

# Benefit Payments Prior to Trusteeship

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## Background

For a variety of reasons, including insufficient assets or abandonment, a terminating pension plan may have participants who are not receiving benefits to which they are entitled. This internal guidance describes when PBGC may pay benefits prior to its appointment as trustee, as outlined in ERISA § 4005(b)(2)(E).

This internal guidance applies to any single-employer plan that PBGC anticipates it will trustee in the future and that has participants who are not receiving benefits to which they are entitled under Title IV of ERISA if, as expected, the plan terminates and is trustee by PBGC and is effective upon issuance.

## Definitions

**Pre-Trusteeship Authorization Date** – A date established by the Chief of Benefits Administration as of which PBGC may make benefit payments prior to trusteeship.

## Internal Guidance

In certain circumstances, PBGC may decide to pay benefits to participants in a plan covered by Title IV of ERISA prior to PBGC's appointment as trustee. The Chief of Benefits Administration will decide based on the facts and circumstances of the case and will specify the pre-trusteeship authorization date as of which payments may be made.

In general, PBGC may pay benefits prior to its appointment as trustee only if:

- PBGC reasonably believes that the plan is covered under ERISA § 4021;
- PBGC anticipates becoming plan trustee in the future;
- Benefits are out of pay status or are projected to be out of pay status prior to the expected date of trusteeship;
- PBGC has the data necessary to make estimates of benefits payable;
- The Date of Plan Termination (DOPT) is expected to be on or before the date the benefit payments are due; and
- The plan is insufficient or projected to be insufficient to pay benefits, has been abandoned, or otherwise lacks the administrative ability to make payments to new payees or continue to make payments to existing payees as of the pre-trusteeship authorization date.

After the decision is made to pay benefits as of a pre-trusteeship authorization date, PBGC pays benefits as follows until the plan is trustee:

- A participant, beneficiary or alternate payee who is in pay status will continue to be paid the form of benefit that he or she was receiving from the plan;
- PBGC will pay benefits in plan (annuity) forms based on valid plan applications that are filed before PBGC becomes trustee of the plan;
- A plan participant or beneficiary requesting an application for annuity benefits will be provided a PBGC application. PBGC will offer only the PBGC benefit forms, as provided under Internal Guidance Annuity Benefit Forms;
- PBGC will not pay a benefit in a lump sum before PBGC becomes trustee of the plan, even if the benefit is de minimis under the plan or Internal Guidance Lump Sum Benefit Payments; and
- PBGC will limit benefits to its best estimate of termination benefits, which, in most cases, will be estimated guaranteed benefits.

Payments missed prior to PBGC's pre-trusteeship authorization date will be reimbursed as soon as practicable **after** PBGC becomes trustee of the plan. Missed payments will be reimbursed after trusteeship as provided under Internal Guidance Underpayment Reimbursement and Interest Payments.

## Examples

ABC Corporation pension plan has not been terminated or trustee as of 1/1/2020. The plan has run out of funds. Therefore, payments to existing retirees have ceased, and participants newly eligible to retire are not able to apply for or receive retirement benefits. PBGC establishes a pre-trusteeship authorization date of 1/1/2020. Ultimately the plan is terminated and trustee, with a DOPT of 9/1/2019 and Date of Trusteeship (DOTR) of 8/1/2020.

1. **Existing Payees – Annuity Starting Date (ASD) before pre-trusteeship authorization date.** PBGC determines that John Doe retired in 2010 and was receiving an SLA monthly payment of \$600, however, the last payment to Mr. Doe was on 11/2019. After the pre-trusteeship authorization date is established as 1/1/2020, PBGC pays Mr. Doe an estimated \$600 monthly benefit beginning 3/2020. He has "missed payments" for 12/2019, 1/2020 and 2/2020. PBGC pays Mr. Doe his 1/2020 and 2/2020 payments, as both payments are owed as of the pre-trusteeship authorization date of 1/1/2020. PBGC pays Mr. Doe his other "missed payment" for 12/2019 after the plan is trustee, because the missed payment date precedes the pre-trusteeship authorization date.
2. **New Payee – ASD after pre-trusteeship authorization date.** Bill Smith contacts PBGC in March of 2020 about his eligibility for an annuity start date of 4/1/2020. PBGC supplies Mr. Smith with his estimated retirement benefit information and application package (including optional forms etc.). Mr. Smith completes and returns the application in early May. His annuity start date is 4/1/2020, which is after the pre-trusteeship authorization date.

3. **New Payee – ASD before pre-trusteeship authorization date.** Jane Murphy contacts PBGC in March of 2020 about her eligibility for an annuity start date on 10/1/2019. Ms. Murphy advises she was unsuccessful in getting an application package or benefit estimates from the prior plan administrator and was unable to apply for retirement. PBGC determines Ms. Murphy is eligible for an annuity start date of 10/1/2019. PBGC provides Ms. Murphy with an estimate of her retirement benefit and an application package (including optional forms etc.) and informs her that she may elect a retroactive annuity start date of 10/1/2019. She is further informed that if she elects an annuity start date of 10/1/19, PBGC will pay her back payments to 10/1/2019 only **after** the plan has been formally trustee by PBGC. If she prefers, she can select an annuity start date after the pre-trusteeship authorization date. She returns the completed application in early May, selecting 10/1/2019 as her annuity start date. Therefore, when she is put into pay with a first monthly payment on 6/1/2020, PBGC pays her back payment for the months of January through May 2020 because these payments are owed as of the pre-trusteeship authorization date, and advises her that she is owed for "missed payments" for October through December 2019, which will be paid after PBGC becomes trustee of the pension plan.