

# **Asset Re-evaluations**

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## **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 internal guidance 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 3<sup>rd</sup> edition of the internal guidance 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 internal guidance is effective upon issuance.

## **C. General Guidance**

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.

Request guidance by emailing PSDGuidance@pbgc.gov 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 internal guidance, 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 UNGBs 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 representatives from OBA and a representative from the Office of the General Counsel.

Any issues unresolved by the ARWG shall be referred to the Chief 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 internal guidance.

## **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 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.