

Annuity Benefit Forms

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A. Background

Earlier editions of this internal guidance 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 trusteee plans, and they are available independent of plan provisions.

In this fifth edition, the internal guidance 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 Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities). This edition also includes other minor clarifying changes, including removal of disability benefit forms details with reference to Internal Guidance Disability Benefits.

B. Scope and Effective Date

This internal guidance 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 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 internal guidance, 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 Internal Guidance 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
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, request guidance by emailing PSDGGuidance@pbgc.gov for a determination regarding whether the form is payable.

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, request guidance by emailing PSDGGuidance@pbgc.gov.

Payments before trusteeship. In a plan in which PBGC is paying benefits before trusteeship (see Internal Guidance 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.

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 internal guidance 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.

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 Internal guidance 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, request guidance by emailing PSDGGuidance@pbgc.gov.
 - 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 Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities).
- 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 Internal Guidance 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:
 - 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 Internal Guidance 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 Internal Guidance 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 Internal Guidance Recoupment, Recovery and Administrative Correction.

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 Internal Guidance 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. PSD Federal concurrence is required for a determination to allow a new benefit form election.

If PSD Federal 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 Internal Guidance 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 Internal Guidance Qualified Preretirement Survivor Annuities - 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 QJSA (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 QJSA 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 Internal Guidance 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 Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments; Internal Guidance Recoupment, Recovery and Administrative Correction; and Internal Guidance 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.

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 PSD Federal 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 PSD Federal concurs, PBGC will allow Participant C to elect a new annuity benefit form.