

# Excess Assets in Trusteed Sufficient Plans

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## 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.

## Definitions

**Excess assets** means the excess, as of the termination date, of (a) the plan's Financial Plan Assets (defined in Internal Guidance 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.

**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.

## Guidance

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, 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.

If a plan that required mandatory employee contributions now has excess assets, 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.

## **Plan Provides for Distributing Excess Assets to the Employer**

PBGC shall return the excess assets, net of any amount attributable to mandatory employee contributions, to the entity that the plan provides is entitled to the excess 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, premiums, termination premium, etc.) that amount will generally be offset against the excess assets and treated as a recovery, see Internal Guidance Valuing Recoveries. The Office of General Counsel (OGC) should be consulted in all excess assets cases to advise whether there is an applicable offset that may be restricted, such as the entity's pending bankruptcy or prior settlement agreement with PBGC.

If the entity entitled to excess assets is a debtor in an ongoing bankruptcy or similar proceeding, the excess assets will be paid, in consultation with OGC, 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 exceed \$250,000, OGC will determine whether to take additional steps such as seeking to reopen a closed bankruptcy.

## **Plan Provides for Distributing Excess Assets to Participants**

PBGC shall apportion the excess assets (net of any amount attributable to mandatory employee contributions) 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.

## **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) 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.