49 = \mathbf{\$497.84}$

2. Determine Total Expense Amount at Allocation Date
 - a. Discount EXP-1 to Allocation Date: $\$100.00 * .9784 = \97.84
 - b. Sum EXP-1: **\$97.84**

3. Determine Total Net Recovery Amount at Allocation Date (TR)
 - a. Subtract Total Expense Amount at Allocation Date from Total Recovery Amount at Allocation Date:
 $= \$497.84 - \$97.84 = \mathbf{\$400.00}$

Recovery Allocation Spreadsheet

4. Determine Net DUEC Claim
 - a. Subtract Post-DOPT Contributions from Gross DUEC Claim:
 $= \$1,000.00 - \$100.00 = \mathbf{\$900.00}$

5. Allocate Recovery to Secured DUEC Claim

a. Determine Secured DUEC Claims Remaining after Reduction of Post-DOPT Contributions.

$$\begin{aligned} &= \text{the greater of (Secured DUEC Claim less Post-DOPT Contributions) or } \$0.00: \\ &= \$0.00 - \$100 = -\$100.00, \mathbf{\$0.00} \end{aligned}$$

b. Determine Recovery for Combined Secured DUEC Claim

$$\begin{aligned} &= \text{the lesser of (Secured DUEC Claim less Post-DOPT Contributions) or Total Net Recovery Amount at Allocation Date} \\ &= \mathbf{\$0.00} \end{aligned}$$

c. Allocate Total Net Recovery Amount at Allocation Date to Secured DUEC Claim:

$$\begin{aligned} &= \text{Recovery for Combined Secured DUEC Claim} \times \frac{(\text{Secured DUEC Claim for Plan})}{(\text{Combined Secured DUEC Claim})} \\ &= \$0.00 * (\$0.00 / \$0.00) = \mathbf{\$0.00} \end{aligned}$$

d. Determine Remaining Recovery Amount by subtracting (Recovery for Combined Secured DUEC Claim from Total Net Recovery Amount at Allocation Date):

$$= \$400.00 - \$0.00 = \mathbf{\$400.00}$$

6. Allocate Recovery to Unsecured Priority DUECs

a. Determine Unsecured Priority DUECs

$$\begin{aligned} &= (\text{Unsecured Admin Priority DUEC Claim} + \text{Unsecured 180-day DUEC Claim}) \\ &= (\$100.00 + \$0.00) \\ &= \mathbf{\$100.00} \end{aligned}$$

b. Determine whether Post-DOPT Contributions should be allocated to Unsecured Priority DUECs

$$\begin{aligned} &= \text{Post-DOPT Contributions less Secured DUEC Claim} \\ &= \$100.00 - \$0.00 \\ &= \mathbf{\$100} \end{aligned}$$

c. Determine Unsecured Priority DUEC Claims remaining after reduction of Post-DOPT Contributions

$$\begin{aligned} &= \text{Unsecured Priority DUECs} - \text{Post-DOPT Contributions Allocated to Unsecured Priority DUECs} \\ &= \$100 - \$100 \\ &= \mathbf{\$0} \end{aligned}$$

d. Determine Recovery for Unsecured Priority DUEC Claims

$$\begin{aligned} &= \text{the lesser of Combined Unsecured Priority DUEC Claims or Remaining Recovery Amount (lesser of } \$0.00 \text{ and } \$400.00\text{)} \\ &= \mathbf{\$0.00} \end{aligned}$$

e. Allocate Total Net Recovery Amount at Allocation Date to Unsecured Priority DUEC Claims:

$$\begin{aligned} &= \text{Recovery for Unsecured Priority DUEC Claim} \times \frac{(\text{Unsecured Priority DUEC Claim for Plan})}{(\text{Combined Unsecured Priority DUEC Claim})} \\ &= \$0.00 * (\$0.00/\$0.00) = \mathbf{\$0.00} \end{aligned}$$

f. Determine new Remaining Recovery Amount by subtracting Unsecured Priority DUEC Claims from previous Remaining Recovery Amount:

$$= \$400.00 - \$0.00 = \mathbf{\$400.00}$$

7. Reduce General Unsecured UBL Claims at DOPT by Recoveries allocated to Secured and Unsecured Priority DUEC Claims:

a. General Unsec. UBL Claims at DOPT - Secured DUEC Claims Recovery – Unsecured Priority DUEC Recovery: \$5,000.00

$$- \$0.00 - \$0.00 = \$5,000.00$$

8. Calculate Recovery for Combined General Unsecured DUEC Claim

Where:

$$\begin{aligned} \text{Total Recovery (TR)} &= \$400.00 \\ \text{Gross DUEC} &= \$1,000.00 \\ \text{Combined General Unsecured DUEC Claim (DUEC)} &= \text{Net DUEC} - \text{Secured DUEC Claim Recovery} - \\ &\quad \text{Unsecured Priority DUEC Claim} \\ &= \$900.00 - \$0.00 - \$0.00 = \$900.00 \\ \text{Total Remaining Claims (TC)} &= \text{Reduced Unsec. UBL Claims at DOPT} + \\ &\quad \text{Combined General Unsecured DUEC Claim} + \\ &\quad \text{Unpaid Premium Claim as of DOPT} \\ &= \$5,000.00 + \$900.00 + \$50.00 = \$5,950.00 \end{aligned}$$

a. Determine Recovery for Combined General Unsecured DUEC Claim:

$$\frac{\text{TC} - \sqrt{(\text{TC}^2) - 4 \times \text{TR} \times \text{DUEC}}}{2} = \frac{\$5,950.00 - \sqrt{(\$5,950.00^2) - 4 \times \$400.00 \times \$900.00}}{2} = \$61.13$$

9. Allocate General Unsecured DUEC Recovery

a. Allocate General Unsecured DUEC Recovery

$$\begin{aligned} &= \text{Recovery for Combined General Unsecured DUEC Claim} \times \frac{\text{General Unsecured DUEC Claim for Plan}}{\text{Combined General Unsecured DUEC Claim}} \\ &= \$61.13 \times (\$900.00 / \$900.00) = \$61.13 \end{aligned}$$

10. Determine Remaining Recovery Amount

a. Determine new Remaining Recovery Amount

$$\begin{aligned} &\text{Old Remaining Recovery Amount} - \text{Recovery for Combined Gen. Unsecured DUEC Claim} \\ &= \$400.00 - \$61.13 = \$338.87 \end{aligned}$$

11. Determine Adjusted General Unsecured UBL Claim

a. Subtract Discounted Unsecured DUEC Recovery at DOPT from Unsecured UBL Claim:

$$= \$5,000.00 - \$61.13 = \$4,938.87$$

12. Determine Combined Remaining UBL and Premium Claims

a. Adjusted General Unsecured UBL Claim + Unpaid Premium Claims as of DOPT

$$= \$4,938.87 + \$50.00 = \$4,988.87$$

13. Allocate Recovery to General Unsecured UBL Claims

$$\begin{aligned} \text{a. } &= \text{Remaining Recovery} \times \frac{\text{(Adj. General Unsecured UBL Claim for Plan}}{\text{Combined Remaining UBL and Premium Claims)}} \\ &= \$338.87 \times (\$4,938.87 / \$4,988.87) \\ &= \$335.47 \end{aligned}$$

14. Allocate Recovery to Premium Claims

$$\begin{aligned} \text{a. } &= \text{Remaining Recovery} \times \frac{\text{(Unpaid Premium Claim for Plan)}}{\text{Combined Remaining UBL and Premium Claims}}} \\ &= \end{aligned}$$

= \$338.87 x (\$50.00 / \$4,988.87)

= **\$3.40**

15. Summary of Claims and Recoveries

a. Total Allocated DUEC Claims at DOPT:

= Secured DUEC Recovery + Unsecured Priority DUEC Recovery + General Unsecured DUEC Recovery

= \$0.00 + \$0.00 + \$61.13

= **\$61.13**

b. Allocated General Unsecured UBL Recovery at DOPT

= **\$335.47**

c. Allocated Premium Recovery at DOPT

= **\$3.40**

16. Discount Recoveries to DOPT:

a. (Discount Total Allocated DUEC Recoveries at DOPT) and add Post-DOPT Contribution DUEC Recoveries

= (\$61.13 x 1.000) + \$100.00

= \$61.13 + \$100.00

= **\$161.13**

b. Discount Allocated General Unsecured UBL Recovery to DOPT

= \$355.47 x 1.0000

= **\$335.47**

c. Discount Premium Recoveries to DOPT

= \$3.40 x 1.0000

= **\$3.40**

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:

Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.

http://intranet/standards_manuals/manuals/policy/8_2_1_6th.htm

(10/01/2012).

Previous Editions

[8.2-1 Valuing Recoveries 1st Ed. - Outdated](#)

[8.2-1 Valuing Recoveries 2nd Ed. - Outdated](#)

[8.2-1 Valuing Recoveries 3rd Ed. - Outdated](#)

[8.2-1 Valuation and Allocation of Recoveries 4th Ed. - Outdated](#)

[8.2-1 Valuation and Allocation of Recoveries 5th Ed. - Outdated](#)

8.2-1 Valuation and Allocation of Recoveries

Edition	6th Edition
Issue Date	10/01/2012
Transmittal	Transmittal 2012-10
Contact	ASK PPD

In this policy

- [**A. Background**](#)
- [**B. Scope and Effective Date**](#)
- [**C. Definitions**](#)
- [**D. Valuation of Recoveries**](#)
- [**E. Claim Amounts and Priority**](#)
- [**F. Allocation of Recoveries**](#)
- [**G. Special Rules**](#)
- [**H. Case Processing**](#)

[Example](#)

[Appendix A](#)

A. Background

PBGC asserts claims for Due and Unpaid Employer Contributions ("DUEC"), Unfunded Benefit Liabilities ("UBL"), and unpaid premiums (including Termination Premiums), against a contributing sponsor and its controlled group members with respect to terminated plans sponsored by a member of the controlled group. Recoveries on these claims reimburse PBGC for its losses and are used for determining the amounts in PBGC's financial statements. Also, PBGC shares a portion of its recoveries with plan participants and beneficiaries, with recovery amounts used to determine their benefits.

The DUEC claim is a plan asset and is asserted on behalf of the plan under ERISA §§ 4042(d) and 4062(c). The portion of the recovery allocated to the DUEC claim can affect (1) the value of plan assets allocated under ERISA § 4044, (2) the determination of the ERISA § 4062(c) Recovery Ratio used to calculate DUEC recovery amounts for plans with Unfunded Nonguaranteed Benefits ("UNGEB") that do not exceed \$20 million (see ERISA § 4044(f)), and (3) the amount of PBGC's UBL claim under ERISA § 4062(b).

The UBL claim is a corporate asset of PBGC. Recoveries allocated to this claim can affect (1) the Section 4022(c) amount that PBGC pays to participants under ERISA § 4022(c), (2) the determination of the Small Plan Average Recovery Ratio ("SPARR"), used to determine the Section 4022(c) amount paid under plans with UNGEB that do not exceed \$20 million (see ERISA § 4022(c)(3)(A-B)), and (3) PBGC's net losses for financial statements.

Unpaid premiums owed to PBGC are an asset of PBGC's revolving fund. The portion of the recovery allocated to the unpaid premium claim affects PBGC's financial statements.

PBGC's recoveries are valued and allocated among the claims pursuant to the rules in this Policy. First, PBGC determines a starting value for the recovery as of the receipt date (or expected receipt date). Then, PBGC discounts the recovery value(s) to the plan termination date. Finally, PBGC allocates the total recovery value among PBGC's claims (according to the claims' priority status and other rules) as of the plan termination date. Where two or more plans within the same controlled group terminate together (e.g., during the same bankruptcy proceeding, even if the termination dates are not the same), PBGC's claims for the various plans are generally aggregated. (See [section F.4.](#))

The values determined under this Policy may differ from those used for financial statement purposes.

B. Scope and Effective Date

This policy statement applies to PBGC-trusted plans. As it is primarily a restatement of existing policies, most of the rules contained herein have been effective for many years (see the Pension Protection Act enacted as part of the Omnibus Budget Reconciliation Act of 1987, P.L. 100-203). This sixth edition of this Policy is effective upon issuance and applies to all valuation and allocation of recoveries completed on or after the issuance date.

C. Definitions

Date of Plan Termination (DOPT) means the termination date determined in accordance with ERISA § 4048.

Date of Trusteeship (DOTR) means the date on which PBGC becomes statutory trustee of a terminated plan. This is either the date of the last signature on an agreement for termination of the plan between PBGC and the plan administrator, or the entry date of the court order (or other date as established by court order) in a termination under ERISA § 4042(c).

Due and Unpaid Employer Contributions (DUEC) means the amounts required to be contributed to the plan pursuant to ERISA §§ 302 and 303 and IRC §§ 412 and 430 as of DOPT, but not contributed by that date. Liability for this claim is owed to PBGC as statutory trustee upon termination of the plan, pursuant to ERISA §§ 4042(d) and 4062(c). While the literal language of ERISA § 4062(c), as amended by the Pension Protection Act of 2006 (PPA), refers to “shortfall amortization charges” and “waiver amortization charges,” PBGC believes the amended language was incorrectly drafted. Therefore, PBGC construes ERISA § 4062(c) as referring to the same liability as under the pre-PPA provision – i.e., liability for due and unpaid minimum required contributions.

Premium means any unpaid flat rate or variable rate premium amount required under ERISA § 4006(a)(3)(A)(1) and (a)(3)(E), § 4007, and applicable PBGC regulations, and includes Termination Premiums, as applicable, under [section F.2.b.](#)

Recovery Valuation Group (RVG) means the interdepartmental group responsible for reviewing all large and complex recovery valuations as described in [Paragraph H](#) of this Policy.

Termination Premium means the premium owed pursuant to ERISA § 4006(a)(7) and applicable PBGC regulations, and addressed in [section F.2.b](#).

Unfunded Benefit Liabilities (UBL) means the excess, as of the DOPT, of (a) the total value of a plan's benefit liabilities determined in accordance with 29 CFR part 4044, subpart B, over (b) the fair market value of the plan's assets determined in accordance with ERISA § 4044(a) and 29 CFR § 4044.41(b). The UBL and DUEC values used for purposes of the recovery valuation and allocation process are those in the Pension Information Profile (PIP) for a plan.

D. Valuation of Recoveries

1. Determination of Starting Value.

- a. **General Rule.** PBGC determines a recovery's "starting value" using the fair market value of the recovery (or PBGC's best estimate of such value) as of the date on which PBGC receives or expects to receive payment or on a date soon thereafter (the "Starting Value Date"). In cases in which portions of PBGC's recovery are received on multiple, separate dates, PBGC will determine the starting value for each component of the recovery as of the date it is (or is expected to be) received. (E.g., if the recovery includes two separate cash distributions, a stock distribution, and a note payable in installments over ten years, PBGC would determine a starting value for each of these four components.) If PBGC knows, or in its best estimate expects, that it will receive no recovery, PBGC will determine a \$0 recovery value. In appropriate cases, the valuation may include estimated amounts.

In rare cases, PBGC's staff may be able to reasonably assign a monetary value to all or a portion of its recovery but may not be able to reasonably estimate when the distribution to PBGC of that recovery will take place. In such a case, PBGC staff shall value the recovery (or the applicable portion of that recovery) using an estimated payment date that is two years after the date on which PBGC performs its valuation and allocation of recoveries (see [section H.2](#)).

- b. **Offset for Expenses.** In appropriate cases the value of a recovery can be reduced by clearly identifiable, commercially reasonable expenses incurred in obtaining the recovery -- e.g., expenses that would reasonably be incurred in seeking recoveries outside of bankruptcy. These would include expenses related to assistance from outside parties, such as outside counsel, industry specialists, investment bankers, expert witnesses and actuarial contractors. Recoveries shall

not be reduced by PBGC's direct or indirect internal administrative or overhead expenses (e.g., salaries of PBGC employees). PBGC staff shall provide (1) a brief description of the service provided in obtaining the recovery, (2) the amount of payment, and (3) the date of payment. Each expense amount shall be discounted to DOPT (using the PBGC Select Rate). (If there are multiple plans with different DOPTs, the amount(s) will be discounted using the PBGC Select Rate in effect as of the DOPT of whichever plan terminated latest.)

2. **Discounting of Value(s) to DOPT.** The value of a recovery under a terminated plan is discounted from the Starting Value Date to DOPT, using the PBGC Select Rate in effect as of DOPT. (The PBGC Select Rate is the rate published in 29 C.F.R. part 4044, Appendix B, first column (it) – i.e., the interest rate used for valuing benefits during the first 20-25 years after DOPT.)

In a case involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding) but do not have the same termination date, PBGC will initially discount the recovery value(s) to the DOPT of whichever plan terminated latest (“Allocation Date”), using the PBGC Select Rate in effect as of that date. PBGC will, as of that date, perform its allocation of recoveries to all plans under [section F](#) of this policy. For recoveries allocated to plan(s) with earlier termination date(s), PBGC will discount the allocated recovery a second time to the earlier DOPT(s), using the PBGC Select Rate(s) in effect as of those earlier DOPT(s).

E. Claim Amounts and Priority

1. **In General.** The amounts of the DUEC, UBL, and premium claims shall be the amounts as of DOPT. The claims shall be based on the best available estimates. In bankruptcy cases, each claim shall be classified by its priority.
2. **Secured Claims.** The value of a secured claim depends upon the facts and circumstances. In no event shall the amount allocated to a particular secured claim exceed the value of the collateral.
3. **Premium Claims.** Premium claims do not include penalties, and are treated as general unsecured claims.
4. **Other Plan Claims.** In general, where a plan has claims other than DUEC claims (e.g., amounts required to be contributed to the plan pursuant to legal commitments such as plan agreements, trust agreements, or collective-bargaining agreements; or a fiduciary-breach claim), these claims are treated in the same way as DUEC claims for purposes of the allocation under [section F](#). However, a different treatment may be appropriate depending on the facts and circumstances.

In cases involving recoveries on plan claims other than DUEC, the amount of recovery for each type of claim (DUEC claim, fiduciary-breach claim, contract claim, or other type of plan claim) should be separately identified. Thus, even if DUEC and other plan claims of the same priority have shared in recoveries or been combined as "DUEC" in the application of [sections F.2\(c\), \(d\), and \(f.i\)](#), they should be separated in the report of allocation results.

See also [section H.2.a](#), requiring that cases involving plan claims other than DUEC be processed by the date on which OBA needs recovery information to complete its actuarial case valuation.

Note: (May X, 2021) When PBGC pursues a claim for fiduciary breach separately from its global claim against the plan sponsor, PBGC treats the recoveries on the fiduciary breach claim as plan assets. OGC will provide their best estimate (including any pertinent details such as a payment schedule) of the recovery amount and AED will value that amount as of DOPT and add it to the DOPT value of plan assets. The fiduciary breach claim and the recovery amount are not treated as DUEC and are exempt from CFRD's recovery valuation, in accordance with the decision by OBA, OGC, and CFRD documented in the January 4, 2016 email in Appendix A.

F. Allocation of Recoveries

1. **In General.** The allocation of recoveries to claims for DUEC, UBL, and unpaid premiums occurs as of the plan's DOPT. (See [section D.2](#) for cases involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding) but do not have the same termination date.)

PBGC uses the methodology described in this Paragraph F unless it is determined that the allocation rules in Paragraph F should not apply under the facts and circumstances of a particular case, in which case the recoveries may be allocated on a facts-and-circumstances basis. The RVG Chairperson must concur in any such allocation.

2. **Method for Allocating Recoveries to Claims**

- a. **Post-DOPT contributions.** Amounts that are paid to the plan as ordinary contributions after DOPT are treated as a recovery and are allocated entirely to the DUEC claim (first to secured DUEC, then to priority DUEC, and last to any general unsecured DUEC). If the post-DOPT contributions exceed the plan's DUEC claim, the excess is not allocated to the DUEC claims of other plans in the controlled group; instead, the excess is allocated to the plan's UBL claim.

Because CFRD's calculation of the UBL claim in the PIP already takes into account any post-DOPT contributions, no further adjustment to the UBL claim is necessary for such contributions.

- b. **Termination premiums.** Termination Premiums are included as premium claims in the valuation and allocation process if PBGC has compromised its Termination Premium claims as part of a global settlement amount and either of the following apply:
 - (i) The sponsor and any controlled group members have liquidated, but outside of any bankruptcy or insolvency proceeding (whether under Chapter 7 or Chapter 11 of the Bankruptcy Code or under a similar state or other law); or
 - (ii) The sponsor or one or more of its controlled group members is continuing in business after a distress test 3 or distress test 4 termination or a termination that occurred during a reorganization under Chapter 11 of the Bankruptcy Code or under any similar state or other law.

Termination Premiums are excluded from the valuation and allocation process in all other cases, except (1) cases in which the total recovery exceeds 100% of all claims combined, in which case only the recovery amount above the UBL shall be allocated to the termination premium claim, or (2) other unusual cases in which the Chief of Negotiations and Restructuring ("CNR") determines that they should be included.

- c. **Secured Claims.** Recoveries shall be allocated first to any secured claims in order of their priority. If the value of the recovery is not sufficient to cover secured claims of equal priority, the value shall be allocated pro-rata based on the amounts of such secured claims. In no event shall the amount allocated to a particular secured claim exceed the value of the collateral (or, if less, of the secured claim).
- d. **Priority Bankruptcy Claims.** Any recovery value remaining after the allocation to secured claims shall be allocated to priority bankruptcy claims in order of their priority. Except in highly unusual circumstances, the UBL claim for purposes of this allocation shall be treated as having no priority. If the value of the recovery is not sufficient to cover claims of equal priority, the value shall be allocated pro-rata based on the amounts of such claims.
- e. **Adjust UBL Claim.** Since DUEC recovery (as well as recovery on other plan claims) affects the amount of the remaining UBL, the UBL claim must be reduced by the amount of any recoveries allocated to DUEC (except post-DOPT contribution amounts) or such other claims in subparagraphs [2\(c\)](#), and [\(d\)](#) above.

f. **Allocate Pro-Rata to Remaining Claims.** Allocate the remaining recovery amount pro-rata among DUEC, UBL, Unpaid Premium, and any other claims (e.g., fiduciary-breach claims) as of the DOPT.

(i) **Pro-Rata Allocation to General Unsecured DUEC.** Determine the amount of the recovery for DUEC (or other plan claims) as of the DOPT using the following equation:

$$\text{DUEC Recovery} = \frac{[\text{TC} - \sqrt{(\text{TC}^2 - 4 \times \text{TR} \times \text{DUEC})}]}{2}$$

Where:

- **TC** equals total amount of claims (DUEC, UBL and Unpaid Premiums, including Termination Premiums (where applicable)), as of the DOPT to which the recovery is being allocated.
- **TR** equals total net recovery (determined as of the DOPT) being allocated.
- **DUEC** equals the total DUEC claims (or other plan claims) as of the DOPT to which the recovery is being allocated.

(ii) **Adjust UBL Claim.** Since DUEC recovery (as well as recovery on other plan claims) affects the amount of the remaining UBL, the UBL claim must be reduced by the amount of any recovery allocated to DUEC (or such other claims) determined in Subparagraph [2\(f\)\(i\)](#) above.

(iii) **Allocate Remaining Recovery Amount Pro-Rata.** Allocate the remaining recovery amount pro-rata as of the DOPT between the remaining non-DUEC claims (in most cases this will be the general unsecured UBL and premium claims, including Termination Premium claims where applicable).

3. **Multiple Settlements.** When PBGC recoveries on its claims result from settlements with more than one company or bankruptcy estate, the recovery values shall be combined and allocated to PBGC's various claims as of DOPT.

4. **Multiple Plans.** For allocation of recoveries in cases involving two or more plans within the same controlled group that terminate together (e.g., during the same bankruptcy proceeding, even if the termination dates are not the same), PBGC will aggregate claims of the same priority, and allocate to the claims according to the methodology in [section F.2](#). If, after allocation to the claims of highest priority, there is any remaining recovery value, PBGC will allocate the excess to the next priority level of claims, and so on. Thus, in a case involving two plans, with Plan A having a secured claim of \$1,000 and a priority DUEC claim of \$1,000, and Plan B having no secured claims and a priority DUEC claim of \$1,000, PBGC would allocate a recovery

value of \$2,000 as follows: \$1,500 to Plan A (\$1,000 to the secured claim and \$500 to the priority DUEC claim) and \$500 to Plan B (to the priority DUEC claim).

G. Special Rules

1. **Large Plan Exception.** If the plan is a non-SPARR plan (i.e., the plan has UNGB greater than \$20 million) and the value of the recovery changes significantly between the date when PBGC staff completes the valuation and allocation (see [section H.2](#)) and the date when PBGC computes the total Section 4022(c) amount for the plan, the CNR, in consultation with the Deputy Director for Operations (“DDO”), may decide to revalue the recovery as of a later date for the purpose of determining Title IV benefits (guaranteed benefits plus any additional benefits to which plan assets are allocated pursuant to ERISA section 4044 and 29 CFR part 4044) and the total Section 4022(c) amount for the plan. The exception for these rare cases is in addition to the exception provided in [section G.2](#) below.
2. **Mistake of Fact or Extraordinary Material Change of Circumstances.** Subsequent adjustments to the value of recoveries shall be made only in situations in which the valuation was based on a material mistake of fact or there has been an extraordinary material change of circumstances. An example of such a mistake would be an employer's having substantial assets that were not taken into account at the time the recoveries were valued. An example of an extraordinary material change of circumstances would be a substantial unexpected recovery in a legal action pertaining to a terminated and trustee pension plan. The RVG shall determine whether a valuation was based on a material mistake of fact or whether there has been an extraordinary material change of circumstances concerning a valuation, and whether or not to adjust the recovery value. Where the RVG Chairperson concludes that there has been a material mistake of fact or an extraordinary material change of circumstances, and that the valuation should be changed, the RVG shall determine an adjusted recovery value. RVG determinations under this paragraph are subject to the approval of the CNR (and the DDO in the case of non-SPARR plans).
3. **Subsequent Insufficiencies.** In the case of a plan that is sufficient for guaranteed benefits as of the termination date, and subsequently becomes insufficient as described in ERISA § 4041(c)(3)(C)(ii), the value of PBGC's net recoveries on its claims for DUEC, unfunded benefit liabilities and unpaid premiums shall be determined as of the date of the subsequent insufficiency as described in ERISA § 4062(b)(1)(B) (using as the discount rate the PBGC Select Rate in effect as of that date).

H. Case Processing

1. **Responsibilities.** The Corporate Finance and Restructuring Department (“CFRD”) has lead responsibility for completing the recovery valuation and allocation process. The

Office of Chief Counsel (“OCC”), Financial Operations Department (“FOD”), and OBA shall provide assistance on financial, legal, and other matters as appropriate.

2. Recovery Valuation and Allocation Due Date. CFRD shall complete the recovery valuation and allocation for each terminated plan in the processing period first occurring after all significant uncertainties regarding the value of recoveries are removed, but in any event no later than:

- a. For non-SPARR plans (and any plans that have non-DUEC plan claims, such as fiduciary-breach claims), the date when the information is needed for OBA to complete the actuarial case valuation;
- b. For SPARR plans, 36 months after the plan’s DOTR.

Processing Periods. CFRD will process cases in batches. Processing periods for completing batches of cases will occur no less frequently than annually, provided the timeframe described in [section 2.a](#) and [b](#) is met.

Excessive Uncertainties. In rare and unusual circumstances where excessive uncertainties make it unreasonable to value recoveries within the timeframe above, CFRD and OCC may prepare a recommendation to the RVG Chairperson to delay the due date. The RVG Chairperson is responsible for determining whether there are excessive uncertainties for purposes of the recovery valuation and allocation and whether to delay the due date.

3. Recovery Valuation Group

- a. The RVG consists of representatives from CFRD, OCC, OBA, FOD, and other units of PBGC as appropriate. The RVG Chairperson is designated by the CNR.
- b. RVG concurrence is required for the following cases:
 1. Cases that, as of the DOPT, involve total UBL of more than \$25 million for all terminated plans sponsored by the same controlled group (determined using the best available information as of the date when the RVG completes its valuation and allocation and assuming a zero value for DUEC);
 2. Cases presenting issues that are significant, complex, or novel.
 3. Cases involving a recovery valuation and allocation that occurs later than the due date prescribed in [section H.2.a](#) and [b](#).

Any issues unresolved by the RVG shall be referred to the CNR for resolution.

Example

Valuation and allocation of combined recoveries from a bankrupt entity in a case involving one plan with post-DOPT contributions

A. Assumptions	<u>Plan 1</u>
1. Date of Plan Termination (DOPT)	12/31/2010
2. Select Rate at DOPT	4.48%
3. Allocation Date ¹	12/31/2010
4. Discount Factor applicable to discount from Allocation Date to plan's respective DOPT ²	1.0000
<u>First Combined Recovery (RECOV-1)</u> <u>Second Combined Recovery (RECOV-2)</u>	
5. Starting Value of Combined Recoveries	\$215.00
6. Starting Value Date (Date Recoveries Received)	07/01/2011
7. Discount Factor Applicable to discount to Allocation Date	.9784
	.9571
<u>First Combined Expense (EXP-1)</u>	
8. Combined Expenses Incurred	\$100.00
9. Date Expenses Incurred	07/01/2011
10. Discount Factor Applicable to discount to Allocation Date	.9784

Note 1: Allocation Date = DOPT, or in the case of multiple DOPTs, the latest DOPT.

Note 2: Because this example does not involve multiple plans with different DOPTs, there is no additional discounting. For purposes of completeness, the example includes the discount-factor step, applying a factor of 1.0000 to the recovery.

B. Claims (as of each plan's DOPT)	<u>Plan 1</u>
1. Gross DUEC ³	\$1,000.00
2. Secured DUEC Claim (perfected 430(k) or 412(n) liens) ^{4 5}	\$0.00
3. Unsecured Priority DUEC: Administrative Priority (Code § 507(a)(2)) ⁶	\$100.00
4. Unsecured Priority DUEC: 180-Day DUEC Claim ⁷	\$0.00
5. General Unsecured UBL	\$5,000.00
6. General Unsecured Premium ⁸	\$ 50.00
7. Total Claims	\$6,050.00
8. Post-DOPT Contributions ⁹	\$100.00

Note 3: In general, where the plan has claims other than DUEC claims -- e.g., a fiduciary-breach claim -- these are included as DUEC for purposes of the valuation and allocation process. See [section E.4](#) of Policy. The pro rata allocation to each type of claim should, however, be separately identified. (Only that portion of the DUEC recovery that relates to missed required contributions is used for purposes of calculating the SPDRR under ERISA § 4044(f).)

Note 4: The secured DUEC claim reflects the amount (up to the value of the collateral) perfected against total controlled group, including non-debtor controlled group members. For cases in which PBGC has a secured claim and PBGC's liens include those filed against non-bankrupt controlled group members, interest on the secured claim will continue to apply post-bankruptcy petition date of the plan sponsor.

Note 5: If there are secured claims other than DUEC, they also would be included here and in allocation step C.5. In order for the recovery methodology to work, however, RVG staff must keep track of the pro rata allocation to each type of claim, because recoveries allocated to non-DUEC are not used for reducing DUEC claims of lower priority or for adjusting the general unsecured UBL claim in step C.7.

Note 6: If there are priority claims other than DUEC (e.g., a priority claim for post-petition date premiums), they also would be included here and in allocation step C.6. In order for the recovery methodology to work, however, RVG staff must keep track of the pro rata allocation to each type of claim, because recoveries allocated to non-DUEC are not used for reducing DUEC claims of lower priority or for adjusting the general unsecured UBL claim in step C.7.

Note 7: For cases in which PBGC has a secured claim, the RVG will consult with OCC on whether that claim supersedes any 180-day DUEC priority claim that PBGC may have.

Note 8: In this example, Termination Premiums are excluded from the valuation and allocation process, as this case does not fall within the circumstances described under [section F.2.b](#) of the Policy.

Termination Premiums claims are included for those cases involving a global settlement and either of the following apply: The sponsor and controlled group members liquidated, but outside of any bankruptcy or insolvency proceeding; or the sponsor or one or more of its controlled group members is continuing in business after a distress test 3 or 4 or occurred during a reorganization under Chapter 11 of the Bankruptcy Code. In cases where Termination Premiums are included, the model adds the Termination Premiums amount with the regular premiums amount and allocates to the combined claim; however, for bookkeeping purposes, PBGC will keep track of the pro-rata allocations to each claim and the RVG will report to FOD the amount(s) allocated to Termination Premiums.

Note 9: Post-DOPT Contributions are not used to reduce UBL any further, as the UBL is already reduced to account for the expected DUEC recovery, which includes Post-DOPT Contributions. In this example, the \$100 of post-DOPT contributions has already been discounted to DOPT.

C. Procedures

Recovery Calculation Spreadsheet

1. Determine Total Recovery Amount at Allocation Date
 - a. Discount RECOV-1 to Allocation Date: $\$215.00 * .9784 = \210.35
 - b. Discount RECOV-2 to Allocation Date: $\$300.37 * .9571 = \287.49
 - c. Sum RECOV-1 and RECOV-2: $\$210.35 + \$287.49 = \mathbf{\$497.84}$
2. Determine Total Expense Amount at Allocation Date
 - a. Discount EXP-1 to Allocation Date: $\$100.00 * .9784 = \97.84
 - b. Sum EXP-1: **\$97.84**
3. Determine Total Net Recovery Amount at Allocation Date (TR)
 - a. Subtract Total Expense Amount at Allocation Date from Total Recovery Amount at Allocation Date:
 $= \$497.84 - \$97.84 = \mathbf{\$400.00}$

Recovery Allocation Spreadsheet

4. Determine Net DUEC Claim

a. Subtract Post-DOPT Contributions from Gross DUEC Claim:

$$= \$1,000.00 - \$100.00 = \mathbf{\$900.00}$$

5. Allocate Recovery to Secured DUEC Claim

a. Determine Secured DUEC Claims Remaining after Reduction of Post-DOPT Contributions.

= the greater of (Secured DUEC Claim less Post-DOPT Contributions) or \$0.00:

$$= \$0.00 - \$100 = -\$100.00, \mathbf{\$0.00}$$

b. Determine Recovery for Combined Secured DUEC Claim

= the lesser of (Secured DUEC Claim less Post-DOPT Contributions) or Total Net Recovery Amount at Allocation Date

$$= \mathbf{\$0.00}$$

c. Allocate Total Net Recovery Amount at Allocation Date to Secured DUEC Claim:

$$= \text{Recovery for Combined Secured DUEC Claim} \times \frac{(\text{Secured DUEC Claim for Plan})}{(\text{Combined Secured DUEC Claim})}$$

$$= \$0.00 * (\$0.00 / \$0.00) = \mathbf{\$0.00}$$

d. Determine Remaining Recovery Amount by subtracting (Recovery for Combined Secured DUEC Claim from Total Net Recovery Amount at Allocation Date):

$$= \$400.00 - \$0.00 = \mathbf{\$400.00}$$

6. Allocate Recovery to Unsecured Priority DUECs

a. Determine Unsecured Priority DUECs

= (Unsecured Admin Priority DUEC Claim + Unsecured 180-day DUEC Claim)

$$= (\$100.00 + \$0.00)$$

$$= \mathbf{\$100.00}$$

b. Determine whether Post-DOPT Contributions should be allocated to Unsecured Priority DUECs

= Post-DOPT Contributions less Secured DUEC Claim

$$= \$100.00 - \$0.00$$

$$= \mathbf{\$100}$$

c. Determine Unsecured Priority DUEC Claims remaining after reduction of Post-DOPT Contributions

= Unsecured Priority DUECs – Post-DOPT Contributions Allocated to Unsecured Priority DUECs

= \$100 - \$100

= **\$0**

d. Determine Recovery for Unsecured Priority DUEC Claims

= the lesser of Combined Unsecured Priority DUEC Claims or Remaining Recovery Amount (lesser of \$0.00 and \$400.00)

= **\$0.00**

e. Allocate Total Net Recovery Amount at Allocation Date to Unsecured Priority DUEC Claims:

$$= \text{Recovery for Unsecured Priority DUEC Claim} \times \frac{\text{(Unsecured Priority DUEC Claim for Plan}}{\text{Combined Unsecured Priority DUEC Claim)}}$$

= \$0.00 * (\$0.00/\$0.00) = **\$0.00**

f. Determine new Remaining Recovery Amount by subtracting Unsecured Priority DUEC Claims from previous Remaining Recovery Amount:

= \$400.00 - \$0.00 = **\$400.00**

7. Reduce General Unsecured UBL Claims at DOPT by Recoveries allocated to Secured and Unsecured Priority DUEC Claims:

a. General Unsec. UBL Claims at DOPT - Secured DUEC Claims Recovery – Unsecured Priority DUEC Recovery:

= \$5,000.00 - \$0.00 - \$0.00 = **\$5,000.00**

8. Calculate Recovery for Combined General Unsecured DUEC Claim

Where:

Total Recovery (TR) = \$400.00

Gross DUEC = \$1,000.00

Combined General Unsecured DUEC	=	Net DUEC – Secured DUEC Claim Recovery – Unsecured Priority DUEC Claim
Claim (DUEC)		
	=	\$900.00 - \$0.00 - \$0.00 = \$900.00

$$\begin{aligned}
 \text{Total Remaining Claims (TC)} &= \text{Reduced Unsec. UBL Claims at DOPT} + \\
 &\quad \text{Combined General Unsecured DUEC Claim} + \\
 &\quad \text{Unpaid Premium Claim as of DOPT} \\
 &= \$5,000.00 + \$900.00 + \$50.00 = \$5,950.00
 \end{aligned}$$

a. Determine Recovery for Combined General Unsecured DUEC Claim:

$$\frac{\text{TC} - \sqrt{[(\text{TC}^2) - 4 \times \text{TR} \times \text{DUEC}]} = \frac{\$5,950.00 - \sqrt{[(\$5,950.00^2) - 4 \times \$400.00 \times \$900.00]}}{2}}{2} = \$61.13$$

9. Allocate General Unsecured DUEC Recovery

a. Allocate General Unsecured DUEC Recovery

$$\begin{aligned}
 &= \text{Recovery for Combined General Unsecured DUEC Claim} \times \frac{(\text{General Unsecured DUEC Claim for Plan})}{(\text{Combined General Unsecured DUEC Claim})} \\
 &= \$61.13 \times (\$900.00 / \$900.00) = \$61.13
 \end{aligned}$$

10. Determine Remaining Recovery Amount

a. Determine new Remaining Recovery Amount

Old Remaining Recovery Amount – Recovery for Combined Gen. Unsecured DUEC Claim

$$= \$400.00 - \$61.13 = \$338.87$$

11. Determine Adjusted General Unsecured UBL Claim

a. Subtract Discounted Unsecured DUEC Recovery at DOPT from Unsecured UBL Claim:

$$= \$5,000.00 - \$61.13 = \$4,938.87$$

12. Determine Combined Remaining UBL and Premium Claims

a. Adjusted General Unsecured UBL Claim + Unpaid Premium Claims as of DOPT

$$= \$4,938.87 + \$50.00 = \$4,988.87$$

13. Allocate Recovery to General Unsecured UBL Claims

a.

$$\begin{aligned}
 &= \text{Remaining Recovery Amount} \times \frac{(\text{Adj. General Unsecured UBL Claim for Plan})}{\text{Combined Remaining UBL and Premium Claims}} \\
 &= \$338.87 \times (\$4,938.87 / \$4,988.87) \\
 &= \mathbf{\$335.47}
 \end{aligned}$$

14. Allocate Recovery to Premium Claims

a.

$$\begin{aligned}
 &= \text{Remaining Recovery Amount} \times \frac{(\text{Unpaid Premium Claim for Plan})}{\text{Combined Remaining UBL and Premium Claims}} \\
 &= \$338.87 \times (\$50.00 / \$4,988.87) \\
 &= \mathbf{\$3.40}
 \end{aligned}$$

15. Summary of Claims and Recoveries

a. Total Allocated DUEC Claims at DOPT:

$$\begin{aligned}
 &= \text{Secured DUEC Recovery} + \text{Unsecured Priority DUEC Recovery} + \text{General Unsecured DUEC Recovery} \\
 &= \$0.00 + \$0.00 + \$61.13 \\
 &= \mathbf{\$61.13}
 \end{aligned}$$

b. Allocated General Unsecured UBL Recovery at DOPT

$$= \mathbf{\$335.47}$$

c. Allocated Premium Recovery at DOPT

$$= \mathbf{\$3.40}$$

16. Discount Recoveries to DOPT:

a. (Discount Total Allocated DUEC Recoveries at DOPT) and add Post-DOPT Contribution DUEC Recoveries

$$\begin{aligned}
 &= (\$61.13 \times 1.000) + \$100.00 \\
 &= \$61.13 + \$100.00 \\
 &= \mathbf{\$161.13}
 \end{aligned}$$

b. Discount Allocated General Unsecured UBL Recovery to DOPT

$$= \$355.47 \times 1.0000$$

= **\$335.47**

- c. Discount Premium Recoveries to DOPT
 - = $\$3.40 \times 1.0000$
 - = **\$3.40**

Appendix A:

From: Jones Taylor
Sent: Monday, January 4, 2016 6:18 PM
To: Schneider Andrea; Travia Cynthia; Traynham Aaron; Krettek Joseph; Cooper Kenneth; Hagan Nicole; Grohman Donald; Lee Jennifer A.; Hutchins Michael; Shelton Mark; Jones Michael; Bonds Quinette; Ryan Matthew
Subject: Reporting of Estimated Recoveries on Fiduciary Breach Claims to AED

On November 24, 2015, there was a discussion between OGC, AED, OCC, and CFRD – coordinated by Andrea Schneider, the Recovery Valuation Group Chairwoman – to confirm best practices for reporting PBGC recoveries for fiduciary breach claims, for purposes of AED’s determination of plan assets. The group concluded that AED generally has a system in place to interact with OGC in order to estimate and account for monies received due to fiduciary breach. This system provides accurate information and generally obviates the need for CFRD to treat estimated fiduciary breach recoveries in the way generally proposed under PBGC’s Operating Policy on Valuation and Allocation of Recoveries.

The policy provides that CFRD generally will treat monies received due to fiduciary breach as recoveries to be allocated to DUEC. The allocation methodology, however, is complex. Furthermore, CFRD is not in the best position to know if a fiduciary breach claim exists, and if one does, and what the expected recovery may be. If CFRD were to continue treating fiduciary breach recoveries as recoveries to be allocated to DUEC, this would impose an administrative burden on CFRD due to the difficulty in incorporating fiduciary breach data into pre-existing financial models and procedures.

With OCC’s input, CFRD, AED, and OGC agreed that AED would continue to coordinate directly with OGC in order to appropriately account for fiduciary breach estimates that are ultimately used in benefit determinations. CFRD agreed to provide to AED, generally around the time of its annual deliverable, a compilation of the OCC Best Estimate forms for cases involving fiduciary breach.

Previous Editions

- [8.2-1 Valuing Recoveries 1st Ed. - Outdated](#)
- [8.2-1 Valuing Recoveries 2nd Ed. - Outdated](#)
- [8.2-1 Valuing Recoveries 3rd Ed. - Outdated](#)
- [8.2-1 Valuation and Allocation of Recoveries 4th Ed. - Outdated](#)
- [8.2-1 Valuation and Allocation of Recoveries 5th Ed. - Outdated](#)

8.3-1 Locators of Lost Funds / Missing Pensions and PBGC

Edition	1st Edition
Issue Date	12/21/2017
Transmittal	Transmittal 2018-01
Last Review Date	N/A
Signed Policy	8.3-1 Locators of Lost Funds / Missing Pensions and PBGC
Contact	ASK PPD

In this policy

- [A. Background and Introduction](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. General](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background and Introduction

PBGC pays pension benefits to participants, beneficiaries, and alternate payees in trustee plans. From time to time, a trustee plan participant may be unlocatable by PBGC if a current address is not on file with the agency. PBGC provides insurer information or pays benefits to the missing participant, or beneficiaries, when they are located.

PBGC administers a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help those participants and beneficiaries find and receive the benefits being held for them. PBGC uses various methods, which currently include publishing the names of the participants in an online searchable database. The database allows individuals on their own to search for and identify a potential entitlement to a pension, when the individual suspects that there may be unpaid funds in a plan that terminated.

PBGC has long had a practice regarding unclaimed property locators (a/k/a "heir finders," "assets locators," "property locators") and the payment of fees associated with these locators. PBGC does not pay a finder's fee or otherwise cooperate with or facilitate a property finder's usage of PBGC's missing participant database. PBGC does not cooperate in the collection of fees from a payee.

Since 2003, however, PBGC has provided formal guidance on locators in its operating policy on power of attorneys ("POAs"). The guidance provides that PBGC will not allow the agent in a power of attorney to have the principal's payment mailed to anyone in an effort to collect a finder's fee.

In 2006, the Pension Protection Act expanded the missing participants program (the "Missing Participants Program") under ERISA section 4050, to open the program to most terminated defined contribution plans, certain terminated small professional defined benefit plans, and terminated multiemployer pension plans. PBGC is implementing this expansion with regulations and anticipates having the expanded program available in early 2018 (for plans that terminate after 2017).

With this program expansion, PBGC anticipates an increase in its population of unlocatable participants **and** an increased public awareness of the missing participant database due to the expanded universe of plans included in the program. As a result, PBGC may also see an increase in the number of missing participant related inquiries by property locators.

In this policy statement, PBGC is formalizing and clarifying its policies with respect to locators. This policy does not apply to locators (i.e., skip tracers, private investigators, or lawyers) that PBGC enters into an agreement with to assist PBGC in finding participants.

B. Scope and Effective Date

This policy statement applies to PBGC benefit payment operations with respect to participants, beneficiaries, and alternate payees in PBGC-trusteed plans and to benefits transferred to PBGC under the Missing Participants Program.

This policy is effective upon issuance.

C. Definitions

For purposes of this policy, the following definitions apply:

- 1. Agent.** The agent is the person who is authorized under a POA to act on behalf of the principal. The agent may also be referred to in the document as a representative, attorney-in-fact, holder, grantee or donee. (See Policy **8.4-1**.)
- 2. Probable Locator.** As determined by PBGC, a person or firm (or an employee or representative of a firm) that appears to be engaged in the business of offering to find lost property (or informing an owner about how to obtain unclaimed property) in exchange for a fee or percentage of the value of the property.

D. General

- 1. Payment of Fees Directly to Probable Locators** – PBGC will not pay any fees to a Probable Locator for locating a missing payee, such as a flat "finder's fee" or a percentage of the pension asset found. PBGC will not reimburse a customer for his having paid a finder's fee to a Probable Locator.
- 2. Payment of Fees Indirectly to Probable Locators** – PBGC will not honor a payee's request to direct his or her payment, partially or wholly, to the Probable Locator's address or to a bank account of the Probable Locator, including an account jointly titled with the customer. The only exception is where all of the conditions for a third-party payment agreement (as described in **section D.4** of Policy **6.6-2 Assignment or Alienation of Benefits**) are met.
- 3. Recognition of Probable Locator as Agent or other Authorized Representative** – PBGC will limit its recognition of a Probable Locator as Agent under a PBGC or Non-PBGC Power of Attorney. (See also **8.4-1**). PBGC will not allow the locator to designate himself (or a third party unrelated to the principal) as a beneficiary or joint annuitant, to make or change the beneficiary, or to direct the principal's payment to any account other than an account wholly owned by the principal.
- 4. Other Appropriate Action** – PBGC reserves the right to take other actions to protect the benefits of participants, beneficiaries, and alternate payees from fees and judgments sought by Probable Locators.

Concurrence, Endorsement, and Approval

Policy 8.3-1 Locators of Lost Funds / Missing Pensions and PBGC (1st Edition)		
Concurrence	Initials	Date
OBA/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	11/29/2017
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	11/29/2017
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	11/29/2017
OBA/PSD: Jennifer Messina, Director	J.L.M.	12/11/2017
OGC: Joseph Krettek, Assistant General Counsel	J.M.K.	11/29/2017
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	12/11/2017
Chief Financial Officer: Patricia Kelly	P.K.	12/11/2017
Approval		
OBA: Cathleen Kronopolus, Chief of Benefits Administration	C.K.	12/11/2017
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2018-01.</i>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/8_3_1_1st.htm
(12/21/2017).

8.3-1 Locators of Lost Funds/Missing Pensions and PBGC

Edition	2 nd edition
Issue Date	04/04/2019
Transmittal	Transmittal 2019-01
Last Review Date	N/A
Signed Policy	8.3-1 Locators and PBGC
Contact	ASK PPD

A. Background and Introduction

PBGC pays pension benefits to participants, beneficiaries, and alternate payees in trustee plans. From time to time, a trustee plan participant may be unlocatable by PBGC if a current address is not on file with the agency. PBGC pays benefits to the missing participant, or beneficiaries, when they are located.

PBGC administers a program to hold retirement benefits for missing participants and beneficiaries in terminated retirement plans and to help those participants and beneficiaries find and receive the benefits being held for them. PBGC uses various methods, which currently include publishing the names of the participants in an online searchable database. The database allows individuals on their own to search for and identify a potential entitlement to a pension, when the individual suspects that there may be unpaid funds in a plan that terminated.

PBGC has long had a practice regarding unclaimed property locators (a/k/a "heir finders," "assets locators," "property locators") and the payment of fees associated with these property locators. PBGC does not pay a finder's fee or otherwise cooperate with or facilitate a property finder's usage of PBGC's missing participant database. PBGC does not cooperate in the collection of finder's fees from a payee.

Since 2003, however, PBGC has provided formal guidance on locators in its operating policy on power of attorneys ("POAs"). The guidance provides that PBGC will not allow the agent in a power of attorney to have the principal's payment mailed to anyone in an effort to collect a finder's fee.

In 2006, the Pension Protection Act expanded the missing participants program (the "Missing Participants Program") under ERISA section 4050, to open the program to most terminated defined contribution plans, certain terminated small professional defined benefit plans, and terminated multiemployer pension plans. PBGC implemented this expanded program in early 2018.

As part of that program expansion, PBGC anticipated an ongoing increase in its population of unlocatable participants and an increased public awareness of the missing participant database due to the expanded universe of plans included in the program. As a result, PBGC anticipated an increase in the number of missing participant related inquiries by property locators.

In the first edition of this policy statement, PBGC formalized and clarified its policies with respect to property locators. This policy does not apply to property locators (i.e., skip tracers, private investigators, or lawyers) that PBGC enters into an agreement with to assist PBGC in finding participants.

In this second edition, PBGC clarifies those powers (identified in Policy 8.4-1 Power of Attorney) that it will recognize with respect to a PBGC benefit and a power of attorney naming the property locator as agent for a PBGC customer. By doing so, PBGC is revising its policy with respect to probable locators to further limit its recognition of powers to a probable locator named as agent in a power of attorney. The possible powers no longer include several previously permitted actions, including applying for benefits or changing the customer's address. Also, PBGC is specifying the list

of applicable powers for a probable locator in Operating Policy 8.4-1 Power of Attorney only, to eliminate redundancy between the two policies.

B. Scope and Effective Date

This policy statement applies to PBGC benefit payment operations with respect to participants, beneficiaries, and alternate payees in PBGC-trusted plans and to benefits transferred to PBGC under the Missing Participants Program.

This policy is effective upon issuance.

C. Definitions

For purposes of this policy, the following definitions apply:

1. **Agent.** The agent is the person who is authorized under a POA to act on behalf of the principal. The agent may also be referred to in the document as a representative, attorney-in-fact, holder, grantee or donee. (See policy 8.4-1.)
2. **Probable Locator.** As determined by PBGC, a person or firm (or an employee or representative of a firm) that appears to be engaged in the business of offering to find lost property (or informing an owner about how to obtain unclaimed property) in exchange for a fee or percentage of the value of the property.

D. General

1. **Payment of Fees Directly to Probable Locators** – PBGC will not pay any fees to a Probable Locator for locating a missing payee, such as a flat “finder’s fee” or a percentage of the pension asset found. PBGC will not reimburse a customer for his having paid a finder’s fee to a Probable Locator.
2. **Payment of Fees Indirectly to Probable Locators** – PBGC will not honor requests by a payee or his authorized representative to direct his or her payment, partially or wholly, to the Probable Locator’s address or to a bank account of the Probable Locator, including an account jointly titled with the customer. The only exception is where all of the conditions for a third-party payment agreement (as described in section D.4 of Policy 6.6-2 Assignment or Alienation of Benefits are met.
3. **Recognition of Probable Locator as Agent or other Authorized Representative** – PBGC will limit its recognition of a Probable Locator as Agent under a PBGC or Non-PBGC Power of Attorney per Policy 8.4-1 Powers of Attorney.
4. **Other Appropriate Action** – PBGC reserves the right to take other actions to protect the benefits of participants, beneficiaries, and alternate payees from fees and judgments sought by Probable Locators.

Concurrence, Endorsement, and Approval

Policy 8.3-1 Locators of Lost Funds/ Missing Pensions and PBGC (2 nd edition)		
Concurrence	Initials	Date
OBA/ASD: Jarred Scott, Supervisory Technical Reviewer	<i>JF</i>	3/6/2019
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	<i>LS</i>	2/27/19
OBA/PSD: Michelle Gray, Project Manager	<i>MG</i>	2/27/19
OBA/PSD: Jennifer Messina, Director	<i>JM</i>	3/13/19

OGC: Joseph Krettek, Assistant General Counsel	JMK	2/28/19
Endorsements		
General Counsel: Judith R. Starr	JRS	3/20/19
Chief Financial Officer: Patricia Kelly	OPK	3/28/19
Approval		
OBA: David Foley, Chief of Benefits Administration	DJF	3/20/19
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2019 - 01.</i>		

8.4-1 Power of Attorney

Edition	5th Edition
Issue Date	07/28/2017
Transmittal	Transmittal 2017-05
Last Review Date	N/A
Signed Policy	8.4-1 Power of Attorney
Contact	ASK PPD

In this policy

- [A. Background and Introduction](#)
 - [B. Scope and Effective Date](#)
 - [C. Definitions](#)
 - [D. Acceptable Powers of Attorney](#)
 - [E. Documentation Indicating Incapacity](#)
 - [F. Permitted Actions by Agents](#)
 - [G. Duration of a Power of Attorney](#)
 - [H. Miscellaneous](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background and Introduction

An individual may appoint another person(s) as an agent(s), to perform actions on his or her behalf through a document referred to as a power of attorney (POA). PBGC reviews a power of attorney to see if an agent has been granted the authority to handle a payee's benefits and transactions related to that benefit. This policy statement provides the rules that PBGC will apply regarding the acceptance and interpretation of powers of attorney and recognition of authority granted to the agent(s).

In prior editions of this policy:

- PBGC clarified that durable powers of attorney may be accepted if they are prepared using a PBGC provided form or the power of attorney meets the requirements of applicable state law; and
- Eliminated references to guardianship and conservatorships which are addressed in a separate policy statement, [8.4-2 Guardianships and Conservatorships](#).

In this edition of the policy,

- PBGC is clarifying that an agent acting under a POA whom PBGC identifies as a probable locator, will not be recognized as having authority to take certain actions with respect to PBGC pension payments, regardless of the language in the POA.

B. Scope and Effective Date

This policy statement applies to powers of attorney submitted to the agency for participants, beneficiaries, and alternate payees in PBGC-trusteed and administered plans.

Subject to the uses and limitations set forth in [Section F](#), PBGC will continue to honor POAs that it accepted before the date of this policy revision, including any PBGC Form 715 Power of Attorney accepted as a DPOA before November 13, 2003.

This policy is effective upon issuance.

C. Definitions

For purposes of this policy, the following definitions apply:

1. **Agent.** The agent is the person who is authorized under a POA to act on behalf of the principal. The agent may also be referred to in the document as a representative, attorney-in-fact, holder, grantee or donee.
2. **Capacity.** Capacity refers to the ability to make decisions and understand the action(s) one is taking. Capacity may also be referred to as competence. All persons are presumed to have the capacity to take any particular action (i.e., execute a POA or

apply for a benefit) unless medical or legal documentation is provided.

3. **Durability.** A POA is durable when it remains in effect even if the principal becomes incapacitated. Some states require specific language of durability for a POA to be durable, often referred to as a "durability clause". Other states have a presumption of durability so that a POA that is silent on its effect when the principal becomes incapacitated is presumed to be durable unless the document states otherwise.
4. **Independent Authority.** An agent with independent authority may exercise authority singly even when there are multiple agents named in a power of attorney.
5. **Joint Authority.** An agent with joint authority must act together with the other agents named in a power of attorney to exercise authority.
6. **Power of Attorney (POA).** A POA is a document that authorizes someone to act on behalf of a principal in handling his personal or financial affairs. PBGC distinguishes POAs into these three types. In this policy, the term "POA" refers to all types of POAs unless otherwise stated.
 - a. **Durable Power of Attorney (DPOA).** A durable POA is a POA that continues in effect even when the principal is incapacitated.
 - b. **Non-Durable Power of Attorney (NDPOA).** A non-DPOA is a POA that is in effect only while the principal is competent; it is invalid during any period when the principal has been determined to be incapacitated.
 - c. **Springing Durable Power of Attorney (SDPOA).** A springing DPOA is a DPOA that takes effect only upon the occurrence of a specified event, such as a determination that the principal is incapacitated.
7. **Principal.** The principal is the person who granted authority to another person to act on his or her behalf. The principal is also referred to as the grantor or donor.
8. **Probable Locator.** A person or firm (or an employee or representative of a firm) that appears to be engaged in the business of offering to find lost property (or informing an owner about how to obtain unclaimed property) in exchange for a fee or percentage of the value of the property.
9. **Revocation.** A revocation of a POA occurs when a principal who has capacity terminates the POA. The principal effects a revocation by notifying the agent(s) that the POA is no longer in effect. For PBGC to have knowledge that a POA has been revoked and is no longer in effect, PBGC must receive written notification of the revocation.
10. **Successor Agent.** An agent named in a power of attorney to act in the event the first-named agent is unable or unwilling to act. Example: If the first named agent dies and is unable to act, authority passes to the successor agent.

D. Acceptable Powers of Attorney

1. Requirements for Accepting Powers of Attorney

- a. **Non-PBGC Power of Attorney.** PBGC will accept a power of attorney that is not prepared using a PBGC form, provided the power of attorney includes:
 - i. The principal's name;
 - ii. The principal's signature;
 - iii. The agent(s) name;
 - iv. Specifies end date if the POA is of temporary duration;
 - v. Specifies the authority granted to the agent including the power to conduct some or all possible pension matters with PBGC on behalf of the principal, see **Section F**; and
 - vi. Meets the requirements of the laws of the state in which it was executed.
- b. **PBGC Power of Attorney.** PBGC will accept powers of attorney properly completed using a PBGC provided form. In addition to item i. through v. above, the PBGC Form will include the following:
 - i. Principal's Acknowledgment.
 - ii. Agent's Notice signed by the agent.
 - iii. One witness to the Principal's signature, who may not be:
 - a. An attending physician or medical service provider to principal, or relative of same;

- b. An owner or operator of health care facility in which principal is a patient or resident, or relative of same;
 - c. A Parent, sibling or child of principal, or any spouse of the parent, sibling or child; and
 - d. Agent or successor agent named in power of attorney.
- iv. Notarization of Principal's signature.

2. Recognition of Power of Attorney

- a. After PBGC has completed a review of a POA, it will respond in writing regarding whether it will recognize the POA. If PBGC recognizes a POA, it will confirm the agent(s) recognized and the authority granted under the POA. If PBGC cannot recognize a POA, it will identify the reason(s) the document will not be recognized by PBGC.
- b. If PBGC questions whether a POA is still in effect, before permitting an agent to act under a POA, PBGC may require the agent to execute an acknowledgment or affidavit affirming the power of attorney is still in effect and acknowledging his or her responsibilities as an agent.

E. Documentation Indicating Incapacity

1. Unless PBGC has been provided acceptable medical or legal documentation that a principal is incapacitated, the customer is presumed to have capacity. Assertions from other non-medical sources such as family members are insufficient to show incapacity.
2. PBGC must confirm that the principal is incapacitated before it can permit the agent under a DPOA to perform an action permitted only when the principal is incapacitated, see [section F.2](#) and [section F.3](#).
3. PBGC must confirm that the principal is incapacitated before it can recognize a springing DPOA as taking effect.
4. PBGC criteria for confirming a principal is incapacitated is:
 - a. A documented determination of incapacity from a licensed physician; or
 - b. A ruling of incapacity issued by a court of competent jurisdiction.

F. Permitted Actions by Agents

1. **Actions Permitted for All Powers of Attorney.** Subject to the limitations under [Section H.5](#), PBGC will routinely permit an agent under a POA to perform some or all of the following actions (also referred to as authorities) if the authority to do so is granted by the POA:
 - a. Apply for PBGC benefits.
 - b. Designate a beneficiary, including the selection of an optional form of benefits naming a contingent annuitant.
 - c. Change a beneficiary previously selected by the principal.
 - d. Request/receive information from PBGC pertaining to principal (ex. verification of income).
 - e. Request PBGC forms.
 - f. Respond to PBGC's requests for information or documents.
 - g. Change the address or bank account information for PBGC payments. (The principal's name must be on the bank account.)
 - h. Represent the principal before the PBGC Appeals Board.
 - i. Change federal income tax withholding.
 - j. Direct payment of a principal's payment into an account bearing the principal's name.
 - k. Delegate all or a portion of the agent's authority to another person to act on behalf of the principal to the extent permitted by the power of attorney. If it is unclear from the POA what actions the agent may delegate, [contact PPD](#) for assistance if it is necessary to determine whether the agent has delegation authority for a specific action.
2. **Actions Permitted only when Principal is Incapacitated.** PBGC will allow the holder of a DPOA to perform the following additional actions, only if they are authorized under the DPOA and the principal has been determined to be incapacitated under PBGC criteria, see [section E.3](#) above.

- a. Spousal Consent. An agent may give spousal consent (i.e., as described in PBGC Policy [5.7-5 Spousal Content \(Qualified Joint-and-Survivor Annuities\)](#)) for an incapacitated spouse (the "Principal"), even if the agent is the participant.
 - b. Third-Party Payment Agreement. An agent may execute a third-party payment agreement (i.e. as described in PBGC Policy [6.6-2 Assignment or Alienation of Benefits](#)) directing that the principal's PBGC payments be made to a third party by check or direct deposit to an account that does not have the principal's name on it. (Direction to make payments to a third party must follow the rules in [section D.4](#) of PBGC Operating Policy [6.6-2 Assignment or Alienation of Benefits](#).)
3. **Actions Permitted under Springing DPOA.** An agent under an SDPOA may only perform the actions granted in the SDPOA and listed in [section F.1](#) if the condition for the document to take effect is met (typically a determination that the principal is incapacitated). If the SDPOA becomes effective upon the incapacity of the principal and the SDPOA is silent about how to determine incapacity, PBGC criteria is used, as described in [section E.4](#). Regardless of the conditional event specified in an SDPOA, the agent may only act upon the special authorities listed in [section F.2](#) if the Principal has been determined incapacitated based on PBGC criteria as described in [section E.4](#).

G. Duration of a Power of Attorney

A POA remains in effect until the earlier of one of the following events occurs:

1. **Death.** The principal dies.
2. **Expiration.** The POA expires in accordance with express terms in the POA.
3. **Revocation.** The principal revokes the POA in writing.
4. **Agent related.** The agent and any successor dies, becomes incapacitated, or resigns.
5. **Incapacity.** The principal of a non-DPOA is determined incapacitated by medical professionals/licensed physician.

H. Miscellaneous

1. **Multiple POAs.** In some instances, multiple POAs may be submitted for one principal. The POAs may have different agents that have been granted the same or different authority. If multiple POAs relating to the same principal appear to be in conflict, PBGC will seek clarification from the principal. If necessary, PBGC may ask the principal to submit a written revocation of all other POAs except the one he or she wishes to be in effect. If the principal is incapacitated or one or more agents challenges the validity of a POA, please [contact PPD](#) for further guidance.
2. **Concurrently Effective Guardianship/Conservatorship.** When a guardian or conservator is appointed by the court for an individual with an existing DPOA (a DPOA executed by the ward while competent and before the appointment), the court may terminate the DPOA or allow it to continue in effect. Sometimes the court may provide that a guardian or conservator acting for the ward has the authority to terminate the DPOA or appoint a new agent under a new POA. Please consult with PPD when a customer appears to have a concurrently effective guardianship or conservatorship and DPOA.
3. **Revocations.** A POA will often contain language revoking previously executed POAs. A revocation of a POA can also be submitted to PBGC in a separate writing. Keep in mind that a principal who lacks capacity may not be able to revoke a previously executed POA.
4. **Checks for Validity of POA.** A staff member who questions the validity of a POA for any reason (e.g., incapacity of an individual, scope of the agent's authority, validity of a signature) should contact PPD for additional guidance.
5. **Limits on Authority of Probable Locators.**

PBGC will not permit an agent who has been identified as a probable locator to take the following actions:

- a. Designate himself (or a third party unrelated to the principal) as a beneficiary or joint annuitant;
- b. Make or change the beneficiary; and
- c. Direct payment of a principal's payment into an account wholly or jointly held by the locator-agent (or a third party unrelated to the principal), even if the principal is a joint owner.

Notwithstanding the above, PBGC will permit payment to an account of the agent if all of the conditions for a third-party payment agreement (as described in [section D.4](#) of Policy [6.6-2 Assignment or Alienation of Benefits](#)) are met, and it is the principal who enters into the agreement on his or her own behalf.

Concurrence, Endorsement, and Approval

Policy 8.4-1 Power of Attorney (5th Edition)		
Concurrence	Initials	Date
OBA/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	06/21/2017
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	06/21/2017
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	06/21/2017
OBA/PSD: Jennifer Messina, Director	L.S. for J.M.	06/22/2017
OCC: Joseph Krettek, Assistant Chief Counsel	J.M.K.	06/21/2017
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	06/21/2017
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	06/23/2017
Chief Financial Officer: Patricia Kelly	P.K.	06/26/2017
Approval		
OBA: Cathleen Kronopolus, Chief of Benefits Administration	C.K.	06/27/2017

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2017-05.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
[\(07/28/2017\).](http://intranet/standards_manuals/manuals/policy/8_4_1_5th.htm)

Previous Editions

[8.4-1 Power of Attorney and Guardianship 1st Ed. - Outdated](#)

[8.4-1 Power of Attorney and Guardianship 2nd Ed. - Outdated](#)

[8.4-1 Power of Attorney and Guardianship 3rd Ed. - Outdated](#)

[8.4-1 Power of Attorney 4th Ed. - Outdated](#)

8.4-1 Power of Attorney

Edition	6th Edition
Issue Date	04/04/2019
Transmittal	Transmittal 2019-02
Last Review Date	N/A
Signed Policy	8.4-1 Power of Attorney
Contact	ASK PPD

A. Background and Introduction

An individual may appoint another person(s) as an agent(s), to perform actions on his or her behalf through a document referred to as a power of attorney (POA). PBGC reviews a power of attorney to see if an agent has been granted the authority to handle a payee's benefits and transactions related to that benefit. This policy statement provides the rules that PBGC will apply regarding the acceptance and interpretation of powers of attorney and recognition of authority granted to the agent(s).

In prior editions of this policy:

- PBGC clarified that durable powers of attorney may be accepted if they are prepared using a PBGC provided form or the power of attorney meets the requirements of applicable state law; and
- Eliminated references to guardianship and conservatorships which are addressed in a separate policy statement, ***8.4-2, Guardianships and Conservatorships.***
- Clarified that an agent acting under a POA whom PBGC identifies as a probable locator, will not be recognized as having authority to take certain actions with respect to PBGC pension payments, regardless of the language in the POA.

In this sixth edition of this policy:

- PBGC clarifies that an agent acting under a POA whom PBGC identifies as a probable locator, will be recognized as having authority to take only certain actions with respect to PBGC pension payments, if the principal authorized those actions under a POA. Thus, PBGC further limits the permitted actions that it will recognize for agents identified as a probable locator to include several previously permitted actions, including applying for benefits, selecting an optional form of benefit, or

changing a customer's address. PBGC will no longer recognize such actions if requested by probable locators.

B. Scope and Effective Date

This policy statement applies to powers of attorney submitted to the agency for participants, beneficiaries, and alternate payees in PBGC-trusted and administered plans.

Subject to the uses and limitations set forth in Section F, PBGC will continue to honor POAs that it accepted before the date of this policy revision, including any PBGC Form 715 Power of Attorney accepted as a DPOA before November 13, 2003.

This policy is effective upon issuance.

C. Definitions

For purposes of this policy, the following definitions apply:

1. **Agent.** The agent is the person who is authorized under a POA to act on behalf of the principal. The agent may also be referred to in the document as a representative, attorney-in-fact, holder, grantee or donee.
2. **Capacity.** Capacity refers to the ability to make decisions and understand the action(s) one is taking. Capacity may also be referred to as competence. All persons are presumed to have the capacity to take any particular action (i.e., execute a POA or apply for a benefit) unless medical or legal documentation is provided.
3. **Durability.** A POA is durable when it remains in effect even if the principal becomes incapacitated. Some states require specific language of durability for a POA to be durable, often referred to as a "durability clause". Other states have a presumption of durability so that a POA that is silent on its effect when the principal becomes incapacitated is presumed to be durable unless the document states otherwise.
4. **Independent Authority.** An agent with independent authority may exercise authority singly even when there are multiple agents named in a power of attorney.
5. **Joint Authority.** An agent with joint authority must act together with the other agents named in a power of attorney to exercise authority.
6. **Power of Attorney (POA).** A POA is a document that authorizes someone to act on behalf of a principal in handling his personal or financial affairs. PBGC distinguishes POAs into these three types. In this policy, the term "POA" refers to all types of POAs unless otherwise stated.
 - a. **Durable Power of Attorney (DPOA).** A durable POA is a POA that continues in effect even when the principal is incapacitated.

- b. **Non-Durable Power of Attorney (NDPOA).** A non-DPOA is a POA that is in effect only while the principal is competent; it is invalid during any period when the principal has been determined to be incapacitated.
 - c. **Springing Durable Power of Attorney (SDPOA).** A springing DPOA is a DPOA that takes effect only upon the occurrence of a specified event, such as a determination that the principal is incapacitated.
7. **Principal.** The principal is the person who granted authority to another person to act on his or her behalf. The principal is also referred to as the grantor or donor.
8. **Probable Locator.** As determined by PBGC, a person or firm (or an employee or representative of a firm) that appears to be engaged in the business of offering to find lost property (or informing an owner about how to obtain unclaimed property) in exchange for a fee or percentage of the value of the property.
9. **Revocation.** A revocation of a POA occurs when a principal who has capacity terminates the POA. The principal effects a revocation by notifying the agent(s) that the POA is no longer in effect. For PBGC to have knowledge that a POA has been revoked and is no longer in effect, PBGC must receive written notification of the revocation.
10. **Successor Agent.** An agent named in a power of attorney to act in the event the first-named agent is unable or unwilling to act. Example: If the first named agent dies and is unable to act, authority passes to the successor agent.

D. Acceptable Powers of Attorney

1. Requirements for Accepting Powers of Attorney

- a. **Non-PBGC Power of Attorney.** PBGC will accept a power of attorney that is not prepared using a PBGC form, provided the power of attorney includes:
 - i. The principal's name;
 - ii. The principal's signature;
 - iii. The agent(s) name;
 - iv. Specifies end date if the POA is of temporary duration;
 - v. Specifies the authority granted to the agent including the power to conduct some or all possible pension matters with PBGC on behalf of the principal, see **sections F and G**; and
 - vi. Meets the requirements of the laws of the state in which it was executed.
- b. **PBGC Power of Attorney.** PBGC will accept powers of attorney properly completed using a PBGC provided form. In addition to item i. through v. above, the PBGC Form will include the following:

- i. Principal's Acknowledgment.
- ii. Agent's Notice signed by the agent.
- iii. One witness to the Principal's signature, who may not be:
 - a. An attending physician or medical service provider to principal, or relative of same;
 - b. An owner or operator of health care facility in which principal is a patient or resident, or relative of same;
 - c. A Parent, sibling or child of principal, or any spouse of the parent, sibling or child; and
 - d. Agent or successor agent named in power of attorney.
- iv. Notarization of Principal's signature.

2. Recognition of Power of Attorney

- a. After PBGC has completed a review of a POA, it will respond in writing regarding whether it will recognize the POA. If PBGC recognizes a POA, it will confirm the agent(s) named in the POA and the actions PBGC will permit the agent(s) to take pursuant to the limits in this policy and the authority granted by the POA. If PBGC cannot recognize a POA, it will identify the reason(s) the document will not be recognized by PBGC.
- b. If PBGC questions whether a POA is still in effect, before permitting an agent to act under a POA, PBGC may require the agent to execute an acknowledgment or affidavit affirming the power of attorney is still in effect and acknowledging his or her responsibilities as an agent.

E. Documentation Indicating Incapacity

1. Unless PBGC has been provided acceptable medical or legal documentation that a principal is incapacitated, the principal is presumed to have capacity. Assertions from other non-medical sources such as family members are insufficient to show incapacity.
2. PBGC must confirm that the principal is incapacitated before it can permit the agent under a DPOA to perform an action permitted only when the principal is incapacitated, see **section F.2** and **section F.3**.
3. PBGC must confirm that the principal is incapacitated before it can recognize a springing DPOA as taking effect.
4. PBGC criteria for confirming a principal is incapacitated is:
 - a. A documented determination of incapacity from a licensed physician; or
 - b. A ruling of incapacity issued by a court of competent jurisdiction.

F. Actions by Agents who are not Probable Locators

1. Actions Permitted by Powers of Attorney. PBGC will permit an agent under a POA, who is not a probable locator, to perform some or all of the following actions (also referred to as authorities) if the authority to do so is granted by the POA:

- a. Apply for PBGC benefits.
- b. Select an optional form of benefits and/or name a contingent annuitant.
- c. Designate a beneficiary, including an agent.
- d. Change a beneficiary previously selected by the principal.
- e. Request/receive information from PBGC pertaining to principal (ex. verification of income).
- f. Request PBGC forms.
- g. Respond to PBGC's requests for information or documents.
- h. Change the address or bank account information for PBGC payments. (The principal's name must be on the bank account.)
- i. Change customer's contact information, such as home address, phone number(s) and/or email.
- j. Represent the principal before the PBGC Appeals Board.
- k. Change federal income tax withholding.
- l. Direct payment of a principal's payment into an account bearing the principal's name.
- m. Delegate all or a portion of the agent's authority to another person to act on behalf of the principal to the extent permitted by the power of attorney. If it is unclear from the POA what actions the agent may delegate, contact PPD for assistance if it is necessary to determine whether the agent has delegation authority for a specific action.

2. Actions Permitted only when Principal is Incapacitated. PBGC will allow the agent of a DPOA, who is not a probable locator, to perform the following additional actions, only if the authority to do so is granted by the DPOA and the principal has been determined to be incapacitated under PBGC criteria, see **section E.4** above.

- a. Spousal Consent. An agent may give spousal consent (i.e., as described in PBGC Policy **5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)**) for an incapacitated spouse (the "Principal"), even if the agent is the participant.
- b. Third-Party Payment Agreement. An agent may execute a third-party payment agreement (i.e. as described in PBGC Policy **6.6-2 Assignment or Alienation of Benefits**) directing that the principal's PBGC payments be made to a third party by check or direct deposit to an account that does not have the principal's name on it. (Direction to make payments to a third party

must follow the rules in **section D.4** of PBGC Operating Policy **6.6-2 Assignment or Alienation of Benefits.**)

3. **Actions Permitted under Springing DPOA.** An agent under an SDPOA may only perform the actions granted in the SDPOA and listed in **section F.1 or G.1 if applicable**, if the condition for the document to take effect is met (typically a determination that the principal is incapacitated). If the SDPOA becomes effective upon the incapacity of the principal and the SDPOA is silent about how to determine incapacity, PBGC criteria is used, as described in **section E.4**. Regardless of the conditional event specified in an SDPOA, the agent may only act upon the special authorities listed in **section F.2** if the Principal has been determined incapacitated based on PBGC criteria as described in **section E.4**.

G. Actions by Agents who are Probable Locators

1. **Actions Probable Locator Agents Permitted to Take.** PBGC **will** permit an agent under a POA, whom PBGC identifies as a Probable Locator, to perform only those actions listed below (also referred to as authorities) if the authority to do so is granted by the POA:
 - a. Request/receive information from PBGC pertaining to principal (ex. verification of income).
 - b. Request PBGC forms.
 - c. Respond to PBGC's requests for information or documents.
 - d. Represent the principal before the PBGC Appeals Board.
 - e. Change federal income tax withholding.
2. **Actions Probable Locator Agents Prohibited from Taking.** PBGC **will not** permit an agent under a POA, whom PBGC identifies as a Probable Locator, to perform any of these actions listed below (also referred to as authorities) even if the authority to do so is granted by the POA:
 - a. Apply for PBGC benefits.
 - b. Select an optional form of benefits and/or name a contingent annuitant.
 - c. Designate a beneficiary, including an agent.
 - d. Change a beneficiary previously selected by the principal.
 - e. Change customer's contact information, such as home address, phone number(s) and/or email.
 - f. Direct payment of a principal's payment into an account bearing the principal's name.
 - g. Delegate all or a portion of the agent's authority to another person to act on behalf of the principal.

- h. Give spousal consent, i.e., as described in PBGC Policy **5.7-5 Spousal Content (Qualified Joint-and-Survivor Annuities)** for an incapacitated spouse (the "Principal").
- i. Execute a Third-party payment agreement (i.e. as described in PBGC Policy **6.6-2 Assignment or**

H. Duration of a Power of Attorney

A POA remains in effect until the earlier of one of the following events occurs:

1. **Death.** The principal dies.
2. **Expiration.** The POA expires in accordance with express terms in the POA.
3. **Revocation.** The principal revokes the POA in writing.
4. **Agent related.** The agent and any successor dies, becomes incapacitated, or resigns.
5. **Incapacity.** The principal of a non-DPOA is determined incapacitated by medical professionals/licensed physician.

I. Miscellaneous

1. **Multiple POAs.** In some instances, multiple POAs may be submitted for one principal. The POAs may have different agents that have been granted the same or different authority. If multiple POAs relating to the same principal appear to be in conflict, PBGC will seek clarification from the principal. If necessary, PBGC may ask the principal to submit a written revocation of all other POAs except the one he or she wishes to be in effect. If the principal is incapacitated or one or more agents challenges the validity of a POA, please contact PPD for further guidance.
2. **Concurrently Effective Guardianship/Conservatorship.** When a guardian or conservator is appointed by the court for an individual with an existing DPOA (a DPOA executed by the ward while competent and before the appointment), the court may terminate the DPOA or allow it to continue in effect. Sometimes the court may provide that a guardian or conservator acting for the ward has the authority to terminate the DPOA or appoint a new agent under a new POA. Please consult with PPD when a customer appears to have a concurrently effective guardianship or conservatorship and DPOA.
3. **Revocations.** A POA will often contain language revoking previously executed POAs. A revocation of a POA can also be submitted to PBGC in a separate writing. Keep in mind that a principal who lacks capacity may not be able to revoke a previously executed POA.
4. **Checks for Validity of POA.** A staff member who questions the validity of a POA for any reason (e.g., incapacity of an individual, scope of the agent's authority, validity of a signature) should contact PPD for additional guidance.

Concurrence, Endorsement, and Approval

Policy 8.4-1 Power of Attorney (6th edition)		
Concurrence	Initials	Date
OBA/ASD: Jarred Scott, Supervisory Technical Reviewer	JS	3/6/2019
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	LS	2/27/19
OBA/PSD: Michelle Gray, Project Manager	MG	3/7/19
OBA/PSD: Jennifer Messina, Director	JM	3/13/19
OCC: Joseph Krettek, Assistant General Counsel	JMK	2/6/19
Endorsements		
General Counsel: Judith R. Starr	JRS	3/20/19
Chief Financial Officer: Patricia Kelly	PK	3/28/19
Approval		
OBA: David Foley, Chief of Benefits Administration	DF	3/20/19
<i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2019 -02.</i>		

8.4-2 Guardianships and Conservatorships

Edition	2nd Edition
Issue Date	08/30/2016
Transmittal	Transmittal 2016-07
Signed Policy	8.4-2 Guardianships and Conservatorships
Contact	ASK PPD

In this policy

[A. Background and Introduction](#)

[B. Scope and Effective Date](#)

[C. Definitions](#)

[D. General Rule](#)

[E. Duration of Guardianships](#)

[F. Authorities](#)

[G. Miscellaneous](#)

[Concurrence, Endorsement, and Approval](#)

A. Background and Introduction

There are circumstances in which a court may appoint one or more individuals to be responsible for another through a guardianship or conservatorship because the individual lacks capacity to manage his or her own personal and/or financial affairs. When a guardian or conservator has been appointed with authority to manage financial affairs of an individual, PBGC will recognize the guardian's authority as provided by the court.

This policy statement clarifies the rules that PBGC will apply regarding its acceptance and recognition of an appointment of a conservator or guardian for purposes of managing an individual's PBGC benefits. In this policy, the term guardian will be used to refer to a guardian or conservator unless the context clearly indicates otherwise.

Previously PBGC's rules for guardianships and conservatorship were included in PBGC Operating Policy [8.4-1 Power of Attorney](#), which was revised in 2016 to describe rules solely pertaining to powers of attorney. In the first edition of this policy, PBGC provided that it would:

- Review both the court's order appointing a conservator or guardian and any letters of guardianship or conservatorship issued by the court;
- Determine the powers granted by the court to the guardian or conservator based on the content of the court issued documents;
- Convey its determination whether it will accept and recognize a guardian or conservator in writing; and
- Require an affidavit from a guardian or conservator when necessary to affirm there are no other guardians or conservators appointed for the ward.

In this second edition, PBGC clarifies that it will complete its review and make a determination with respect to a guardianship or conservatorship based on adequate court documents in the form of orders, letters or other filings.

B. Scope and Effective Date

This policy statement applies to guardianship or conservatorship documentation submitted to the agency for participants, beneficiaries, and alternate payees in PBGC-trusteed plans (PBGC customers).

This policy is effective upon issuance.

C. Definitions

For purposes of this policy, the following definitions apply:

1. **Conservator** – An individual or entity named by a court to assume responsibility to act for a ward (with authority generally limited to the ward's estate and financial affairs). Generally, a conservator is named when the court determines that the ward

lacks the capacity to make financial and/or personal decisions on his own. The court may designate multiple conservators. In some jurisdictions, courts may appoint guardians in lieu of conservators or appoint both.

2. **Guardian** – An individual or entity named by a court to assume responsibility to act for a ward. The court may designate multiple guardians. Generally, a guardian is named when the court determines that the ward lacks the capacity to make financial and/or personal decisions on his own. In some jurisdictions, courts may appoint conservators in lieu of guardians or appoint both.
3. **Independent Authority** – A guardian with independent authority may exercise authority singly even when there are multiple guardians appointed.
4. **Joint Authority** – A guardian with joint authority must act together with the other guardian(s) appointed to exercise authority.
5. **Ward** – An individual for whom a court places under the responsibility of one or more other persons. A ward is usually under the protection of a legal conservator or guardian.

D. General Rule

1. **Requirements for Guardianships.** PBGC will recognize an appointed guardian after it receives adequate court documentation that provides the following:
 - a. Ward's name.
 - b. Guardian(s) name. When a guardian is an entity (ex. Guardian Services of Ippity County), PBGC will seek, in writing from the entity, the names of one or more individuals of the entity who may interact with PBGC on behalf of the entity for the ward.
 - c. Effective date of appointment and expiration date, if any.
2. **Powers granted to the guardian.** PBGC will recognize a guardian's authority to act with respect to the ward's PBGC benefits based on the type of guardianship and authority granted by the court, see [Section F](#).
 - a. **Guardian of the estate.** A guardian of the estate is appointed by the court to handle the financial affairs or estate (property) of the ward, and will generally have authority to act with respect to the ward's PBGC benefits, although the court may specify limits to the guardian of the estate's authority.
 - b. **Guardian of the person.** A guardian of the person has authority to handle personal matters for a ward, including health care, living situation and other day-to-day matters, but generally not financial matters. However, in some jurisdictions a guardian of the person may automatically be granted some limited estate authority under certain circumstances such as when a ward has a small estate (ex. less than \$25,000) and no guardian of the estate has been appointed. Sometimes, a court will expressly grant property powers to a guardian of the person. In these situations, PBGC may require a guardian of the person to provide an affidavit acknowledging that no guardian of the estate has been appointed and confirming that the guardian of the person has limited estate authority under applicable state law because a guardian or conservator of the estate was not appointed by the court.
3. **Recognition of Guardianship**
 - a. After PBGC has completed its review and analysis of the guardianship documentation provided, it will respond in writing whether the guardian(s) will be recognized by PBGC. If PBGC will recognize the guardian(s), PBGC will confirm the name of the guardian(s) and the permitted authorities (see [Section F](#)). If there are multiple guardians named, PBGC will confirm whether the court provided independent or joint authority.

E. Duration of Guardianships

1. Unless otherwise provided by the court, a guardian's appointment ends at the earlier of the following: death of the ward, termination by the court (i.e, when the court determines that the ward has regained capacity) or upon the court's approval of a guardian's resignation.
2. Emergency or temporary guardianships may be ordered by a court. PBGC may wait for a permanent guardian to be appointed before completing its review unless the temporary guardian is immediately seeking to act on behalf of the ward.

F. Authorities

1. **Authorities Permitted for Guardian(s).** PBGC will routinely permit a guardian with full financial or "estate" authority to perform all of the following actions (referred to as authorities), unless limited by the court:

- a. Apply for PBGC benefits.
 - b. Designate a beneficiary, including the selection of an optional form of benefits naming a contingent annuitant.
 - c. Change a beneficiary previously selected by the ward.
 - d. Request/receive information from PBGC pertaining to ward.
 - e. Request PBGC forms.
 - f. Respond to PBGC's requests for information or documents.
 - g. Change the address or bank account information for PBGC payments. (The ward's name must be on the bank account.)
 - h. Represent the ward before the PBGC Appeals Board.
 - i. Change federal income tax withholding.
 - j. Direct payment of a ward's payment into an account bearing the ward's name.
 - k. Delegate all or a portion of the guardian's authority to another person to act on behalf of the ward to the extent permitted by the court order. This authority requires that the guardianship has not terminated. A delegation of authority is void if a guardianship has terminated. If the documentation from the court is silent, contact PPD for assistance if it is necessary to determine whether the guardian has delegation authority.
 - l. Waive benefits, including:
 - i. Spousal consent to the waiver of a qualified joint-and-survivor annuity; and
 - ii. Selection of an optional form of benefits that results in a reduced payment to the ward.
 - m. Request the ward's payment be paid directly to a third party including direction to send checks to a third party or deposit payments directly into an account that does not have the ward's name on it. (Direction to make payments to a third party must follow the rules in ***section D.4 of PBGC Operating Policy 6.6-2 Assignment or Alienation of Benefits***.)
2. **Authority retained by a Ward.** Typically the appointment of a guardian or conservator is made when a ward is determined by a court to be incapacitated and not able to act for herself or himself. However, in a guardianship a ward may retain some decision-making authority and PBGC will determine such authority based on the language of the court documents.

G. Miscellaneous

1. **Concurrently effective DPOA.** When a guardian is appointed by the court for an individual with an existing Durable Power of Attorney (DPOA) (executed by the ward while competent and prior to the appointment of a guardian), the court may specifically address whether the DPOA is terminated by the court. If the DPOA is not terminated by the court, the court (or applicable state law) may provide that it remains in effect and/or may provide that the guardian, acting for the ward, has the discretion to retain or terminate the DPOA or delegate various estate powers to another individual.
2. A PBGC staff member who questions a guardianship for any reason including the authenticity of submitted document or scope of authority of the guardian(s), should contact PPD for additional guidance.

Concurrence, Endorsement, and Approval

Policy 8.4-2 Guardianships and Conservatorships (2nd Edition)		
Concurrence	Initials	Date
OBA/ASD: Scott Young, Supervisory Actuary	S.Y.	07/20/2016
OBA/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	07/20/2016
OBA/OPCMD: Jennifer Messina, Director	J.M.	07/20/2016
OBA/PSD: Michelle Gray, Division Manager	M.G.	07/20/2016
OCC: Joseph Krettek, Assistant Chief Counsel	J.K.	07/20/2016
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	07/20/2016

Endorsements		
General Counsel: Judith R. Starr	J.R.S.	07/21/2016
Chief Financial Officer: Patricia Kelly	P.K.	07/22/2016
Approval		
OBA: David Foley for Cathleen Kronopolus, Chief of Benefits Administration	D.F.	07/20/2016
<p><i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2016-07.</i></p>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/8_4_2_2nd.htm
(08/30/2016).

Previous Editions

[8.4-2 Guardianships and Conservatorships 1st Ed. - Outdated](#)

[Top of Page](#)

8.5-1 Signature by Mark

Edition	2nd Edition
Issue Date	07/24/2008
Transmittal	Transmittal 2008-05
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Policy

A. Background

PBGC requires signatures on many documents that it receives. There are occasions when a payee from whom PBGC requires a signature is able only to make a mark, such as an X ("signature by mark"). PBGC accepts a signature by mark according to the conditions set forth in this policy.

B. Scope and Effective Date

This policy applies to all documents that require a signature and is effective upon issuance.

This policy applies to PBGC trustee plans.

C. Policy

1. General Rule

PBGC requires that a signature by mark be notarized, or be witnessed by at least two individuals ("witnesses") to be accepted.

- a. Notarized signatures by mark will be accepted without further witnesses or attestations.
- b. Witnessed signatures by mark will be accepted provided they meet the following conditions:
 - i. The witnesses must know the person signing by mark and must witness the signature by mark at the time the person makes the mark,
 - ii. The witnesses must sign and date the document they are witnessing, and
 - iii. At least one witness must be a "disinterested witness" and must provide a written statement that he or she is disinterested.

2. Disinterested Witness

A disinterested witness is a person that receives no direct financial benefit from the document being witnessed. For example, if a participant designates a beneficiary using a signature by mark, the beneficiary is not considered disinterested, because the designation benefits him or her financially. However, other persons, such as the beneficiary's spouse, attorney, or employee, would be considered disinterested, though they might receive an indirect benefit through the beneficiary.

3. Special rule for a power-of-attorney designation

Unless a signature by mark on a power of attorney is notarized, it must be witnessed by two persons, neither of whom is the designated representative ("Holder"). The witnesses must also meet conditions (i) and (ii) described in **section C.1.b**. Additionally, a power of attorney signed by mark must meet the requirements of **section D** of PBGC Operating Policy **8.4-1 Power of Attorney**.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:

Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.

http://intranet/standards_manuals/manuals/policy/8_5_1_2nd.htm

(07/24/08).

8.5-1 Signature by Mark 1st Ed. - Outdated

[Top of Page](#)

8.6-1 Payments to Beneficiaries

Edition	3rd Edition
Issue Date	04/30/2012
Transmittal	Transmittal 2012-01
Contact	ASK PPD

In this policy

- A. Introduction
- B. Scope and Effective Date
- C. Continuing Annuity Payments to Contingent Annuitants
- D. Payments Owed to Deceased Payees - Deaths On and After June 1, 2002
- E. Payments Owed to Deceased Payees - Deaths Before June 1, 2002
- F. Miscellaneous Rules

A. Introduction

When a participant, beneficiary or ► alternate payee under a ► QDRO dies, PBGC must determine if any death benefits or other payments are due at death, and if so, to whom payment should be made. Payments that may be due at death include, but are not limited to:

Continuing annuity payments - Annuity payments payable to a beneficiary or survivor, frequently referred to as survivor benefits, as provided under the benefit form a payee was receiving on the date of death, for example:

- An annuity for the lifetime of a surviving spouse payable under a ► qualified joint-and-survivor annuity (QJSA).
- Annuity payments for the remainder of the certain period under a 10-year ► certain-and-continuous benefit (C&C) and the payee dies before 10 years of payments have been made.

Other amounts owed - Payments as described in PBGC Policy **6.3-1 Underpayment Reimbursement and Interest Payments** owed to a deceased payee as of the date of death, such as:

- An underpayment due to the difference in estimated annuity benefits a payee received before the date of death and the final benefit that should have been paid.
- A ► lump-sum distribution of a ► de minimis benefit that was not paid before the date of death.
- Back payments owed a deceased person who was not in pay status but was due retroactive payments when he or she died.

In addition to the underpayment, PBGC may also owe continuing annuity payments as described above.

B. Scope and Effective Date

This policy provides guidance on making payments to the beneficiary or beneficiaries of a deceased participant, beneficiary or ► alternate payee. This policy is based on 29 CFR §4022.81, §4022.83, §§4022.91-95, and §§4022.101-104 and supplements PBGC Policies **5.4-7 Annuity Benefit Forms**, **5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)**, and **5.11-2 Payment of Priority Category 2 Benefits**. With this edition, PBGC is:

- Clarifying its rules on making payments to a deceased payee's next of kin.
- Confirming that benefits otherwise payable to an estate in a ► lump sum remain payable in a lump sum even if a ► §436(d) limitation on ► prohibited payments was in effect as of DOPT.
- Providing additional guidance on payment of lump-sum death benefits.
- Making formatting and minor editorial changes to the policy.

These rules apply regardless of contrary provisions in a plan, will, or similar testamentary document. This policy applies to all plans trustee by PBGC and is effective upon issuance.

C. Continuing Annuity Payments to Contingent Annuitants

1. Definitions:

- a. **Continuing annuity payments** means payments that are made when a deceased payee was receiving a benefit form that provides annuity payments which continue after the payee's death (frequently referred to as survivor benefits). The form of benefit may be a joint-life annuity, such as a qualified joint-and-survivor annuity (QJSA) or optional joint-and-survivor annuity (JSA), or a single-life annuity, such as a certain and continuous (C&C), cash-refund or installment-refund annuity.
- b. **Contingent Annuitant** means the person or entity entitled to receive continuing annuity payments. The contingent annuitant is usually the person designated by the payee (typically at retirement) or under the plan to receive continuing annuity benefits.
 - 1) **Joint-life annuities.** If the elected form of benefit is a joint-life annuity, the contingent annuitant must be a living person. The contingent annuitant for a joint-life annuity is generally designated at retirement and may not be changed after the first payment date.
 - 2) **Single-life annuities.** If the elected form of benefit is a single-life annuity, the contingent annuitant may be one or more living persons, an estate, trust, church or other organization. The contingent annuitant may be designated before or after payments begin and may subsequently be changed. When payments to a contingent annuitant under a single-life annuity, such as a C&C or cash-refund annuity, have ended, there is no longer a contingent annuitant.

For additional guidance on contingent annuitants, see PBGC Policy [5.4-7 Annuity Benefit Forms](#).

2. Payment of continuing annuity payments

- a. **Benefits in pay status.** Continuing annuity payments are payable when a deceased payee was receiving a form of benefit that provides for annuity payments to continue after the payee's death to a contingent annuitant.
- b. **Benefits not in pay status.** Continuing annuity payments generally are not payable if a benefit was not in pay status and the decedent died before his or her benefit starting date.

Note: The survivor benefit under a plan's automatic benefit form that provides for continuing annuity payments generally is not payable, if the benefit is not in pay status, even if the benefit form provides a certain period of benefits. For example, if the automatic benefit form for an unmarried participant is a 10-year C&C and the participant dies before his or her annuity starting date, survivor benefits are not payable.

- c. **Retroactive annuity starting date.** If benefits are not in pay status, PBGC will determine if the decedent was eligible for a retroactive annuity starting date under PBGC Policy [5.2-4 Annuity Starting Dates](#). If the decedent was eligible for a retroactive annuity starting date, the benefit is a benefit in pay status.

If benefits are owed due to a retroactive annuity starting date, the automatic benefit form payable under the plan or PBGC policy determines whether continuing annuity payments are due (see PBGC Policies [5.4-7 Annuity Benefit Forms](#) and [5.7-5 Spousal Consent \(Qualified Joint and Survivor Annuities\)](#)).

- d. **Contingent annuitant deceased.** If a benefit was in pay status but the contingent annuitant died before the payee, PBGC pays continuing annuity benefits as follows:

- a. **Joint-life benefit.** If the payee was receiving a joint-life benefit (e.g., a QJSA or an optional JSA), continuing annuity payments are not payable.
- b. **Single-life benefit.** Continuing annuity payments are due if the payee was receiving a single-life benefit that provides:
 - Benefits for a certain period of time (e.g., a 10-year C&C) and the certain period has not ended; or
 - Benefits until a certain amount is paid (e.g., a cash-refund or installment-refund annuity) and the full amount has not been paid.

PBGC follows the rules in [section D. Payments Owed to Deceased Payees - Deaths After June 1, 2002](#) or [section E. Payments Owed to Deceased Payees - Deaths Before June 1, 2002](#), to determine the contingent annuitant.

- e. **No contingent annuitant designation on file.** Although unusual, if a designation of a contingent annuitant is not in file, PBGC determines the contingent annuitant as follows:

- **Joint-life benefit.** PBGC determines if benefits are payable to a surviving spouse, if any, in accordance with PBGC Policy [5.7-5 Spousal Consent \(Qualified Joint and Survivor Annuities\)](#). If the benefit is not a QJSA,

PBGC makes a facts and circumstances determination on whether continuing annuity payments are payable and to whom.

- **Single-life benefit.** PBGC follows the rules in [section D. Payments Owed to Deceased Payees - Deaths After June 1, 2002](#) or [section E. Payments Owed to Deceased Payees - Deaths Before June 1, 2002](#), to determine the contingent annuitant.

f. **Unusual benefit forms.** Plans occasionally provide complex and unusual benefit forms (e.g., a straight life annuity with a ► [free surviving spouse benefit](#) ('FSSB'), a JSA with a 5-year C&C) in which it may be difficult to determine if continuing annuity payments are otherwise due and/or to whom payment should be made. When necessary, PBGC's Policy and Procedures Division (► [PPD](#)) will provide guidance in determining whether continuing annuity payments are payable and to whom.

3. **Estate as contingent annuitant for single-life benefits.** If elected by the ► [estate](#), PBGC pays annuity payments due an estate in a lump sum. PBGC discounts the annuity payments using the federal mid-term rate, determined by the Secretary of the Treasury pursuant to IRC §1274(d)(1)(C)(ii) for the month the payee died based on monthly compounding. PBGC pays the benefit in a lump sum even if the value of the benefits is non-► [de minimis](#) or a ► [§436\(d\) limitation](#) on ► [prohibited payments](#) was in effect as of ► [DOPT](#).

Example: A participant was receiving benefits in the form of a 10 C&C. The participant died in April 2007. PBGC made 74 payments of \$500 before the payee died. The estate was due the remaining 46 payments and elected to receive the payments in a lump sum. Using the federal mid-term interest rate for April 2007, 4.52%, and monthly compounding, the value of the remaining 46 payments was calculated as \$21,160.73. PBGC paid \$21,734.08 (\$21,160.73 + \$573.35 in interest for May through November) to the estate on December 1, 2007.

D. Payments Owed to Deceased Payees - Deaths On and After June 1, 2002

For deaths on or after June 1, 2002, PBGC determines the beneficiary for payments owed to a deceased payee as follows:

1. **Post-trusteeship deaths.** For deaths on or after the date of trusteeship (DOTR), PBGC makes payments in the following order:

a. **Contingent annuitant.** PBGC pays the contingent annuitant determined under [section C.](#), except as follows:

- **Alternate payee.** An ► [alternate payee](#) who is the contingent annuitant as designated by a ► [QDRO](#) is not treated as a contingent annuitant for purposes of payments owed to a deceased participant. However, the alternate payee may be the beneficiary as otherwise provided below in section D.1.
- **Expiration of single-life annuity.** If payments to a contingent annuitant under a single-life annuity, such as a ► [C&C](#) or ► [cash-refund annuity](#) have ended, there is no longer a contingent annuitant for purposes of payments owed the deceased payee. However, the individual who was the contingent annuitant may be the beneficiary as otherwise provided below in section D.1.

b. **Beneficiary designation with PBGC.** PBGC pays the beneficiary, designated after DOPT, by the payee with PBGC on a PBGC form for that purpose or other form acceptable to PBGC. If the beneficiary designated with PBGC died:

- **Before or at the same time as the payee** and an alternate beneficiary was not designated, PBGC determines the beneficiary as if no designation had been made. The payee and the designated beneficiary are considered to have died at the same time if they died within 30 days of one another due to the same event. If an alternate beneficiary survives the payee, PBGC pays the alternate beneficiary.
- **After the payee** but before receiving payment, PBGC pays the beneficiary of the designee as though the designee were a deceased payee under the rules in section D.

For payee deaths within 180 days of trusteeship see [section D.2. Deaths shortly after trusteeship](#).

c. **Surviving spouse.** PBGC pays the surviving spouse of the deceased payee. Payment will be made to the spouse even if the payee and the spouse were separated, unless PBGC receives evidence that a decree of divorce or annulment had been entered by a court.

d. **Children and descendants of deceased children.** PBGC pays the deceased payee's biological or adopted children, but not stepchildren. If the decedent had more than one child, payment will be equally divided among the children. If a child died before or after the payee, that child's share will be equally divided among his or her own children (i.e., the payee's grandchildren), if any. If a grandchild has died, payment will be made to his or her children (i.e., the payee's great grandchildren) and so on.

- e. **Parents.** PBGC pays the deceased payee's biological or adoptive parents, but not stepparents. The payment will be equally divided between the parents if both survive the child.
 - f. **Open estate of the deceased payee.** Payment is made to the payee's ►estate only if the estate is open. PBGC will not make payment directly to the beneficiaries of an open estate, even if requested by the estate administrator.
 - g. **Next of kin.** PBGC pays next of kin determined in accordance with applicable state law. If the payee lived outside of the United States, PBGC pays next of kin determined in accordance with the law of the District of Columbia (D.C.).
If there are multiple beneficiaries, payment will be divided among the next of kin as provided under the applicable state law, or if applicable, D.C. law.
2. **Deaths shortly after trusteeship.** If a payee dies within 180 days after DOTR and a designation was not made with PBGC, PBGC pays the beneficiary designated by or under the plan to specifically receive payments owed a deceased payee. If such a designation was not made, the beneficiary will be determined as provided above in [section D.1](#).
3. **Pre-trusteeship death.** If a payee died before the DOTR and the plan had not paid the benefits as of the DOTR, PBGC makes payment to the beneficiary designated by or under the plan to specifically receive payments owed a deceased payee. If such a designation was not made, the beneficiary will be determined as provided above in [section D.1](#).

E. Payments Owed to Deceased Payees - Deaths Before June 1, 2002

For deaths before June 1, 2002, the beneficiary for payments owed to a deceased payee depends on whether the payee was a participant or beneficiary and to whom the benefit was due. The beneficiary is determined as follows:

- 1. **Deceased participant.** PBGC makes payments owed to a deceased participant in the following order:
 - a. **Contingent annuitant.** PBGC pays the participant's contingent annuitant as provided in [section D.1.a](#).
 - b. **Beneficiary designation with PBGC.** PBGC pays a beneficiary designated, after DOPT, by the participant with PBGC on a PBGC form for that purpose or another form acceptable to PBGC.
 - c. **Pre-DOPT beneficiary designation.** PBGC pays the beneficiary designated by the participant under the plan if the designation was executed before DOPT.
 - d. **Plan designation.** PBGC pays the beneficiary designated by plan provisions specifically to receive money owed the participant.
 - e. **Estate.**
 - 1) If the participant's beneficiary (as determined under section E.1.a-d. above) is deceased, PBGC pays the estate of the:
 - Participant if the beneficiary died before the participant.
 - Beneficiary if the beneficiary died after the participant.
 - 2) If the participant's beneficiary cannot be determined under section E.1., PBGC pays the participant's estate.
 - 3) **Exception:** PBGC pays total payments of \$500 or less including interest to a surviving spouse unless there is an open estate.

Note: When payments are owed a deceased participant and the deceased participant's beneficiary has also died, [section E.2](#). *Deceased beneficiary*, below, does not apply.

Example: A participant was receiving an estimated benefit of \$600 a month in the form of a straight life annuity. The final benefit was determined to be \$660 a month. The participant was owed an underpayment of \$540, but died before the underpayment could be paid. A beneficiary was not designated with PBGC but had been designated under the plan before DOPT. Payment is due the pre-DOPT beneficiary.

- If the pre-DOPT beneficiary died before the participant, payment is due the participant's estate.
 - If the beneficiary died after the participant, payment is due the deceased beneficiary's estate, not a beneficiary of the deceased beneficiary as described in [section E.2](#).
2. **Deceased beneficiary.** PBGC makes payments owed to a deceased beneficiary (the 'deceased payee'), such as an underpayment or back payment of survivor benefits or a ►QPSA payable in a ►lump sum, in the following order:
- a. **Contingent annuitant.** PBGC pays the deceased payee's contingent annuitant as described in [section D.1.a](#).

- b. **Beneficiary designation with PBGC.** PBGC pays the beneficiary designated, after DOPT, by the payee with PBGC on a PBGC form for that purpose or another form acceptable to PBGC.
- c. **Pre-DOPT beneficiary designation.** PBGC pays the beneficiary designated by the payee under the plan if the designation was executed before DOPT.
- d. **Beneficiary designated by plan provisions.** PBGC pays a beneficiary designated by plan provisions to specifically receive money owed a deceased beneficiary.
- e. **Estate.**
 - 1) If the beneficiary (as determined in 2.a.-d. above) of the deceased payee has also died, PBGC pays the estate of the:
 - Deceased payee if the beneficiary died before the payee.
 - Beneficiary if the beneficiary died after the payee.
 - 2) If the beneficiary of the deceased payee cannot be determined under [section E.2.](#), PBGC pays the deceased payee's estate.
 - 3) **Exception:** PBGC pays total payments of \$500 or less including interest to a surviving spouse unless there is an open estate.

Example: A participant elected a QJSA and received annuity payments of \$1,000. After the participant's death, the surviving spouse began receiving continuing annuity payments (i.e., a survivor benefit) of \$500. The spouse died and payments for four months were returned to PBGC. Three payments or \$1,500 was owed the deceased spouse. The spouse's beneficiary was determined in accordance with [section E.2.](#) The spouse had designated a beneficiary with PBGC and payment was made to that designee.

Shortly after payment was made to the deceased spouse's beneficiary, PBGC determines that the participant was owed a back payment of \$2,000 for missed payments. Under [section E.1.a.](#), the spouse as the contingent annuitant would have been due the underpayment. Because the spouse died after the participant, [section E.2.](#) does not apply, and payment is owed to the deceased spouse's estate as provided under [section E.1.e.](#)

3. **Estate payments.** If the estate of the deceased payee is determined to be the beneficiary under [section E.1. Deceased participant or E.2. Deceased beneficiary](#), PBGC makes payment directly to the estate.
 - a. PBGC will not make payment directly to the beneficiaries of an open estate, even if requested by the estate administrator.
 - b. If an individual alleges difficulty in negotiating an estate payment because the estate is not open, PBGC pays the individual directly only if PBGC receives convincing evidence such as, a copy of the will or other testamentary document or a court order or decree, that the individual would be due the payment from the estate.
 - 1) If such a governing document is not available or does not refer to the individual by name but instead, for example, refers to heirs or next of kin, PBGC determines if the individual is due the payment as provided in [section D.1.g. Next of Kin.](#)
 - 2) If multiple beneficiaries are determined to be due payment, payment will be divided as provided in the governing document. If the governing document is not available or does not adequately provide for division of the payment, the payment will be divided as provided in [section D.1.g. Next of Kin.](#)

F. Miscellaneous Rules

1. **Change in beneficiary designated to receive payments owed a deceased payee.** An individual may, at any time, change his or her designation of the beneficiary for payments that may be owed the individual at the time of his or her death.
2. **Lump-sum death benefits.** If a lump-sum death benefit is payable:
 - a. Payment is made to the beneficiary designated by or under the plan specifically for the lump-sum death benefit. If a beneficiary cannot be determined under plan provisions, the beneficiary will be determined as provided in [section D. Payments Owed to Deceased Payees - Deaths After June 1, 2002](#) or [section E. Payments Owed to Deceased Payees - Deaths Before June 1, 2002](#).
 - b. For a post-DOPT death, the benefit will be converted to an annuity as provided in 20 CFR §4022.7(c), unless the beneficiary is an estate.

Note: For post-DOPT deaths, a lump-sum death benefit is not a ▶guaranteed benefit and is payable only as a ▶PC6 benefit.

- c. For a pre-DOPT death, if a ▶§436(d) limitation on ▶prohibited payments was in effect as of DOPT, the benefit will be converted to an annuity as provided in 20 CFR §4022.7(c), unless the beneficiary is an estate.
3. **Multiple beneficiaries.** If a payee designated multiple beneficiaries or PBGC determines that payment should be made to multiple beneficiaries, PBGC divides the payment equally among the beneficiaries, unless the payee specified a different division in writing or a different division is otherwise provided in this policy.
4. **Pre-retirement survivor annuities (PSA).** A pre-retirement survivor annuity is a death benefit payable under plan provisions to the surviving spouse or other beneficiary of a vested participant who dies before his or her ▶annuity starting date.
- a. **Qualified pre-retirement survivor annuity (QPSA).** Effective August 23, 1984, under section §205 of ▶ERISA, a plan must provide a ▶qualified pre-retirement survivor annuity (QPSA) to the surviving spouse of a vested participant when specific conditions are met. For guidance on payment of a QPSA, see PBGC Policy **5.7-2 Payment of Qualified Pre-Retirement Survivor Annuities in Plans Terminating on and after August 23, 1984**.
 - b. **Non-QPSA pre-retirement survivor annuity (PSA).** Plans may also provide a ▶pre-retirement survivor annuity (PSA) that is not a QPSA. If a PSA is payable, payment is made to the beneficiary designated by or under the plan specifically for the PSA. If a beneficiary cannot be determined under plan provisions, the beneficiary will be determined as otherwise provided in **section D. Payments Owed to Deceased Payees - Deaths After June 1, 2002** or **section E. Payments Owed to Deceased Payees - Deaths Before June 1, 2002**.

Note: For post-DOPT deaths, a PSA, that is not a QPSA, is not a guaranteed benefit and is payable only as a PC6 benefit.

5. **Death benefits derived from accumulated mandatory employee contributions (AMEC).** PBGC pays death benefits derived from ▶AMEC as provided in **section G. Pre-Retirement Death Benefits** or **section H. Post-Retirement Death Benefits** of PBGC Policy **5.11-2 Payment of Priority Category 2 Benefits**.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/8_6_1_3rd.htm
(04/30/2012).

Previous Editions

[8.6-1 PBGC Payments Owed to Deceased Payees 1st Ed. - Outdated](#)

[8.6-1 Payments to Beneficiaries 2nd Ed. - Outdated](#)

[Top of Page](#)

8.7-1 Health Coverage Tax Credit (HCTC) - PBGC Responsibility

Edition	3rd Edition
Issue Date	07/28/2016
Transmittal	Transmittal 2016-06
Signed Policy	8.7-1 Health Coverage Tax Credit (HCTC) - PBGC Responsibility
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definition of Eligible PBGC Pension Recipient](#)
- [D. PBGC Policy](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

The Trade Act of 2002 (Trade Act) amended the Internal Revenue Code to provide a tax credit for health insurance costs for eligible individuals who obtain health insurance from qualified health plans. The Health Coverage Tax Credit (HCTC) program is administered by the Internal Revenue Service (IRS). It covers a percentage of the premiums for qualified health insurance for eligible individuals and their qualifying family members. Congress has changed the percentage of premiums covered from time to time over the years. The credit expired on January 01, 2014.

Beginning with December 2002, the HCTC became available to eligible individuals as a credit on their Federal income tax return. The individual pays health insurance premiums directly to a qualified insurance program and claims the HCTC when filing his or her tax return. Since August 2003, the IRS has also provided a monthly advanced tax credit in which the IRS pays the covered percentage of the premium directly to the insurance program in lieu of the individual claiming the credit on his or her tax return. Individuals may still claim the credit on their tax return for any month in which an advanced tax credit was not paid.

The Trade Preference Extension Act of 2015, enacted June 29, 2015, extended and modified the Health Care Tax Credit retroactive to its previous January 01, 2014 expiration date. The new expiration date is January 01, 2020, unless Congress acts to extend the credit.

Certain PBGC payees are covered under the HCTC legislation. Accordingly, PBGC provides information about potentially eligible payees in PBGC-trusteed plans to the IRS. The IRS then determines which individuals are allowed to receive the HCTC credit. PBGC worked with the IRS to establish the criteria used in providing this information.

In March 2014, PBGC rescinded its previous policy on HCTC after the legislation authorizing the program expired. With this edition of the policy, PBGC is reinstating its policy regarding its responsibilities with respect to the HCTC program.

B. Scope and Effective Date

This policy covers all PBGC-trusteed plans and describes the potentially eligible payees that PBGC will include in the information given to the IRS. This policy is effective upon issuance.

C. Definition of Eligible PBGC Pension Recipient

Eligible PBGC pension recipient, as defined in section 35(c)(4) of the Internal Revenue Code, means, with respect to any month, any individual who (a) has attained age 55 as of the first day of such month and (b) is receiving a benefit for such month from PBGC under a PBGC-trusteed plan. A recipient may be a participant, surviving spouse, beneficiary, or alternate payee under a QDRO.

D. PBGC Policy

Subject to the Privacy Act, PBGC will give the IRS, on a recurring and ad hoc basis, information about eligible PBGC pension recipients to whom PBGC pays periodic pension benefits (i.e., monthly or annual payments) and recipients of lump-sum payments. PBGC will provide participant information to the IRS on a retroactive basis for the time the credit was expired.

- 1. Frequency of payment.** PBGC will include individuals who are paid annual payments and lump-sum payments under PBGC-trusteed plans to avoid having them excluded from consideration for eligibility for the HCTC program because of PBGC's frequency and form of payment policies.

2. Annuity payments. On or after December 01, 2002, a recipient of annuity payments will be included as an eligible PBGC pension recipient beginning with the month in which all of the following conditions are met and for any month thereafter, provided the conditions continue to be met:

- the plan is a PBGC-trusteed plan (including the month in which the plan is trusteed);
 - a PBGC benefit is being paid to the recipient; and
 - the recipient has attained age 55 as of the first day of such month.
- a. **Retroactive annuity starting date.** A recipient will be included beginning with his or her annuity starting date, including a retroactive annuity starting date as determined under PBGC Policy [5.2-4 Annuity Starting Dates](#), but no earlier than that start date.
- b. **Benefit offsets.** PBGC will not include a recipient for any month in which the payee's PBGC benefit is completely offset (i.e., a PBGC benefit is not payable) by a non-PBGC benefit or source of income (e.g., worker's compensation, purchased annuity, etc.).
- c. **Qualified Domestic Relations Order (QDRO).** If a QDRO assigns all benefits of an eligible PBGC pension recipient to an alternate payee and, as a result of the QDRO, the participant is not receiving payments from PBGC, then PBGC will *not* report the participant's information to the IRS; the alternate payee's information will be reported to the IRS.

3. Lump-sum payments. A lump-sum payment for purposes of the HCTC program is a total distribution of a benefit (i.e., the present value of the termination benefit). On or after August 06, 2002, a recipient of a lump-sum payment will be included as an eligible PBGC pension recipient beginning with the month in which all of the following conditions have been met and continuing thereafter:

- the plan is a PBGC-trusteed plan (including the month in which the plan is trusteed);
- a PBGC lump-sum payment was paid to the recipient; and
- the recipient has attained age 55 as of the first day of such month.

PBGC will not include any recipient who was paid a lump sum before August 06, 2002, the effective date of the Trade Act.

4. Other specified coverage. Payees who have "other specified coverage," such as Medicare, Medicaid, or health insurance paid for by an employer, are excluded from the HCTC program. However, PBGC is unable to determine which payees have other specified coverage and therefore includes in its filing to the IRS all payees age 55 or older meeting the above criteria without regard to such coverage. PBGC will generally *not* include information to be reported to the IRS about qualified family members (such as former spouses).

Concurrence, Endorsement, and Approval

Policy 8.7-1 Health Coverage Tax Credit (HCTC) - PBGC Responsibility (3rd Edition)		
Concurrence	Initials	Date
OBA/ASD: Scott Young, Manager	S.Y.	07/06/2016
OBA/PPD: Laura Stephens, Manager	L.S.	07/06/2016
OBA/CSD: Michelle Gray, Manager	M.G.	07/06/2016
OBA/OPCMD: Jennifer Messina, Director	J.M.	07/11/2016
OCC: Joseph Krettek, Assistant Chief Counsel	J.M.K.	07/06/2016
OGC: Kenneth Cooper, Assistant General Counsel	K.C.	07/07/2016
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	07/13/2016
Chief Financial Officer: Patricia Kelly	P.K.	07/18/2016
Approval		
OBA: David Foley for Cathleen Kronopolus, Chief of Benefits	D.F.	07/11/2016

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2016-06.

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/8_7_1_3rd.htm
(07/28/2016).

Previous Editions

[8.7-1 Health Coverage Tax Credit \(HCTC\) - PBGC Responsibility 1st Ed. - Outdated](#)

[8.7-1 Health Coverage Tax Credit \(HCTC\) - PBGC Responsibility 2nd Ed. - Outdated](#)

[Top of Page](#)

8.7-1 Health Coverage Tax Credit (HCTC) - PBGC Responsibility

Edition	4th Edition
Issue Date	03/05/2020
Transmittal	Transmittal 2020-02
Signed Policy	8.7-1 Health Coverage Tax Credit (HCTC) - PBGC Responsibility
Contact	ASK PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definition of Eligible PBGC Pension Recipient
- D. PBGC Policy

Concurrence, Endorsement, and Approval

A. Background

The Trade Act of 2002 (Trade Act) amended the Internal Revenue Code to provide a tax credit for health insurance costs for eligible individuals who obtain health insurance from qualified health plans. The Health Coverage Tax Credit (HCTC) program is administered by the Internal Revenue Service (IRS). It covers a percentage of the premiums for qualified health insurance for eligible individuals and their qualifying family members. Congress has changed the percentage of premiums covered from time to time over the years.

Beginning with December 2002, the HCTC became available to eligible individuals as a credit on their Federal income tax return. The individual pays health insurance premiums directly to a qualified insurance program and claims the HCTC when filing his or her tax return. Since August 2003, the IRS has also provided a monthly advanced tax credit in which the IRS pays the covered percentage of the premium directly to the insurance program in lieu of the individual claiming the credit on his or her tax return. Individuals may still claim the credit on their tax return for any month in which an advanced tax credit was not paid.

The Trade Preference Extension Act of 2015, enacted June 29, 2015, extended and modified the Health Care Tax Credit retroactive to its previous January 01, 2014 expiration date. The new expiration date is January 01, 2021, unless Congress acts to extend the credit.

Certain PBGC payees are covered under the HCTC legislation. Accordingly, PBGC provides information about potentially eligible payees in PBGC-trusted plans to the IRS. The IRS then determines which individuals are allowed to receive the HCTC credit. PBGC worked with the IRS to establish the criteria used in providing this information.

B. Scope and Effective Date

This policy covers all PBGC-trusted plans and describes the potentially eligible payees that PBGC will include in the information given to the IRS. This policy is effective upon issuance.

C. Definition of Eligible PBGC Pension Recipient

Eligible PBGC pension recipient, as defined in section 35(c)(4) of the Internal Revenue Code, means, with respect to any month, any individual who (a) has attained age 55 as of the first day of such month and (b) is receiving a benefit for such month from PBGC under a PBGC-trusted plan. A recipient may be a participant, surviving spouse, beneficiary, or alternate payee under a QDRO.

D. PBGC Policy

Subject to the Privacy Act, PBGC will give the IRS, on a recurring and ad hoc basis, information about eligible PBGC pension recipients to whom PBGC pays periodic pension benefits (i.e., monthly or annual payments) and recipients of lump-sum payments. PBGC will provide participant information to the IRS on a retroactive basis for the time the credit was expired.

- 1. Frequency of payment.** PBGC will include individuals who are paid annual payments and lump-sum payments

under PBGC-trusted plans to avoid having them excluded from consideration for eligibility for the HCTC program because of PBGC's frequency and form of payment policies.

2. Annuity payments. On or after December 01, 2002, a recipient of annuity payments will be included as an eligible PBGC pension recipient beginning with the month in which all of the following conditions are met and for any month thereafter, provided the conditions continue to be met:

- the plan is a PBGC-trusted plan (including the month in which the plan is trusted);
- a PBGC benefit is being paid to the recipient; and
- the recipient has attained age 55 as of the first day of such month.
 - a. **Retroactive annuity starting date.** A recipient will be included beginning with his or her annuity starting date, including a retroactive annuity starting date as determined under PBGC Policy 5.2-4 Annuity Starting Dates, but no earlier than that start date.
 - b. **Benefit offsets.** PBGC will not include a recipient for any month in which the payee's PBGC benefit is completely offset (i.e., a PBGC benefit is not payable) by a non-PBGC benefit or source of income (e.g., worker's compensation, purchased annuity, etc.).
 - c. **Qualified Domestic Relations Order (QDRO).** If a QDRO assigns all benefits of an eligible PBGC pension recipient to an alternate payee and, as a result of the QDRO, the participant is not receiving payments from PBGC, then PBGC will *not* report the participant's information to the IRS; the alternate payee's information will be reported to the IRS.

3. Lump-sum payments. A lump-sum payment for purposes of the HCTC program is a total distribution of a benefit (i.e., the present value of the termination benefit). On or after August 06, 2002, a recipient of a lump-sum payment will be included as an eligible PBGC pension recipient beginning with the month in which all of the following conditions have been met and continuing thereafter:

- the plan is a PBGC-trusted plan (including the month in which the plan is trusted);
- a PBGC lump-sum payment was paid to the recipient; and
- the recipient has attained age 55 as of the first day of such month.

PBGC will not include any recipient who was paid a lump sum before August 06, 2002, the effective date of the Trade Act.

4. Other specified coverage. Payees who have "other specified coverage," such as Medicare, Medicaid, or health insurance paid for by an employer, are excluded from the HCTC program. However, PBGC is unable to determine which payees have other specified coverage and therefore includes in its filing to the IRS all payees age 55 or older meeting the above criteria without regard to such coverage. PBGC will generally *not* include information to be reported to the IRS about qualified family members (such as former spouses).

Concurrence, Endorsement, and Approval

Policy 8.7-1 Health Coverage Tax Credit (HCTC) - PBGC Responsibility (4th Edition)

Concurrence	Initials	Date
OBA/ASTD/ASD: David Joseph, Supervisory Technical Actuary	<i>DJ</i>	2/5/2020
OBA/PPD: Laura Stephens, Supervisory Policy Advisor	<i>LW</i>	2/5/20
OBA/CSD: Michelle Gray, Manager	<i>MG</i>	2/5/2020
OBA/OPCMD: Jennifer Messina, Department Director	<i>JM</i>	2/11/2020
OGC: Joseph Krettek, Assistant General Counsel	<i>JMK</i>	2/5/20
Endorsements		
Acting General Counsel: Paul Chalmers	<i>PC</i>	2/14/2020
Chief Financial Officer: Patricia Kelly	<i>PK</i>	2/5/2020
Approval		
OBA: David Foley, Chief of Benefits Administration	<i>DF</i>	2/16/2020

This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of the Office of Benefits Administration on Transmittal 2020-02.

8.8-1 Missing Participants Program (For DB Plans Terminated On or Before December 31, 2017)

Edition	3rd Edition
Issue Date	12/22/2017
Transmittal	Transmittal 2018-02
Last Review Date	N/A
Signed Policy	8.8-1 Missing Participants Program (For DB Plans Terminated On or Before December 31, 2017)
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. General Policy](#)
- [E. Designated Benefit Payable to PBGC](#)
- [F. Benefits Payable by PBGC](#)
- [G. Special Rules and Applicability of Other PBGC Policies](#)
- [H. Benefit Determinations Issued to Missing Participants](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

PBGC's Missing Participants Program was created by the Retirement Protection Act of 1994 to provide a way for distributing plan benefits to participants and beneficiaries who cannot be located by plans terminating in a standard termination.

An employer choosing to terminate a fully funded pension plan must distribute all plan benefits to participants and beneficiaries before completing the plan's termination. Under section 4050(a)(1) of ERISA, when there are benefits owed to plan participants (or their beneficiaries) who could not be located after a diligent search, the plan administrator must either purchase irrevocable commitments from an insurer (i.e., annuity contracts) for the missing participants or transfer the value of the participants' benefits to PBGC.

In order to comply with the Missing Participants Program, the plan administrator must submit Form 501 - Post-Distribution Certification for Standard Termination, Schedule MP - Missing Participant Information, with Attachment A - Missing Participant Annuity Purchase Information, and Attachment B - Missing Participant Individual Information to the PBGC. These forms (hereafter referred to collectively as "Schedule MP") identify the missing participants for whom irrevocable commitments have been purchased, and the missing participants (and designated benefit dollar amounts) for whom payments have been made to PBGC.

B. Scope and Effective Date

This policy applies to benefits payable to missing participants under terminating single-employer plans with a deemed distribution date in a plan year beginning on or after January 01, 1996. It is effective upon issuance. This policy does not apply to the benefits of missing participants and beneficiaries in plans with termination dates on or after January 01, 2018. For these participants and beneficiaries, see Policy [8.8-2 Expanded Missing Participants Program](#).

C. Definitions

Deemed Distribution Date: The date that is either: (a) the last day of the period in which distribution may be made under a standard termination (see part 4041 of PBGC Regulations); or (b) the date selected by the plan administrator that is no earlier than the date when all benefit distributions have been made under the plan (including annuities purchased for missing participants) except for distributions to missing participants whose designated benefits are paid to PBGC. A plan may have only one deemed distribution date.

Designated Benefit: The amount payable by the plan administrator to PBGC for a missing participant under [section 4050.5 of PBGC Regulations \(Revised as of July 01, 1996\)](#).

Designated Benefit Interest Rate: The rate of interest applicable to underpayments of guaranteed benefits by PBGC under section 4022.81(c) of PBGC Regulations.

Diligent Search: A search that (a) is initiated by the plan administrator not more than six months prior to the date that notices of intent to terminate are issued; (b) includes inquiry of any plan beneficiaries (including alternate payees) of the missing participant whose names and addresses are known to the plan administrator; and (c) includes use of a commercial locator service to search for the missing participant. A diligent search must be made by the prior plan administrator before information about and payment for a missing participant is submitted to PBGC.

Missing Participant: A participant or beneficiary entitled to a distribution under a terminating plan whom the plan administrator has not located as of the date when the plan administrator pays the individual's designated benefit to PBGC or distributes the individual's benefit by purchasing an irrevocable commitment from an insurer (i.e., an annuity contract). Missing participants are presumed to be alive until there is proof of death.

D. General Policy

The missing participants program applies to single-employer defined benefit plans distributing benefits in accordance with the standard termination procedures of Title IV. This includes both plans terminating in standard terminations and plans terminating in distress terminations where plan assets are sufficient to provide all guaranteed benefits.

Under the missing participants program, PBGC serves as the repository both of funds payable to missing participants and of information pertaining to annuity contracts purchased by terminated plans for missing participants.

When a missing participant, beneficiary, or estate is located, PBGC will either—

- pay the missing participant's benefit if held by PBGC or,
- provide the missing participant with information about the identity of the insurer, the relevant insurance policy number, and, if known, the amount or value of the benefit if an annuity contract was purchased by the plan.

E. Designated Benefit Payable to PBGC

The amount payable to PBGC by the plan administrator depends on the categorization of the designated benefit, and is calculated in accordance with [sections 4050.2 and 4050.5 of PBGC Regulations \(Revised as of July 01, 1996\)](#).

1. Mandatory lump sum

The plan requires an automatic cashout of the missing participant's benefit. The amount must be no greater than the plan's cashout limit, which, by law, cannot exceed \$5,000.

2. De minimis lump sum

The plan (1) does not require an automatic cashout; and (2) the actuarial present value of the benefit is \$5,000 or less.

3. No lump sum

For other than *de minimis* lump sums, the plan requires that an annuity be paid to the participant.

4. Elective lump sum

The plan would pay either an annuity or a lump sum, based upon the election of the participant.

F. Benefits Payable by PBGC

PBGC will pay a missing participant his or her designated benefit as provided by the plan administrator on the Schedule MP filed with the PBGC. The benefit form payable to the missing participant is related to the category in [section E](#) above that was used to determine the designated benefit.

If the benefit is paid as a lump sum, it will include interest (at the designated benefit interest rate) accrued from the deemed distribution date to the date as of which PBGC pays the benefit.

1. Mandatory and de minimis lump sums

The missing participant's benefit is generally payable by PBGC as a lump sum.

If the benefit is designated as a mandatory lump sum by the plan administrator, PBGC will pay the benefit only in a lump sum. However, if the lump sum is *de minimis* but not a mandatory lump sum, PBGC will permit the participant to elect an annuity.

If the missing participant died before the deemed distribution date, the benefit is payable to the missing participant's beneficiary or estate (per the plan rules, if known). Otherwise, the benefit is payable in accordance with **[8.6-1 PBGC Payments to Beneficiaries](#)**. If the missing participant died after the deemed distribution date, payment is made to the missing participant's estate.

2. No lump sum

The benefit is payable by PBGC to the missing participant as an annuity.

3. Elective lump sum

PBGC will offer a lump sum election when the designated benefit was determined by the plan administrator as an elective lump sum. The election of a lump sum under this section requires spousal consent (see [section G.3](#) below). If a lump sum is not elected, the benefit is payable as an annuity (minus the \$300 in loading expenses).

4. Benefit form payable to missing participant whose benefit was in pay status as of the deemed distribution date

The benefit is payable in the form that was in pay status and begins as soon as the missing participant is located. The missing participant is also due a single payment equal to the underpayment from the deemed distribution date until the date PBGC pays the lump sum. The single payment includes interest (at the plan rate before the deemed distribution date and thereafter at the designated benefit interest rate).

5. Benefit form payable to the spouse of a deceased missing participant

PBGC will pay a survivor benefit to the surviving spouse of a missing participant if the benefit is payable as an annuity. The amount is equal to the survivor benefit (as in a joint-and-50% survivor annuity) of the designated benefit (minus the \$300 in loading expenses), and is payable at the time elected by the surviving spouse. See [section 4050.10 of PBGC Regulations \(Revised as of July 01, 1996\)](#).

If the deceased missing participant was in pay status as of the deemed distribution date, the benefit is payable as a survivor benefit in the form of payment in effect.

PBGC will offer a lump sum election to the surviving spouse when the designated benefit was determined as an elective lump sum. If the surviving spouse elects payment of a lump sum, the amount is equal to the actuarial present value of the survivor benefit plus interest (at the designated benefit interest rate) accrued from the deemed distribution date to the date as of which PBGC pays the benefit.

G. Special Rules and Applicability of Other PBGC Policies

1. Employee Contributions

If a missing participant made mandatory contributions to the plan, the designated benefit cannot be less than the sum of such contributions plus interest.

If a missing participant made voluntary contributions to the plan, the plan administrator must pay and identify such contributions on the Schedule MP separately from the designated benefit. PBGC will pay any amount paid to it relating to voluntary contributions as a lump sum, including interest (at the designated benefit interest rate) accrued from the date received by PBGC to the date as of which PBGC makes payment.

2. Annuity Benefit Forms

If a missing participant's benefit is not in pay status as of the deemed distribution date and is payable as an annuity, **[5.4-7 Annuity Benefit Forms](#)** is applicable.

3. Spousal Consent

If the present value of a missing participant's lump sum exceeds \$5,000, spousal consent must be obtained before a lump sum will be paid. See **[5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities\)](#)**. If a spousal consent is not obtained, the benefit will be paid according to 2 above.

4. Payments Owed to Deceased Payees

To the extent not already provided for in this policy, benefits owed to a deceased missing participant will be payable in accordance with **[8.6-1 Payments to Beneficiaries](#)**.

5. Qualified Domestic Relations Orders

The provisions of **[6.6-3 Qualified Domestic Relations Orders](#)** are applicable to benefits payable to missing participants.

6. Small Benefit Payments

The provisions of **5.4-10 Small Benefit Payments** (including the rules for making small benefit payments without submission of a benefit application) also apply to payments made under the Missing Participants Program.

If unsure whether a PBGC policy applies to a missing participant's benefit, [contact PPD](#).

H. Benefit Determinations Issued to Missing Participants

Upon locating a missing participant or beneficiary, PBGC will issue a benefit determination with appeal rights generally limited to how PBGC has determined the amount of the monthly annuity.

Concurrence, Endorsement, and Approval

Policy 8.8-1 Missing Participants Program (For DB Plans Terminated On or Before December 31, 2017) (3rd Edition)		
Concurrence	Initials	Date
OBA/ASTD/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	12/13/2017
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	12/13/2017
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	12/13/2017
OBA/PSD: Jennifer Messina, Director	J.M.	12/14/2017
OGC: Joseph Krettek, Assistant General Counsel	J.M.K.	12/13/2017
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	12/15/2017
Chief Financial Officer: Patricia Kelly	P.K.	12/18/2017
Approval		
Chief of Benefits Administration: Cathleen Kronopolus	C.K.	12/14/2017

*This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on **Transmittal 2018-02**.*

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/8_8_1_3rd.htm
(12/22/2017).

Previous Editions

[8.8-1 Missing Participants Program 1st Ed. - Outdated](#)

[8.8-1 Missing Participants Program 2nd Ed. - Outdated](#)

8.8-2 Expanded Missing Participants Program

Edition	1st Edition
Issue Date	12/22/2017
Transmittal	Transmittal 2018-03
Signed Policy	8.8-2 Expanded Missing Participants Program
Contact	ASK PPD

In this policy

- [A. Background](#)
- [B. Scope and Effective Date](#)
- [C. Definitions](#)
- [D. General Policy](#)
- [E. Defined Benefit Plans](#)
- [F. Defined Contribution Plans](#)
- [G. Special Rules and Applicability of Other PBGC Policies](#)
- [H. Benefit Determinations Issued to Missing Distributees](#)
- [Concurrence, Endorsement, and Approval](#)

A. Background

The Retirement Protection Act of 1994 created PBGC's Missing Participants Program (MPP) to address plan benefits that were payable to participants and their beneficiaries who could not be located during a standard termination or sufficient distress plan termination.

Under section 4050(a)(1) of ERISA, when benefits are owed to plan participants or their beneficiaries who are unlocatable after a diligent search, the plan is generally required either to purchase irrevocable commitments from an insurer—that is, annuity contracts—for the missing distributee or to transfer the value of the missing distributees' benefits to PBGC.

The Pension Protection Act of 2006 (PPA 2006) instructed PBGC to expand the MPP to other terminating plans not otherwise covered under PBGC's pension insurance program, including defined contribution plans and small professional defined benefit plans. PPA 2006 also expanded the program to include missing distributees in multiemployer plans whose plan sponsors terminate and close out the plan. PPA 2006 directed that the expanded program would apply to distributions made after PBGC's final rules implementing the expansion were effective.

In December 2017, PBGC issued [final regulations](#) to implement the expanded program under PPA 2006 and to modify certain rules applicable to PBGC-covered single-employer plans undergoing standard or sufficient distress plan terminations.

For plans that terminate (or, in the case of multiemployer plans, close out) on or after January 01, 2018, PBGC will pay the missing distributee or qualified survivor a lump sum if the benefit transferred to PBGC is \$5,000 or less. For larger benefit transfer amounts, PBGC will offer the same annuity options offered to missing distributees in trustee plans. If the missing distributee would have been permitted to elect a lump sum upon termination had he or she not been missing, PBGC will also offer a lump sum option.

For defined benefit plans, the method and assumptions used to determine the benefit transfer amount differ depending on many factors (e.g., whether the plan offers lump sums, whether the benefit is de minimis, whether the participant was in pay status) and are described in the instructions to the MP Forms. For defined contribution plans, the account balance available for distribution is transferred to PBGC.

A further change under PBGC's expanded program concerns payments owed with respect to deceased missing distributees. Payments to beneficiaries of missing distributees in plans terminating and/or closing out on and after January 01, 2018, now fall under a streamlined set of qualified survivor rules.

B. Scope and Effective Date

This policy applies to PBGC's payment of benefits under PBGC's Expanded Missing Participants Program (EMPP) to missing distributees and qualified survivors in—

- PBGC-covered single-employer defined benefit plans that distribute benefits in a standard termination or in a distress termination sufficient for guaranteed benefits and that terminate on or after January 01, 2018

- Defined contribution plans that terminate on and after January 01, 2018 and choose to participate in the EMPP
- Small professional defined benefit plans not covered under title IV of ERISA that terminate on and after January 01, 2018, and choose to participate in the EMPP
- PBGC-covered multiemployer defined benefit plans that close out on and after January 01, 2018

This policy does NOT apply to PBGC-covered single-employer defined benefit plans that distributed benefits in a standard termination or sufficient distress termination and that terminated on or before December 31, 2017. For those plans, see [**8.8-1 Missing Participants Program \(For DB Plans Terminating On or Before December 31, 2017\)**](#).

This policy is effective upon issuance.

C. Definitions

Age 55/65 Date: The first of the month coincident with or next following the date on which the plan participant attains age 55/65.

Accumulated Single Sum: The Benefit Transfer Amount, with interest accumulated from BDD/BTD to the annuity starting date (for monthly annuities) or the date payment is made (for lump-sum distributions).

Benefit Determination Date (BDD): For DB plans, the date selected by the plan for valuing benefits of missing distributees and determining the Benefit Transfer Amount.

Benefit Transfer Date (BTD): For DC plans, the date as of which the plan transferred the account balances of missing distributees to PBGC.

Benefit Transfer Amount: The amount as of BDD/BTD that a plan pays to PBGC with respect to a missing distributee's benefit, without regard to the administrative fee or late fees (if applicable).

Defined Benefit (DB) Plan: A single-employer defined benefit retirement plan covered by title IV of ERISA, as defined in [**section 4050.101**](#) (subpart A) of PBGC Regulations; a small professional service defined benefit retirement plan not covered by title IV of ERISA, as defined in [**section 4050.301**](#) (subpart C) of PBGC Regulations; or a multiemployer defined benefit retirement plan covered by title IV of ERISA, as defined in [**section 4050.401**](#) (subpart D) of PBGC Regulations.

Defined Contribution (DC) Plan: A single-employer or multiemployer defined contribution retirement plan, as defined in [**section 4050.201**](#) (subpart B) of PBGC Regulations.

Earliest Allowable Retirement Date (EARD): For DB Plans: The later of the Age 55 Date and the date on which earliest retirement age under the plan, as reported in the Schedule B to the Form MP, is attained. For DC Plans: The Age 55 Date.

Expanded Missing Participants Program (EMPP): The program described in part 4050 of PBGC's regulations for locating and paying benefits owed to missing distributees for plans that terminate or close out on or after January 01, 2018. For PBGC's Missing Participants Program of PBGC-covered Single-Employer DB Plans terminating on or before December 31, 2017, see [**8.8-1 Missing Participants Program \(For DB Plans Terminating On or Before December 31, 2017\)**](#).

Form MP: The [Form MP-100](#) for PBGC-Covered Single-Employer DB Plans, the [Form MP-200](#) for DC Plans, the [Form MP-300](#) for Small Professional DB Plans (not covered by PBGC), or, the [Form MP-400](#) for PBGC-Covered Multiemployer DB Plans.

Latest Allowable Retirement Date (LARD): For DB Plans: The participant's Normal Retirement Date (NRD) under the plan, as reported in the Schedule B to the Form MP (if the missing distributee is a plan participant or separate interest AP) or the participant's EARD (if the missing distributee is a plan participant's surviving spouse). For DC Plans: The Age 65 Date (if the missing distributee is a plan participant or separate interest AP) or the participant's Age 55 Date (if the missing distributee is a plan participant's surviving spouse). In the unlikely situation that a QDRO requires a separate-interest AP who is the missing distributee to commence a separate-interest annuity before or on a specified date, the separate-interest AP's LARD will generally be the date specified as such in the QDRO. Contact [PPD](#) in this situation.

Missing Distributee: An individual whose plan benefit was transferred by the plan to PBGC under the EMPP. A missing distributee may be a plan participant, a deceased plan participant's surviving beneficiary or contingent annuitant, or a plan participant's alternate payee under a QDRO.

PBGC-Covered Multiemployer DB Plan: A multiemployer defined benefit retirement plan, as defined in [**section 4050.401**](#) (subpart D) of PBGC Regulations.

PBGC-Covered Single-Employer DB Plan: A single-employer defined benefit retirement plan distributing benefits in accordance with the standard termination procedures of title IV of ERISA, including distress terminations where plan assets are sufficient to provide all guaranteed benefits, as defined in [**section 4050.101**](#) (subpart A) of PBGC Regulations.

Qualified Survivor: For any benefit with respect to the participant or beneficiary, (1) person(s) who survive the participant or beneficiary and are entitled to receive all or part of the benefit to the extent provided under applicable provisions of a QDRO, if any; (2) person(s) identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or (3) if no such person(s) are so entitled, survivor of the participant or beneficiary who is the participant's or beneficiary's living (i) spouse or, if none, (ii) child(ren) or, if none, (iii) parent(s) or, if none, (iv) sibling(s).

Small Professional DB Plan: A small professional service defined benefit retirement plan not covered under title IV of ERISA, as defined in [section 4050.301](#) (subpart C) of PBGC Regulations.

D. General Policy

PBGC will pay—or notify—a missing distributee or qualified survivor of his or her benefit payable under the EMPP as soon as administratively feasible upon locating and identifying the missing distributee or qualified survivor.

- For benefits transferred to PBGC, PBGC will pay the missing distributee or qualified survivor in accordance with [section E](#) for DB Plans and [section F](#) for DC Plans.
- For annuity contracts purchased by a DB plan on behalf of a missing distributee, PBGC will notify the missing distributee or qualified survivor of the name and contact information of the insurer, the certificate number, and the monthly amount or current value of the benefit as reported to PBGC by the plan.
- For accounts of missing distributees transferred by a DC plan to a financial institution, PBGC will notify the missing distributee or qualified survivor of the name and contact information of the financial institution, the account number, and the account balance transferred as reported to PBGC by the plan.

For special rules and the applicability of other policies to PBGC's payment of benefits under the EMPP (including interest on missed payments), see [section G](#). If missed annuity payments are owed, PBGC will pay interest in accordance with [section G.8](#).

For benefit determinations and appeal rights, see [section H](#).

E. Defined Benefit Plans

As described in this section E, PBGC will pay a missing distributee or qualified survivor the benefit under the EMPP from a DB Plan terminating and closing out on or after January 01, 2018, including PBGC-Covered Single Employer DB, Small Professional DB (not covered by PBGC), and PBGC-Covered Multiemployer DB Plans.

For DC Plans, see [section F](#). For PBGC-Covered Single-Employer DB Plans terminating and closing out on or before December 31, 2017, see [8.8-1 Missing Participants Program \(For DB Plans Terminating On or Before December 31, 2017\)](#).

1. General Rule for DB Plans

If a missing distributee claims a DB Plan benefit under the EMPP and—

- The Benefit Transfer Amount is \$5,000 or less: PBGC will pay the missing distributee the Accumulated Single Sum—no annuity will be offered.
- The Benefit Transfer Amount exceeds \$5,000: PBGC will pay the missing distributee in accordance with [section E.2](#).

If the missing distributee died—

- After BDD: PBGC will pay the qualified survivor in accordance with [section E.3](#).
- Before BDD: The rules in [section E.3](#) will generally apply, but contact ► PPD.

If the missing distributee was in pay as of BDD—which PBGC expects to be unlikely—see [section E.4](#).

2. Non-De Minimis Benefits Payable to a Missing Distributee from a DB Plan

If the Benefit Transfer Amount exceeds \$5,000, PBGC will pay the missing distributee a monthly annuity in accordance with [section G.2](#) or, if the plan permits lump sums above \$5,000 and the missing distributee so elects, the Accumulated Single Sum instead of a monthly annuity.

To determine the monthly benefit payable at the distributee's annuity starting date, PBGC will use (1) the monthly straight-life annuity (SLA) amounts reported by the plan in the Schedule B to the Form MP for annuities, payable on/after BDD from EARD until LARD, and (2) linear interpolation if the annuity starting date is on a non-exact year (for example, at age 60 and 7 months). The annuity starting date will generally be a prospective date but no earlier than EARD and no later than LARD.

3. Benefits Payable to a Qualified Survivor from a DB Plan

For now-deceased missing distributees in DB Plans, if the Benefit Transfer Amount is \$5,000 or less, PBGC will pay the qualified survivor the Accumulated Single Sum—no annuity will be offered.

For now-deceased missing distributees in DB Plans, if the Benefit Transfer Amount exceeds \$5,000, a monthly annuity and/or missed payments with interest will generally be payable under the EMPP by PBGC to a qualified survivor so long as the missing distributee was—

- A married plan participant who—
 - Died before NRD (see [section E.3.a](#)), or
 - Died on/after NRD (see [section E.3.b](#)), or
- An unmarried plan participant who died on/after NRD (see [section E.3.c](#)), or
- A separate-interest AP who died on/after the participant's NRD (see [section E.3.c](#)), or
- A plan participant's surviving spouse who died on/after the participant's EARD (see [section E.3.c](#)), or
- In pay at BDD (rare) (see [section E.4](#)).

a. Death of Married DB Plan Participant before NRD

If the Benefit Transfer Amount exceeds \$5,000 and the missing distributee was a married DB Plan participant who died before NRD, PBGC will pay the surviving spouse as follows—

- If the present value, as of BDD, of the surviving spouse's 50%-survivor annuity is \$5,000 or less: PBGC will pay the plan participant's surviving spouse the present value of the 50%-survivor annuity, with interest from BDD (at the rate described in [section G.8](#))—no annuity will be offered.
- If the present value above exceeds \$5,000: PBGC will pay the plan participant's surviving spouse a 50%-survivor annuity and any missed payments with interest—no lump sum will be offered.

To determine a plan participant's surviving spouse's 50%-survivor annuity amount, PBGC will (1) convert the SLA determined in accordance with [section E.2](#) to an actuarially equivalent joint-and-50% survivor contingent basis (JSC50) annuity and (2) multiply the result by 50%. The annuity starting date will be the later of the plan participant's EARD and the first of the month coincident with or next following participant's date of death.

b. Death of Married DB Plan Participant on/after NRD

If the Benefit Transfer Amount exceeds \$5,000 and the missing distributee was a married DB Plan participant who died on or after NRD, PBGC will pay the surviving spouse the 50%-survivor annuity of the participant's JSC50 annuity, plus any missed payments with interest that were owed to the participant before the participant's death—neither a lump sum nor PBGC Optional Forms will be offered.

To determine the JSC50 annuity amount, PBGC will convert the SLA determined in accordance with [section E.2](#) to an actuarially equivalent JSC50 annuity, commencing at the participant's NRD.

Note: If a DB Plan participant's surviving spouse is also deceased, PBGC will pay—

- The participant's qualified survivor: Missed JSC50 annuity payments with interest from NRD until the participant's death.
- The surviving spouse's qualified survivor: Missed 50%-survivor annuity payments with interest from the participant's death until the spouse's death.

c. Only Missed Payments Owed

If the Benefit Transfer Amount exceeds \$5,000 and the missing distributee died on or after his or her LARD and was an unmarried plan participant, a separate-interest AP, or a plan participant's surviving spouse, PBGC will pay the missing distributee's qualified survivor a single-sum backpayment of missed payments of an SLA (determined in accordance with [section E.2](#)) with interest from each missed payment date until the missing distributee's death—neither a lump sum nor PBGC Optional Forms will be offered. The annuity starting date will be the missing distributee's LARD.

4. Benefits in Pay as of BDD

If, as reported on the Schedule B of the Form MP, the missing distributee was in pay as of BDD, PBGC will generally resume annuity payments (and pay any missed payments with interest) to the missing distributee or contingent annuitant, in the

form reported on the Schedule B.

F. Defined Contribution Plans

As described in this section F, PBGC will pay a missing distributee or qualified survivor the benefit under the EMPP from a DC Plan terminating and closing out on or after January 01, 2018.

For DB Plans terminating and closing out on or after January 01, 2018, see [section E](#). For PBGC-Covered Single-Employer DB Plans terminating and closing out on or before December 31, 2017, see [8.8-1 Missing Participants Program \(For DB Plans Terminating On or Before December 31, 2017\)](#).

1. General Rule for DC Plans

If a missing distributee claims a DC Plan benefit under the EMPP and—

- The Benefit Transfer Amount is \$5,000 or less: PBGC will pay the missing distributee the Accumulated Single Sum—no annuity will be offered.
- The Benefit Transfer Amount exceeds \$5,000: PBGC will pay the missing distributee in accordance with [section F.2](#).

If the missing distributee died—

- After BTD: PBGC will pay the qualified survivor in accordance with [section F.3](#)
- Before BTD: The rules in [section F.3](#) will generally apply, but contact ►PPD.

2. Non-De Minimis Benefits Payable to a Missing Distributee from a DC Plan

If the Benefit Transfer Amount exceeds \$5,000, PBGC will pay the missing distributee a monthly annuity in accordance with [section G.2](#) or, if the missing distributee so elects, the Accumulated Single Sum.

To determine the monthly benefit payable at the missing distributee's annuity starting date, PBGC will convert the Accumulated Single Sum to an actuarially-equivalent immediate SLA, using the applicable mortality table and the applicable interest rate under section 205(g)(3) of ERISA and section 417(e)(3) of the Code for January of the calendar year of the annuity starting date. The annuity starting date will generally be a prospective date but no earlier than EARD and no later than LARD.

3. Benefits Payable to a Qualified Survivor from a DC Plan

For now-deceased missing distributees in DC Plans, if (1) the Benefit Transfer Amount was \$5,000 or less or (2) the Benefit Transfer Amount exceeds \$5,000 and the missing distributee was either (i) not a plan participant or (ii) an unmarried plan participant, PBGC will pay the qualified survivor the Accumulated Single Sum—no annuity will be offered.

For now-deceased missing distributees in DC Plans, if the Benefit Transfer Amount exceeds \$5,000 and the qualified survivor is a participant's surviving spouse, PBGC will pay the participant's surviving spouse an SLA in accordance with [section G.2](#) or, if the spouse so elects, the Accumulated Single Sum. To determine the monthly SLA amount, PBGC will convert the Accumulated Single Sum to an actuarially equivalent SLA in accordance with [section F.2](#). The annuity starting date will be the later of the participant's EARD and the first of the month coincident with or next following the participant's date of death.

G. Special Rules and Applicability of Other PBGC Policies

1. Employee Contributions

If a missing distributee made mandatory contributions to a DB Plan, the Benefit Transfer Amount cannot be less than the sum of such contributions with interest. If a missing distributee made voluntary contributions to a DB Plan, contact ►PPD.

2. Annuity Benefit Forms

For Benefit Transfer Amounts exceeding \$5,000, the automatic form of benefit (absent an election) for a married plan participant in a DB Plan or a DC Plan will be a JSC50 annuity; for an unmarried missing distributee in a DB Plan, the automatic form of benefit will be an SLA.

To convert a monthly SLA amount to the monthly amounts of the JSC50 and, if applicable, PBGC Optional Forms of Annuity, PBGC will use the interest and mortality assumptions described in section 4022.8(c)(7) of PBGC Regulations.

For benefits payable to a missing distributee as a monthly annuity and (with respect to DB Plans) not in pay as of BDD, PBGC Optional Form will be available in accordance with [5.4-7 Annuity Benefit Forms](#). However, PBGC will not offer a certain-and-continuous PBGC Optional Form if the certain period would have expired on or before the first payment date.

3. Spousal Consent

If the missing distributee is a married DB or DC Plan participant, PBGC will first obtain spousal consent, in accordance with **5.7-5 Spousal Consent (Qualified Joint-and-Survivor Annuities)**, before paying a benefit as a lump sum if the Benefit Transfer Amount exceeds \$5,000 or as an annuity if the participant elects a form of annuity other than the JSC50 annuity, if the Benefit Transfer Amount exceeds \$5,000.

PBGC will make determinations with respect to the validity of a marriage, length-of-marriage requirements, and multiple marriages in accordance with **5.7-4 Marriage Requirements**. PBGC will apply spousal consent rules to DC Plan benefits, regardless of whether the plan would have done so.

For individuals applying to PBGC for a benefit payable under the EMPP, marital status will generally be determined as of the date the application for benefits is signed. For individuals who died after BDD/BTD, marital status will be determined in accordance with **5.7-2 Payment of Qualified Preretirement Survivor Annuities** in Plans Terminating on and after August 23, 1984.

4. Payments Owed to Deceased Payees

PBGC will determine payments owed with respect to a deceased missing distributee in accordance with the definition of Qualified Survivor in **section C**.

Note: Payments may be owed to more than one qualified survivor with respect to a missing distributee's benefit.

5. Qualified Domestic Relations Orders

The provisions of **6.6-3 Qualified Domestic Relations Orders** will be applicable to PBGC's payment of benefits under the EMPP. For purposes of this policy, the term "surviving spouse" also refers to an alternate payee treated as a participant's spouse under a QDRO.

6. Small Benefit Payments

The provisions of **5.4-10 Small Benefit Payments** (including payment rules for making small benefit payments without submission of a benefit application) will also apply to PBGC's payment of benefits under the EMPP.

7. Lump Sums

If a missing distributee or qualified survivor has the option to receive his or her benefit under the EMPP in the form of a lump-sum distribution and the payee so elects, PBGC will pay the benefit as an immediate lump sum (regardless of whether the participant's EARD or the Age 55 Date has occurred).

If missed annuity payments with interest exceed the Accumulated Single Sum, PBGC will generally pay the benefit only in the form of an annuity so long as the benefit may be paid under the EMPP in the form of a monthly annuity.

8. Interest

In accordance with **6.3-1 Underpayment Reimbursement and Interest Payments**, PBGC will pay interest from (1) BDD/BTD for lump-sum distributions of the Benefit Transfer Amount or (2) the annuity starting date for missed payments.

If unsure whether a PBGC policy applies to a missing distributee's benefit, contact ► PPD.

H. Benefit Determinations Issued to Missing Distributees

Upon locating a missing distributee or qualified survivor, PBGC will issue a benefit determination with appeal rights generally limited to how PBGC determines the amount of the monthly annuity.

Concurrence, Endorsement, and Approval

Policy 8.8-2 Expanded Missing Participants Program (1st Edition)		
Concurrence	Initials	Date
OBA/ASTD/ASD: Jarred Scott, Supervisory Technical Reviewer	J.S.	12/13/2017
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	L.S.	12/13/2017
OBA/PSD/CSD: Michelle Gray, Division Manager	M.G.	12/13/2017
OBA/PSD: Jennifer Messina, Director	J.M.	12/14/2017

OGC: Joseph Krettek, Assistant General Counsel	J.M.K.	12/13/2017
Endorsements		
General Counsel: Judith R. Starr	J.R.S.	12/15/2017
Chief Financial Officer: Patricia Kelly	P.K.	12/14/2017
Approval		
Chief of Benefits Administration: Cathleen Kronopolus	C.K.	12/14/2017
<p><i>This policy may not take effect without the written and dated endorsements of the General Counsel and Chief Financial Officer and the written and dated approval of the Chief of Benefits Administration on Transmittal 2018-03.</i></p>		

Issued by Pension Benefit Guaranty Corporation. Rights are in public domain. Cite as follows:
Pension Benefit Guaranty Corporation, *PBGC Operating Policy Manual*, Washington, D.C., Author.
http://intranet/standards_manuals/manuals/policy/8_8_2_1st.htm
(12/22/2017).

[Top of Page](#)

8.8-2 Expanded Missing Participants Program

Edition	2nd Edition
Issue Date	10/29/2021
Transmittal	Transmittal 2022-01
Last Review Date	N/A
Signed Policy	8.8-2 Expanded Missing Participants Program
Contact	PPD

In this policy

- A. Background
- B. Scope and Effective Date
- C. Definitions
- D. General Policy
- E. Defined Benefit Plans
- F. Defined Contribution Plans
- G. Special Rules and Applicability of Other PBGC Policies
- H. Benefit Determinations

A. Background

The Retirement Protection Act of 1994 created PBGC's Missing Participants Program (MPP) to address plan benefits that were payable to participants and their beneficiaries who could not be located during a standard termination or sufficient distress plan termination.

Under section 4050(a)(1) of ERISA, when benefits are owed to plan participants or their beneficiaries who are unlocatable after a diligent search, the plan is generally required either to purchase irrevocable commitments from an insurer—that is, annuity contracts—for the missing distributee or to transfer the value of the missing distributees' benefits to PBGC.

The Pension Protection Act of 2006 (PPA 2006) instructed PBGC to expand the MPP to other terminating plans not otherwise covered under PBGC's pension insurance program, including defined contribution plans and small professional defined benefit plans. PPA 2006 also expanded the program to include missing distributees in multiemployer plans whose plan sponsors terminate and close out the plan. PPA 2006 directed that the expanded program would apply to distributions made after PBGC's final rules implementing the expansion were effective.

In December 2017, PBGC issued [final regulations](#) to implement the expanded program under PPA 2006 and to modify certain rules applicable to PBGC-covered single-employer plans undergoing standard or sufficient distress plan terminations.

For plans that terminate (or, in the case of multiemployer plans, close out) on or after January 1, 2018, PBGC will pay the missing distributee or qualified survivor a lump sum if the benefit transferred to PBGC is \$5,000 or less. For larger benefit transfer amounts, PBGC will offer the same annuity options offered to missing distributees in trustee plans. If the missing distributee would have been permitted to elect a lump sum upon termination had he or she not been missing, PBGC will also offer a lump sum option.

For defined benefit plans, the method and assumptions used to determine the benefit transfer amount differ depending on many factors (e.g., whether the plan offers lump sums, whether the benefit is de minimis, whether the participant was in pay status) and are described in the instructions to the MP Forms. For defined contribution plans, the account balance available for distribution is transferred to PBGC.

A further change under PBGC's expanded program concerns payments owed with respect to deceased missing distributees. Payments to beneficiaries of missing distributees in plans terminating and/or closing out on and after January 1, 2018, now fall under a streamlined set of qualified survivor rules.

The second edition of this policy has been revised to clarify that for DC Plans—

- The Latest Allowable Retirement Date for missing distributees who are plan participants or surviving spouses is the later of the Benefit Transfer Date and the IRS Required Beginning Date
- The applicable interest and mortality assumptions in section 417(e)(3) of the Code, as of January of the calendar year of the annuity starting date, are used to convert the Accumulated Single Sum to a monthly form of annuity

B. Scope and Effective Date

This policy applies to PBGC's payment of benefits under PBGC's Expanded Missing Participants Program (EMPP) to missing distributees and qualified survivors in—

- PBGC-covered single-employer defined benefit plans that distribute benefits in a standard termination or in a distress termination sufficient for guaranteed benefits and that terminate on or after January 1, 2018
- Defined contribution plans that terminate on and after January 1, 2018 and choose to participate in the EMPP
- Small professional defined benefit plans not covered under title IV of ERISA that terminate on and after January 1, 2018, and choose to participate in the EMPP
- PBGC-covered multiemployer defined benefit plans that close out on and after January 1, 2018

This policy does NOT apply to PBGC-covered single-employer defined benefit plans that distributed benefits in a standard termination or sufficient distress termination and that terminated on or before

December 31, 2017. For those plans, see [8.8-1 Missing Participants Program \(For DB Plans Terminating On or Before December 31, 2017\)](#).

This policy is effective upon issuance.

C. Definitions

Age 55/65 Date: The first of the month coincident with or next following the date on which the plan participant attains age 55/65.

Accumulated Single Sum: The Benefit Transfer Amount, with interest accumulated from BDD/BTD to the annuity starting date (for monthly annuities) or the date payment is made (for lump-sum distributions).

Benefit Determination Date (BDD): For DB plans, the date selected by the plan for valuing benefits of missing distributees and determining the Benefit Transfer Amount.

Benefit Transfer Date (BTD): For DC plans, the date as of which the plan transferred the account balances of missing distributees to PBGC.

Benefit Transfer Amount: The amount as of BDD/BTD that a plan pays to PBGC with respect to a missing distributee's benefit, without regard to the administrative fee or late fees (if applicable).

Defined Benefit (DB) Plan: A single-employer defined benefit retirement plan covered by title IV of ERISA, as defined in section [4050.101 \(subpart A\)](#) of PBGC Regulations; a small professional service defined benefit retirement plan not covered by title IV of ERISA, as defined in section [4050.301 \(subpart C\)](#) of PBGC Regulations; or a multiemployer defined benefit retirement plan covered by title IV of ERISA, as defined in section [4050.401 \(subpart D\)](#) of PBGC Regulations.

Defined Contribution (DC) Plan: A single-employer or multiemployer defined contribution retirement plan, as defined in section [4050.201 \(subpart B\)](#) of PBGC Regulations.

Earliest Allowable Retirement Date (EARD): For DB Plans: The later of the Age 55 Date and the date on which earliest retirement age under the plan, as reported in the Schedule B to the Form MP, is attained. For DC Plans: The Age 55 Date.

Expanded Missing Participants Program (EMPP): The program described in part 4050 of PBGC's regulations for locating and paying benefits owed to missing distributees for plans that terminate or close out on or after January 1, 2018. For PBGC's Missing Participants Program of PBGC-covered Single-Employer DB Plans terminating on or before December 31, 2017, see [8.8-1 Missing Participants Program \(For DB Plans Terminating On or Before December 31, 2017\)](#).

Form MP: The [Form MP-100](#) for PBGC-Covered Single-Employer DB Plans, the [Form MP-200](#) for DC Plans, the [Form MP-300](#) for Small Professional DB Plans (not covered by PBGC), or, the [Form MP-400](#) for PBGC-Covered Multiemployer DB Plans.

Latest Allowable Retirement Date (LARD): For DB Plans: The participant's Normal Retirement Date (NRD) under the plan, as reported in the Schedule B to the Form MP (if the missing distributee is a plan participant or separate interest AP) or the participant's EARD (if the missing distributee is a plan participant's surviving spouse). For DC Plans: The later of the BTD and the IRS Required Beginning Date (RBD) as determined in [5.2-5](#)

Required Beginning Dates. In the unlikely situation that a QDRO requires a separate-interest AP who is the missing distributee to commence a separate-interest annuity before or on a specified date, the separate-interest AP's LARD will generally be the date specified as such in the QDRO. Contact [PPD](#) in this situation.

Missing Distributee: An individual whose plan benefit was transferred by the plan to PBGC under the EMPP. A missing distributee may be a plan participant, a deceased plan participant's surviving beneficiary or contingent annuitant, or a plan participant's alternate payee under a QDRO.

PBGC-Covered Multiemployer DB Plan: A multiemployer defined benefit retirement plan, as defined in section [4050.401 \(subpart D\)](#) of PBGC Regulations.

PBGC-Covered Single-Employer DB Plan: A single-employer defined benefit retirement plan distributing benefits in accordance with the standard termination procedures of title IV of ERISA, including distress terminations where plan assets are sufficient to provide all guaranteed benefits, as defined in section [4050.101 \(subpart A\)](#) of PBGC Regulations.

Qualified Survivor: For any benefit with respect to the participant or beneficiary, (1) person(s) who survive the participant or beneficiary and are entitled to receive all or part of the benefit to the extent provided under applicable provisions of a QDRO, if any; (2) person(s) identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit; or (3) if no such person(s) are so entitled, survivor of the participant or beneficiary who is the participant's or beneficiary's living (i) spouse or, if none, (ii) child(ren) or, if none, (iii) parent(s) or, if none, (iv) sibling(s).

Small Professional DB Plan: A small professional service defined benefit retirement plan not covered under title IV of ERISA, as defined in section [4050.301 \(subpart C\)](#) of PBGC Regulations.

D. General Policy

PBGC will pay—or notify—a missing distributee or qualified survivor of his or her benefit payable under the EMPP as soon as administratively feasible upon locating and identifying the missing distributee or qualified survivor.

- For benefits transferred to PBGC, PBGC will pay the missing distributee or qualified survivor in accordance with [section E](#) for DB Plans and [section F](#) for DC Plans.
- For annuity contracts purchased by a DB plan on behalf of a missing distributee, PBGC will notify the missing distributee or qualified survivor of the name and contact information of the insurer, the certificate number, and the monthly amount or current value of the benefit as reported to PBGC by the plan.
- For accounts of missing distributees transferred by a DC plan to a financial institution, PBGC will notify the missing distributee or qualified survivor of the name and contact information of the financial institution, the account number, and the account balance transferred as reported to PBGC by the plan.

For special rules and the applicability of other policies to PBGC's payment of benefits under the EMPP (including interest on missed payments), see [section G](#). If missed annuity payments are owed, PBGC will pay interest in accordance with [section G.8](#).

For benefit determinations and appeal rights, see [section H](#).

E. Defined Benefit Plans

As described in this [section E](#), PBGC will pay a missing distributee or qualified survivor the benefit under the EMPP from a DB Plan terminating and closing out on or after January 1, 2018, including PBGC-Covered Single Employer DB, Small Professional DB (not covered by PBGC), and PBGC-Covered Multiemployer DB Plans.

For DC Plans, see [section F](#). For PBGC-Covered Single-Employer DB Plans terminating and closing out on or before December 31, 2017, see [8.8-1 Missing Participants Program \(For DB Plans Terminating On or Before December 31, 2017\)](#).

1. General Rule for DB Plans

If a missing distributee claims a DB Plan benefit under the EMPP and—

- The Benefit Transfer Amount is \$5,000 or less: PBGC will pay the missing distributee the Accumulated Single Sum—no annuity will be offered.
- The Benefit Transfer Amount exceeds \$5,000: PBGC will pay the missing distributee in accordance with [section E.2](#).

If the missing distributee died—

- After BDD: PBGC will pay the qualified survivor in accordance with [section E.3](#).
- Before BDD: The rules in [section E.3](#) will generally apply, but contact [PPD](#).

If the missing distributee was in pay as of BDD—which PBGC expects to be unlikely—see [section E.4](#).

2. Non-De Minimis Benefits Payable to a Missing Distributee from a DB Plan

If the Benefit Transfer Amount exceeds \$5,000, PBGC will pay the missing distributee a monthly annuity in accordance with [section G.2](#) or, if the plan permits lump sums above \$5,000 and the missing distributee so elects, the Accumulated Single Sum instead of a monthly annuity.

To determine the monthly benefit payable at the distributee's annuity starting date, PBGC will use (1) the monthly straight-life annuity (SLA) amounts reported by the plan in the Schedule B to the Form MP for annuities, payable on/after BDD from EARD until LARD, and (2) linear interpolation if the annuity starting date is on a non-exact year (for example, at age 60 and 7 months). The annuity starting date will generally be a prospective date but no earlier than EARD and no later than LARD.

3. Benefits Payable to a Qualified Survivor from a DB Plan

For now-deceased missing distributees in DB Plans, if the Benefit Transfer Amount is \$5,000 or less, PBGC will pay the qualified survivor the Accumulated Single Sum—no annuity will be offered.

For now-deceased missing distributees in DB Plans, if the Benefit Transfer Amount exceeds \$5,000, a monthly annuity and/or missed payments with interest will generally be payable under the EMPP by PBGC to a qualified survivor so long as the missing distributee was—

- A married plan participant who—
 - Died before NRD (see [section E.3.a](#)), or
 - Died on/after NRD (see [section E.3.b](#)), or
- An unmarried plan participant who died on/after NRD (see [section E.3.c](#)), or
- A separate-interest AP who died on/after the participant's NRD (see [section E.3.c](#)), or
- A plan participant's surviving spouse who died on/after the participant's EARD (see [section E.3.c](#)), or
- In pay at BDD (rare) (see [section E.4](#)).

a. Death of Married DB Plan Participant before NRD

If the Benefit Transfer Amount exceeds \$5,000 and the missing distributee was a married DB Plan participant who died before NRD, PBGC will pay the surviving spouse as follows—

- If the present value, as of BDD, of the surviving spouse's 50%-survivor annuity is \$5,000 or less: PBGC will pay the plan participant's surviving spouse the present value of the 50%-survivor annuity, with interest from BDD (at the rate described in [section G.8](#))—no annuity will be offered.
- If the present value above exceeds \$5,000: PBGC will pay the plan participant's surviving spouse a 50%-survivor annuity and any missed payments with interest—no lump sum will be offered.

To determine a plan participant's surviving spouse's 50%-survivor annuity amount, PBGC will (1) convert the SLA determined in accordance with [section E.2](#) to an actuarially equivalent joint-and-50% survivor contingent basis (JSC50) annuity and (2) multiply the result by 50%. The annuity starting date will be the later of the plan participant's EARD and the first of the month coincident with or next following participant's date of death.

b. Death of Married DB Plan Participant on/after NRD

If the Benefit Transfer Amount exceeds \$5,000 and the missing distributee was a married DB Plan participant who died on or after NRD, PBGC will pay the surviving spouse the 50%-survivor annuity of the participant's JSC50 annuity, plus any missed payments with interest that were

owed to the participant before the participant's death—neither a lump sum nor PBGC Optional Forms will be offered.

To determine the JSC50 annuity amount, PBGC will convert the SLA determined in accordance with [section E.2](#) to an actuarially equivalent JSC50 annuity, commencing at the participant's NRD.

Note: If a DB Plan participant's surviving spouse is also deceased, PBGC will pay—

- The participant's qualified survivor: Missed JSC50 annuity payments with interest from NRD until the participant's death.
- The surviving spouse's qualified survivor: Missed 50%-survivor annuity payments with interest from the participant's death until the spouse's death.

c. Only Missed Payments Owed

If the Benefit Transfer Amount exceeds \$5,000 and the missing distributee died on or after his or her LARD and was an unmarried plan participant, a separate-interest AP, or a plan participant's surviving spouse, PBGC will pay the missing distributee's qualified survivor a single-sum backpayment of missed payments of an SLA (determined in accordance with [section E.2](#)) with interest from each missed payment date until the missing distributee's death—neither a lump sum nor PBGC Optional Forms will be offered. The annuity starting date will be the missing distributee's LARD.

4. Benefits in Pay as of BDD

If, as reported on the Schedule B of the Form MP, the missing distributee was in pay as of BDD, PBGC will generally resume annuity payments (and pay any missed payments with interest) to the missing distributee or contingent annuitant, in the form reported on the Schedule B.

F. Defined Contribution Plans

As described in this [section F](#), PBGC will pay a missing distributee or qualified survivor the benefit under the EMPP from a DC Plan terminating and closing out on or after January 1, 2018.

For DB Plans terminating and closing out on or after January 1, 2018, see [section E](#). For PBGC-Covered Single-Employer DB Plans terminating and closing out on or before December 31, 2017, see [8.8-1 Missing Participants Program \(For DB Plans Terminating On or Before December 31, 2017\)](#).

1. General Rule for DC Plans

If a missing distributee claims a DC Plan benefit under the EMPP and—

- The Benefit Transfer Amount is \$5,000 or less: PBGC will pay the missing distributee the

Accumulated Single Sum—no annuity will be offered.

- The Benefit Transfer Amount exceeds \$5,000: PBGC will pay the missing distributee in accordance with [section F.2](#).

If the missing distributee died—

- After BTD: PBGC will pay the qualified survivor in accordance with [section F.3](#)
- Before BTD: The rules in [section F.3](#) will generally apply, but contact [PPD](#).

2. Non-De Minimis Benefits Payable to a Missing Distributee from a DC Plan

If the Benefit Transfer Amount exceeds \$5,000, PBGC will pay the missing distributee a monthly annuity in accordance with [section G.2](#) or, if the missing distributee so elects, the Accumulated Single Sum.

To determine the monthly benefit payable at the missing distributee's annuity starting date, PBGC will convert the Accumulated Single Sum to an actuarially equivalent immediate SLA, using the applicable mortality table and the applicable interest rate under section 205(g)(3) of ERISA and section 417(e)(3) of the Code for January of the calendar year of the annuity starting date. The annuity starting date will generally be a prospective date but no earlier than EARD and no later than LARD.

3. Benefits Payable to a Qualified Survivor from a DC Plan

For now-deceased missing distributees in DC Plans, if (1) the Benefit Transfer Amount was \$5,000 or less or (2) the Benefit Transfer Amount exceeds \$5,000 and the missing distributee was either (i) not a plan participant or (ii) an unmarried plan participant, PBGC will pay the qualified survivor the Accumulated Single Sum—no annuity will be offered.

For now-deceased missing distributees in DC Plans, if the Benefit Transfer Amount exceeds \$5,000 and the qualified survivor is a participant's surviving spouse, PBGC will pay the participant's surviving spouse an SLA in accordance with [section G.2](#) or, if the spouse so elects, the Accumulated Single Sum. To determine the monthly SLA amount, PBGC will convert the Accumulated Single Sum to an actuarially equivalent SLA in accordance with [section F.2](#). The annuity starting date will be the later of the participant's EARD and the first of the month coincident with or next following the participant's date of death (but no earlier than BTD).

G. Special Rules and Applicability of Other PBGC Policies

1. Employee Contributions

If a missing distributee made mandatory contributions to a DB Plan, the Benefit Transfer Amount cannot

be less than the sum of such contributions with interest. If a missing distributee made voluntary contributions to a DB Plan, contact [PPD](#).

2. Annuity Benefit Forms

For Benefit Transfer Amounts exceeding \$5,000, the automatic form of benefit (absent an election) for a married plan participant in a DB Plan or a DC Plan will be a JSC50 annuity; for an unmarried missing distributee in a DB Plan, the automatic form of benefit will be an SLA.

To convert the Accumulated Single Sum to any monthly annuity (DC Plans) or to convert a monthly SLA amount to any other monthly annuity (DB Plans), PBGC will use the following:

- For DB Plans: The interest and mortality assumptions described in section 4022.8(c)(7) of PBGC Regulations.
- For DC Plans: The applicable interest rate and applicable mortality table under section 205(g)(3) of ERISA and section 417(e)(3) of the Code for January of the calendar year of the annuity starting date.

For benefits payable to a missing distributee as a monthly annuity and (with respect to DB Plans) not in pay as of BDD, PBGC Optional Form will be available in accordance with [5.4-7 Annuity Benefit Forms](#). However, PBGC will not offer a certain-and-continuous PBGC Optional Form if the certain period would have expired on or before the first payment date.

3. Spousal Consent

If the missing distributee is a married DB or DC Plan participant, PBGC will first obtain spousal consent, in accordance with [5.7-5 Spousal Consent \(Qualified Joint-and-Survivor Annuities\)](#), before paying a benefit as a lump sum if the Benefit Transfer Amount exceeds \$5,000 or as an annuity if the participant elects a form of annuity other than the JSC50 annuity, if the Benefit Transfer Amount exceeds \$5,000.

PBGC will make determinations with respect to the validity of a marriage, length-of-marriage requirements, and multiple marriages in accordance with [5.7-4 Marriage Requirements](#). PBGC will apply spousal consent rules to DC Plan benefits, regardless of whether the plan would have done so.

For individuals applying to PBGC for a benefit payable under the EMPP, marital status will generally be determined as of the date the application for benefits is signed. For individuals who died after BDD/BTD, marital status will be determined in accordance with [5.7-2 Payment of Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984](#).

4. Payments Owed to Deceased Payees

PBGC will determine payments owed with respect to a deceased missing distributee in accordance with

the definition of Qualified Survivor in [section C](#) .

Note: Payments may be owed to more than one qualified survivor with respect to a missing distributee's benefit.

5. Qualified Domestic Relations Orders

The provisions of [6.6-3 Qualified Domestic Relations Orders](#) will be applicable to PBGC's payment of benefits under the EMPP. For purposes of this policy, the term "surviving spouse" also refers to an alternate payee treated as a participant's spouse under a QDRO.

6. Small Benefit Payments

The provisions of [5.4-10 Small Benefit Payments](#) (including payment rules for making small benefit payments without submission of a benefit application) will also apply to PBGC's payment of benefits under the EMPP.

7. Lump Sums

If a missing distributee or qualified survivor has the option to receive his or her benefit under the EMPP in the form of a lump-sum distribution and the payee so elects, PBGC will pay the benefit as an immediate lump sum (regardless of whether the participant's EARD or the Age 55 Date has occurred).

If missed annuity payments with interest exceed the Accumulated Single Sum, PBGC will generally pay the benefit only in the form of an annuity so long as the benefit may be paid under the EMPP in the form of a monthly annuity.

8. Interest

In accordance with [6.3-1 Underpayment Reimbursement and Interest Payments](#), PBGC will pay interest from (1) BDD/BTD for lump-sum distributions of the Benefit Transfer Amount or (2) the annuity starting date for missed payments.

If unsure whether a PBGC policy applies to a missing distributee's benefit, contact [PPD](#).

H. Benefit Determinations Issued to Missing Distributees

Upon locating a missing distributee or qualified survivor, PBGC will issue a benefit determination with appeal rights generally limited to how PBGC determines the amount of the monthly annuity.

Concurrence, Endorsement, and Approval

Policy 8.8-2 Expanded Missing Participants Program, 2nd Ed.	
Concurrence	
OBA/ASTD/ASD: David Joseph, Supervisory Technical Reviewer	 Digitally signed by DAVID JOSEPH Date: 2021.10.28 10:04:56 -04'00'
OBA/PSD/PPD: Laura Stephens, Supervisory Policy Advisor	 Digitally signed by LAURA STEPHENS Date: 2021.10.26 13:54:46 -04'00'
OBA/PSD/CSD: Michelle Gray, Division Manager	 MICHELE GRAY <small>Digitally signed by MICHELE GRAY Date: 2021.10.28 10:15:53 -04'00'</small>
OGC: Joseph Krettek, Assistant General Counsel	 JOSEPH KRETTEK <small>Digitally signed by JOSEPH KRETTEK Date: 2021.10.28 11:59:18 -04'00'</small>
Endorsement	
General Counsel: F. Russell Dempsey	 FREDRICK DEMPSEY <small>Digitally signed by FREDRICK DEMPSEY Date: 2021.10.28 15:02:01 -04'00'</small>
Approval	
Chief of Benefits Administration: David Foley	 DAVID FOLEY <small>Digitally signed by DAVID FOLEY Date: 2021.10.28 11:11:04 -04'00'</small>
<i>This policy may not take effect without the written and dated endorsement of the General Counsel and the written and dated approval of the Chief of Benefits Administration on Transmittal 2021-01.</i>	