

Computation and Netting of Post-DOPT Overpayments and Underpayments

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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 internal guidance statement provides rules for computing post-DOPT overpayments and underpayments, and netting them when applicable for recoupment, recovery, or reimbursement.

This internal guidance 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 sixth edition, PBGC makes changes to section E with respect to benefits from related plans and clerical errors.

B. Scope and Effective Date

This internal guidance statement applies to the calculation of net overpayments or underpayments made on or after DOPT in PBGC-trusted 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 internal guidance.

This internal guidance does not apply to

- adjustments resulting from earnings offsets as provided in Internal Guidance Earnings-Offset Provisions in PBGC-Trusted Plans nor
- a determination of amounts owed as pre-termination liabilities as provided under Internal Guidance 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) and
 - 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, request guidance by emailing PSDGuidance@pbgc.gov.

Example C-1: A NOIT was not issued. PBGC issued a NOD on 5/30/15. DOPT was 3/31/15, and DOTR was 8/31/15. Since a NOIT was not issued, the OACD is the later of

- a. the NOD Date (5/30/15) and
- b. the actual DOPT (3/31/15).

Therefore, the OACD is 5/30/15.

Example C-2: A NOIT was issued, and the proposed DOPT was 2/15/15. DOPT was 3/31/15. Since a NOIT was issued, the OACD would be the later of

- a. the proposed DOPT (2/15/15) and
- b. the actual DOPT (3/31/15).

Therefore, the OACD is 3/31/15.

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. or 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 10/1/14) for that month. See Example D-1 below and section D.1 and section D.2 of Internal Guidance: 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 Internal Guidance: 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 Internal Guidance: Underpayment Reimbursement and Interest Payments. If a payee has been overpaid, the overpayment may be recouped or recovered as provided under Internal Guidance: Recoupment, Recovery and Administrative Correction.

Example D-1: A participant is entitled to \$1,400.00 per month from 1/1/15 (DOPT, DOTR, and OACD) through 6/1/15 and \$800.00 per month for life thereafter. The error is corrected at (original) BD issuance. The participant was paid

- \$1,400.50 from 1/1/15 until 4/1/15
- \$1,400.00 from 5/1/15 until 8/1/15
- \$799.50 from 9/1/15 until 10/1/15
- \$804.00 from 11/1/15 until 12/1/15

As of 12/31/15, 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
1/1/15 – 4/1/15 (4 months)	\$1,400.00	\$1,400.50	\$1,400.50	\$0.00
5/1/15 – 6/1/15 (2 months)	\$1,400.00	N/A	\$1,400.00	\$0.00
7/1/15 – 8/1/15 (2 months)	\$800.00	N/A	\$1,400.00	\$600.00 (Total o/p \$1,200.00)
9/1/15 – 10/1/15 (2 months)	\$800.00	N/A	\$799.50	\$1.00 (Total u/p \$1.00)
11/1/15 – 12/1/15 (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 12/31/15, 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
1/1/15 – 4/1/15 (4 months)	\$1,400.00	\$1,400.50	\$1,400.50	\$0.00
5/1/15 – 6/1/15 (2 months)	\$1,400.00	N/A	\$1,400.00	\$0.00
7/1/15 – 8/1/15 (2 months)	\$800.00	N/A	\$1,400.00	\$600.00 (Total o/p \$1,200.00)
9/1/15 – 10/1/15 (2 months)	\$800.00	\$799.50	\$799.50	\$0.00
11/1/15 – 12/1/15	\$800.00	\$804.00	\$804.00	\$0.00

(2 months)				
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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 and Clerical Errors

1. Benefits from Related Plans

If a payee was paid from the wrong plan and, as a result of PBGC's determination with respect to which plan the payee is entitled to benefits from, 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. This means that PBGC will generally NOT seek repayment from one plan and simultaneously make a duplicative payment with respect to the other plan. Before applying this internal guidance provision, request guidance by emailing PSDGuidance@pbgc.gov.

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. PBGC subsequently discovers that the payee was owed benefits from the salaried plan, not the hourly plan. For purposes of netting any overpayments and underpayments, PBGC treats all monthly payments as being from the correct plan (that is, the salaried plan), yielding no net overpayment or underpayment.

2. Clerical Errors

Unlike PBGC's authority to remedy the situation described in section E.1 above, offsetting benefit overpayments and underpayments from plans that are not related is generally prohibited. As demonstrated in Example E-2 below, there is an exception if one or more benefit payments were associated with the wrong plan due solely to a clerical error (for example, inputting the wrong case number into a payment system or ledger) – PBGC corrects the clerical error and treats the benefit payments as having been paid from the correct plan. Before applying this internal guidance provision, request guidance by emailing PSDGuidance@pbgc.gov.

Example E-2: A payee is entitled to benefits from Plan A. Due to a clerical error, PBGC miscoded the payee's benefit as payable from Plan B, which was unrelated to Plan A. After discovering the error, PBGC corrects the coding in the payment systems and ledger and treats all monthly payments as being from the correct plan (that is, Plan A).

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 Internal Guidance: Underpayment Reimbursement and Interest Payments and Internal Guidance: Recoupment, Recovery and Administrative Correction. Request guidance by emailing PSDGuidance@pbgc.gov 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.