

Erroneous Commencement

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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 Internal Guidance Bulletin 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 Internal Guidance Bulletin 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 Internal Guidance 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 Internal Guidance 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 (Benefits Erroneously Paid Before Eligibility Internal Guidance) 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 PBGC Internal Guidance 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 Erroneous Commencement Internal Guidance), 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 direction to request guidance by emailing PSDGuidance@pbgc.gov if an affected payee requests a retroactive annuity starting date (section C).

B. Scope and Effective Date

This PBGC Internal Guidance 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 internal guidance 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 internal guidance 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 Internal Guidance 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-trusted plans and replaces Internal Guidance 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 Internal Guidance 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. Request guidance by emailing PSDGuidance@pbgc.gov 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 Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments and will be subject to recoupment as described in PBGC Internal Guidance Recoupment, Recovery and Administrative Correction.

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 internal guidance, for example, if PBGC believes there is evidence of abuse by a prior plan administrator.