

# Beneficiaries

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## A. Background

When a participant, beneficiary, or Alternate Payee under a Qualified Domestic Relations Order (QDRO) dies, PBGC must determine whether and to whom death benefits or other payments are due at death. Payments that may be owed at death include but are not limited to, continuing annuity payments (such as a Qualified Pre-retirement Survivor Annuity (QPSA)) and payments owed to a deceased payee as of the date of death but that had not been paid (such as a net underpayment).

With this edition, PBGC makes editorial changes and clarifies how payments are made:

- To an estate owed the remainder of a certain-and-continuous annuity – see section D.2
- When there is no open estate or under a state's small estate rules – see section G.6
- To Qualified Survivors under the Expanded Missing Participants Program (EMPP, that is, for Defined Benefit (DB) and Defined Contribution (DC) plans under the Missing Participants Program (MPP) and terminated on or after January 1, 2018) – see section G.7
- To a beneficiary who wishes to disclaim the payment in full – see section G.8
- To a beneficiary requesting payment to an open estate in lieu of another beneficiary – see section G.9
- To an acceptable designated beneficiary – see section G.10
- Under various scenarios for trustee plans, the legacy Missing Participants Program (that is, for DB plans under the MPP and terminated before or on December 31, 2017), and the EMPP – see section H.

## B. Scope and Effective Date

This PBGC Internal Guidance applies to making payments to the beneficiary or beneficiaries with respect to a deceased plan participant, a deceased survivor annuitant, or a deceased Alternate Payee under a QDRO.

This internal guidance is based on PBGC Regulations 4022.81, 4022.83, 4022.91-95, 4022.101-104, 4050.102-106, 4050.202-206, 4050.302-306, 4050.402-406. This internal guidance supplements Internal Guidance Annuity Benefit Forms, Spousal Consent (Qualified Joint-and-Survivor Annuities), Priority Category 2 Benefits Payment, Missing Participants Program, Original, and Missing Participants Program, Expanded in 2018. These rules apply regardless of contrary provisions in a plan, will, or similar testamentary document.

This internal guidance applies to all plans trustee by PBGC as well as to payments made under trustee plans as well as the legacy MPP and the EMPP and is effective upon issuance.

## C. Definitions

**C.1. Contingent Annuitant** means the person or entity entitled to receive Continuing Annuity Payments. The Contingent Annuitant is generally the individual designated by the payee (typically at retirement or under the plan) to receive continuing annuity benefits. For additional guidance on contingent annuitants, see Internal Guidance Annuity Benefit Forms.

**C.1.a. Contingent Annuitant of Joint-life Annuities.** If the payee's elected form of benefit is a joint-life annuity (for example, the plan's Qualified Joint-and-Survivor Annuity (QJSA)) or any annuity with a survivor benefit payable for the survivor's lifetime (for example, a straight-life annuity with a free surviving spouse benefit), the Contingent Annuitant must be a living person. The Contingent Annuitant for a joint-life annuity or a free surviving spouse benefit is generally designated at the payee's retirement and may not be changed after the first payment date of the annuity.

**C.1.b. Contingent Annuitant of Single-life Annuities.** If the payee's elected form of benefit is a single-life annuity, the Contingent Annuitant may be one or more living persons, an estate, trust, or other organization (such as a church). For single-life annuities (other than with a free surviving spouse benefit), a Contingent Annuitant may be designated before or after payments begin, and the payee may subsequently change the Contingent Annuitant. When payments to the Contingent Annuitant under a single-life annuity such as a certain-and-continuous annuity or modified cash-refund annuity have ended (for example, when the certain-and-continuous period expires), there is no longer a Contingent Annuitant.

**C.2. Continuing Annuity Payments** means payments that are made when a deceased payee was receiving a benefit form that provides annuity payments which continue after the payee's death (frequently referred to as survivor benefits). The form of benefit may be a joint-life annuity, such as a QJSA or optional joint-and-survivor annuity; a single-life annuity, such as a certain-and-continuous annuity, modified cash-refund annuity, or installment-refund annuity; or an annuity with a free surviving spouse benefit payable to the deceased payee's surviving spouse (this list is not exhaustive).

**C.3 Disclaimer or Waiver of Payment** means an action taken by a beneficiary to renounce or refuse a payment. The payment will pass to the next beneficiary as if the disclaiming beneficiary had predeceased the decedent. See section G.8.

**C.4 Intestate Succession Rules** mean the distribution methods of property of a deceased payee to next of kin, including the surviving blood relatives (including children adopted by the deceased payee and, if deceased, their descendants; but generally not the deceased payee's stepchildren, foster children, or in-laws or, if deceased, any of their descendants), under the intestate (without a will) succession rules of a US state, territory, or the District of Columbia (US State). Intestate succession rules vary by US State but are generally based on one of following three methods:

- **Per Stirpes** (also known as **Strict per Stirpes** or **English per Stirpes**) means benefits are divided at the first generation with a living or deceased member and shares at subsequent generations are divided equally within each bloodline (about a third of US States follow these or similar rules)
- **Per Capita with Representation** (also known as **American per Stirpes**, **Modern per Stirpes**, or **Per Stirpes by Representation**) means benefits are divided at the first generation with a living

member and shares at subsequent generations are divided equally by bloodline (about half of US States follow these or similar rules)

- **Per Capita at Each Generation** (also known as **By Representation**) means benefits are divided at the first generation with a living member and shares at subsequent generations are pooled and divided equally across the generation (about a dozen US States follow these or similar rules)

Summary of Intestate Succession Rules			
	Per Stirpes	Per Capita with Representation	Per Capita at Each Generation
<b>Where Benefit is First Divided</b>	First Living or Deceased Member	First Living Member	
<b>How Shares Are Then Divided</b>	Dividing Equally Within Each Bloodline		By Pooling at Subsequent Generations, Dividing Equally

When a beneficiary is next of kin under sections E.1.g (for deaths on or after June 1, 2002) or F.4 (for deaths before or on May 31, 2002), PBGC will generally follow the intestate succession rules of the US State where the deceased payee resided at death.

**Example:** PBGC owes \$180.00 to a deceased payee who had no children, no surviving spouse, and no surviving parents. The payee had a brother and sister, both of whom predeceased the payee, and a sibling who is alive. The brother is survived by a son; the sister, by four surviving daughters. Depending on which intestate succession rules apply, PBGC pays the following amounts to the beneficiaries of the deceased payee:

- Per Stirpes and Per Capita with Representation: \$60.00 ( $1/3 \times \$180.00$ ) to the sibling, \$60.00 ( $1/3 \times \$180.00$ ) to the nephew, and \$15.00 ( $1/3 \times 1/4 \times \$180.00$ ) to each niece of the deceased payee, for a total of \$180.00 ( $\$60.00 + \$60.00 + 4 \times \$15.00$ )
- Per Capita at Each Generation: \$60.00 ( $1/3 \times \$180.00$ ) to the sibling and \$24.00 ( $2/3 \times 1/5 \times \$180.00$ ) to each niece and nephew of the deceased payee, for a total of \$180.00 ( $\$60.00 + 5 \times \$24.00$ )

**C.5 Open Estate** means an estate, as defined under applicable state law, that (i) has been opened, either by formal or informal Probate, with a named administrator (also known as executor, personal representative, and so forth) to distribute a decedent's assets and to complete the decedent's business and (ii) has NOT been closed under applicable state probate law. Note that an estate does NOT terminate automatically—that is, an estate that has been opened remains open until it is closed. PBGC will also treat a “reopened” estate as an open estate. See also section G.9.

**C.6 Probate** means the process of proving the validity of a will in court or, if a decedent died intestate (without a will), to the process whereby a court determines how a decedent's estate is to be distributed.

**C.7. Qualified Survivor** means, in the context of the EMPP, the individual(s) or entity to whom payment is owed with respect to a Missing Distributee who died on or after the Benefit Determination Date (BDD) in a DB plan or Benefit Transfer Date (BTD) in a DC plan and as determined in accordance with section C of Internal Guidance Missing Participants Program, Expanded in 2018. For any benefit payable with respect to the Missing Distributee, the Qualified Survivor(s) is (are):

- Step 1: the person(s) who survive the participant or beneficiary and are entitled to receive all or part of the benefit to the extent provided under applicable provisions of a QDRO (for example, a portion of the plan participant's benefit, assigned under the QDRO to the Alternate Payee, which was payable (i) to the Alternate Payee as a shared payment or separate interest benefit prior to the participant's death or (ii) as the survivor portion of a QPSA or QJSA under a treat-as-spouse provision to a spouse or former spouse of the participant upon the participant's death), if any;
- Step 2: person(s) identified by the plan in a submission to PBGC by the plan as being entitled under applicable plan provisions (including elections, designations, and waivers consistent with such provisions) to receive the benefit (see also Notes 3 and 7); or
- Step 3: if no such person(s) is (are) so entitled, survivor of the participant or beneficiary who is the participant's or beneficiary's living (i) spouse (but not, with respect to benefits unassigned to an Alternate Payee under a QDRO, a former spouse treated as a surviving spouse under a QDRO) or, if none, (ii) child(ren) or, if none, (iii) parent(s) or, if none, (iv) sibling(s).

**Note 1:** For applying the Qualified Survivor rules to a specific case, see section G.7. The Qualified Survivor rules apply only to deaths on or after the Benefit Determination Date or the Benefit Transfer Date, as applicable (BDD/BTD) and only to the EMPP (not the legacy MPP). If there is no Qualified Survivor, no benefit is payable from PBGC.

**Note 2:** A Missing Distributee is that individual whose benefit or payment the plan has transferred to PBGC under the EMPP. The Missing Distributee can be a plan participant, the plan participant's surviving spouse, an Alternate Payee under a QDRO of the plan participant, or a non-spouse beneficiary who is owed a benefit or payment.

**Note 3:** The identification of person(s) and/or entity or entities described in Step 2 includes, but is not limited to, copies of plan beneficiary designation forms, benefit applications, electronic spreadsheets, databases, and any other electronic or hard-copy supplemental documentation submitted by the plan in accordance with the MPP Filing. This means that, if there is no designated beneficiary identified in the plan filing, PBGC will give priority to and seek to pay the beneficiary as specified under applicable plan provisions. If no designated beneficiary has been identified in the plan filing and if there is no beneficiary to pay under the applicable plan provisions, PBGC will give priority to and seek to pay the beneficiary determined in Step 3.

**Note 4:** If the Missing Distributee has died before BDD/BTD, then the Qualified Survivor rules in this Section C.7 and in section G.7 do NOT apply. Instead, PBGC would give priority, as applicable, to the beneficiary determined under plan's default rules (that is, those plan provisions applicable specifically to payments owed with respect to a deceased payee) in accordance with the relevant section(s) of this Internal Guidance. For example, if the death is on or after June 1, 2002, and before BDD/BTD, then section E.3 applies.

**Note 5:** Qualified Survivors under Step 3 (i)-(iv) are living persons, not descendants of deceased individuals, under PBGC regulations cited in section B above.

**Note 6:** If a Qualified Survivor requests in writing to PBGC that payment be made to an open estate instead of to the Qualified Survivor(s), see section G.9.

**Note 7:** Upon receipt of a PBGC beneficiary designation made on or after BDD/BTD by a Missing Distributee, PBGC will construe the beneficiary designation as superseding any previous plan beneficiary designation(s) or, in the absence of a beneficiary designation, as creating a beneficiary designation.

**C.8 Relative** means, for purposes of determining the deceased payee's beneficiary under this internal guidance, someone related (through one or both parents) to another person biologically or through legal adoption. For purposes of this internal guidance, the terms "child", "descendant of deceased children", "parent", "sibling", and "next of kin" refer to relatives of the decedent and therefore generally do NOT include (this list is not exhaustive) individuals with solely a step-relation to the decedent (such as stepsibling or stepparent), with solely a god-relation to the decedent (such as godparent or godchild), with solely an in-law or marital relation to the decedent (such as the decedent's parent-in-law, the decedent's grandchild's spouse, or the decedent's aunt or uncle by marriage, for example, the spouse of the sibling of a parent of the decedent who nonetheless may be referred to as the decedent's "aunt" or "uncle").

**C.9 Small Estate** means estate exempted from Probate because the value of the decedent's assets does not exceed a certain threshold. Many states exempt an estate from Probate for this reason. See section G.6.

## D. Continuing Annuity Payments to Contingent Annuitants

PBGC will make Continuing Annuity Payments after the payee's death as follows:

- If the Contingent Annuitant is a living beneficiary or ongoing organization, see section D.1
- If the Contingent Annuitant is the deceased payee's estate, see section D.2

Continuing Annuity Payments include (this list is not exhaustive):

- An annuity for the lifetime of a surviving spouse payable under a QJSA or free surviving spouse benefit in a steel plan
- Annuity payments for the remainder of the certain period under a certain-and-continuous annuity if the payee dies before the certain period expired
- Payments to a contingent Alternate Payee under a QDRO after the Alternate Payee's death

For benefit payments owed at death which are not Continuing Annuity Payments (such as a net underpayment of missed payments, a de minimis lump sum, and so forth), see:

- section E if the payee died on or after June 1, 2002
- section F if the payee died before or on May 31, 2002

For rules that may apply in addition to and/or in lieu of the rules in this Section D, see section G.

### D.1. Payment of Continuing Annuity Payments

PBGC will make Continuing Annuity Payments to a Contingent Annuitant who is the payee's living beneficiary or which is an ongoing organization (not an estate) as follows:

- For Continuing Annuity Payments in pay status, see section D.1.a
- For Continuing Annuity Payments NOT in pay status, see section D.1.b
- For retroactive Annuity Starting Dates, see section D.1.c
- For deceased Contingent Annuitants, see section D.1.d

- For single-life annuities, see section D.1.d.1
  - For joint-life annuities, see section D.1.d.2
- If the Contingent Annuitant is unknown, see section D.1.e
  - For single-life annuities, see section D.1.e.1
  - For joint-life annuities, see section D.1.e.2
- If the form of benefit is uncommon (for example, free surviving spouse benefit in a steel plan), see section D.1.f

For Continuing Annuity Payments payable to an estate, see section D.2.

#### **D.1.a. Continuing Annuity Payments in Pay Status**

Continuing Annuity Payments will be payable when the deceased payee was receiving a form of benefit that provides for annuity payments which continue after death to a Contingent Annuitant.

#### **D.1.b. Continuing Annuity Payments Not in Pay Status**

Except as described in section D.1.c, Continuing Annuity Payments will generally not be payable if the benefit was not in pay status and the decedent died before his or her annuity starting date.

**Note:** The survivor benefit under a plan's automatic benefit form that provides for Continuing Annuity Payments generally is not payable if the benefit was not in pay status, even if the form of benefit was a certain-and-continuous annuity. For example, if the plan's automatic benefit form for unmarried participants is a 10-year certain-and-continuous annuity and unmarried participant died before his or her annuity starting date, survivor benefits are generally not payable.

#### **D.1.c. Retroactive Annuity Starting Date**

If benefits are not in pay status, PBGC will determine if the decedent was eligible for a retroactive annuity starting date under Internal Guidance Annuity Starting Dates. If the decedent was eligible for a retroactive annuity starting date, the benefit is treated as a benefit in pay status.

If benefits are owed due to a retroactive annuity starting date, the automatic benefit form payable under the plan or PBGC internal guidance will determine whether and the extent to which continuing annuity payments are due (see Internal Guidance Annuity Benefit Forms and Spousal Consent (Qualified Joint-and-Survivor Annuities)).

Special rules apply with respect to retroactive annuity starting dates under the EMPP and legacy MPP. See Internal Guidance Missing Participants Program, Original and Missing Participants Program, Expanded in 2018, respectively.

#### **D.1.d. Deceased Contingent Annuitant**

If the payee (for example, the plan participant) was in pay status and the Contingent Annuitant died before the payee, PBGC will pay Continuing Annuity Payments as follows:

- For joint-life annuities, see section D.1.d.1
- For single-life annuities, see section D.1.d.2

#### **D.1.d.1 Joint-life Annuity**

If the payee was receiving a joint-life benefit (for example, a QJSA or an optional joint-and-survivor annuity) and dies, Continuing Annuity Payments will generally not be payable if the Contingent Annuitant is also deceased (unless the joint-life benefit also includes a certain-period component which has not expired, an modified cash-refund annuity due to employee contributions, and so forth).

#### **D.1.d.2 Single-life Annuity**

Continuing Annuity Payments may be payable after the payee's death if the payee was receiving a single-life benefit that includes:

- Benefits for a certain period (for example, a 10-year certain-and-continuous annuity) that has not ended; or
- Benefits until a certain amount is paid (for example, employee contributions under an modified cash-refund annuity or installment-refund annuity) and the full amount has not been paid.

To determine the beneficiary of the remaining Continuing Annuity Payments, PBGC will generally follow the rules in sections E (for deaths on or after June 1, 2002) or F (for deaths before or on May 31, 2002).

#### **D.1.e. No Known Contingent Annuitant Designation**

Although unusual, if no designation of a Contingent Annuitant is known (for example, it is not in file) and Continuing Annuity Payments are owed with respect to a deceased payee, PBGC will determine which Contingent Annuitant to pay as follows:

- If the benefit is a joint-life annuity, see section D.1.e.1
- If the benefit is a single-life annuity, see section D.1.e.2

#### **D.1.e.1. Joint-life Annuity**

If no designation of a Contingent Annuitant is known (for example, it is not on file) and Continuing Annuity Payments of a joint-life annuity in the form of a QJSA are owed with respect to a deceased payee, PBGC will determine whether Continuing Annuity Payments are payable to the deceased payee's surviving spouse, if any, in accordance with Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities). If the benefit is an unusual form such as a joint-life annuity with a certain period, see section D.1.f.

If the form of benefit is not a QJSA (for example, it is a joint-life annuity with a survivor annuity payable to a non-spouse beneficiary), PBGC will make a facts and circumstances determination on whether Continuing Annuity Payments are payable and to whom. If this situation arises, request guidance by emailing [PSDGGuidance@pbgc.gov](mailto:PSDGGuidance@pbgc.gov).

#### **D.1.e.2. Single-life Annuity**

If no designation of a Contingent Annuitant is known (for example, it is not on file) and Continuing Annuity Payments of a single-life annuity (such as a certain-and-continuous annuity) are payable with respect to a deceased payee, PBGC will determine the Contingent Annuitant as follows:

- If the payee died on or after June 1, 2002, see section E
- If the payee died before or on May 31, 2002, see section F

If the benefit is an uncommon form such as a free surviving spouse benefit payable to a surviving spouse, see section D.1.f.

#### **D.1.f. Uncommon Benefit Forms**

Plans occasionally pay complex and uncommon benefit forms (for example, a straight-life annuity with a free surviving spouse benefit, a joint-and-survivor with five years of certain payments) in which it may be difficult to determine if Continuing Annuity Payments are otherwise due and/or to whom payment should be made. When necessary, PBGC's PSD Federal will provide guidance in determining whether Continuing Annuity Payments are payable and to whom.

#### **D.2. Estate As Contingent Annuitant for Single-life Annuity**

If Continuing Annuity Payments are payable to an estate, PBGC will pay the Continuing Annuity Payments (as well as any other amounts owed) that are due in the form of a lump sum in accordance with PBGC Regulation 4022.7(b)(1)(v).

For deaths on or after June 1, 2002, PBGC will discount any remaining Continuing Annuity Payments, payable to an estate, using the federal mid-term rate determined by the Secretary of the Treasury pursuant to Internal Revenue Code Section 1274(d)(1)(C)(ii) for the month in which the payee died and based on monthly compounding.

For deaths before or on May 31, 2002, PBGC will discount any remaining Continuing Annuity Payments payable to an estate using the immediate rate for valuation in effect for a plan that terminated on the payee's date of death. PBGC will pay the benefit in a lump sum even if the value of the benefits is non-de minimis or an Internal Revenue Code Section 436(d) limitation on prohibited payments was in effect as of the Date of Plan Termination (DOPT).

For Continuing Annuity Payments payable to a living beneficiary or an ongoing organization such as a trust or church, see section D.1.

**Example:** A plan participant was receiving benefits in the form of a 10 C&C. The participant died in April 2007. PBGC made 74 payments of \$500.00 per month before the participant died. The participant's estate is owed the remaining 46 payments and has elected to receive the payments in a lump sum. Using the federal mid-term interest rate for April 2007, 4.52%, and monthly compounding, the value of the remaining 46 payments was calculated as \$21,160.73. PBGC paid \$21,734.08 (\$21,160.73 + \$573.35 in interest for May through November) to the estate on December 1, 2007.

**Note:** This Section D.2 applies only to estates; it does NOT apply to trusts, churches, or other organizations. With specific regard to trusts, estates and trusts are treated differently under the law. For example, trusts may continue indefinitely, whereas estates are usually temporary. Moreover, the grantor of a trust may have reasons for specifying that remaining payments of a certain-and-continuous annuity be spread over time.

## **E. Payments Owed to Deceased Payees - Deaths on or after June 1, 2002**

This Section E describes the rules with respect to benefit payments as described in Internal Guidance Underpayment Reimbursement and Interest Payments that were owed to a deceased payee as of the date of death (on or after June 1, 2002) but had not been paid. (For deaths before or on May 31, 2002, see section F.)

Such benefit payments (other than Continuing Annuity Payments – see section D) include:

- A net underpayment, such as due to the difference in estimated and final annuity benefits
- A lump-sum distribution of a de minimis benefit
- Back payments owed a deceased person who was not in pay status or because payment checks were not cashed before the payee died

This Section E covers the following types of plans:

- Trusteed plans – any death on or after June 1, 2002
- Legacy MPP plans – any death on or after June 1, 2002
- EMPP plans – a death on or after June 1, 2002, and the death was before BDD/BTD

For deaths on or after June 1, 2002, PBGC will determine the beneficiary for payments owed with respect to a deceased payee (such as benefit underpayments owed to a deceased payee or owed to the deceased payee's designated beneficiary or surviving spouse) as follows:

- For deaths on or after Date of Trusteeship or the Deemed Distribution Date, as applicable (DOTR/DDD) (trusteed plans, legacy MPP plans), see section E.1
- For deaths within 180 days after DOTR (trusteed plans), see section E.2
- For deaths before the Date of Trusteeship, Deemed Distribution Date, Benefit Determination Date, or Benefit Transfer Date, as applicable (DOTR/DDD/BDD/BTD) (trusteed plans, legacy MPP plans, EMPP plans), see section E.3

For rules that may apply in addition to and/or in lieu of the rules in this Section E, see section G.

### **E.1. Deaths on or after DOTR/DDD – Trusteed Plans and Legacy MPP Plans Only**

For deaths (i) on or after DOTR/DDD and (ii) on or after June 1, 2002, PBGC will make payments as described in this Section E.1.

(For trusteed plans, if the death was between DOTR and 180 days after DOTR, see section E.2; for deaths before DOTR/DDD/BDD/BTD, see section E.3.)

For deaths on or after June 1, 2002, the general priority order of who will receive payments owed for post-DOTR/DDD deaths is as follows:

- (i) Contingent Annuitant – see section E.1.a
- (ii) Designated Beneficiary – see section E.1.b

- (iii) Surviving Spouse – see section E.1.c
- (iv) Children and/or Descendants of Deceased Children – see section E.1.d
- (v) Parents – see section E.1.e
- (vi) Open Estate of the Deceased Payee – see section E.1.f
- (vii) Next of Kin in Accordance with Applicable State Law – see section E.1.g

**Note 1:** The rules above are based on and consistent with PBGC Regulations 4022.91-94.

**Note 2:** Special rules apply if there is a surviving spouse. Under these rules, the beneficiary is superseded in priority by the surviving spouse. See below.

### **E.1.a. Contingent Annuitant**

PBGC will pay the Contingent Annuitant as determined in section C.1 except as described in sections E.1.a.1-3.

If the Contingent Annuitant is alive, the payee's Contingent Annuitant will have priority with respect to any payments owed at the payee's death and PBGC will pay the Contingent Annuitant in accordance with the PBGC regulations listed in section B.

#### **E.1.a.1. Alternate Payee as Contingent Annuitant**

An Alternate Payee under a QDRO will not be treated in the payment priority as a contingent annuitant for purposes of payments owed to a deceased participant solely because the Alternate Payee is treated as the plan participant's surviving spouse for purposes of all or a portion of the participant's plan benefit.

However, an Alternate Payee may be the beneficiary as otherwise provided in section E.1 (for example, if the Alternate Payee is a child or other dependent or if the participant designated the Alternate Payee as beneficiary with respect to payments owed at the participant's death).

#### **E.1.a.2. Contingent Annuitant of Expired Single-Life Annuity**

If Continuing Annuity Payments to a contingent annuitant under a single-life annuity, such as a certain-and-continuous annuity or an modified cash-refund annuity have ended, then, because there is no longer a contingent annuitant for purposes of payments owed the deceased payee, the individual(s) designated as the payee's Contingent Annuitant will NOT have priority with respect to any payments owed at the payee's death.

However, the individual who had been designated as Contingent Annuitant by the payee may still be the beneficiary under further subsections of section E.1.

### **E.1.b. Designated Beneficiary**

If section E.1.a does not apply, then the payee's designated beneficiary will have priority with respect to any payments owed at the payee's death and PBGC will pay the designated beneficiary in accordance with section G.10 except as described in sections E.1.b.1-2.

However, if the designated beneficiary has also died, PBGC will make any payments as follows:

- If the beneficiary died before or at the same time as the payee, see section E.1.b.1
- If the beneficiary died after the payee, see section E.1.b.2

**Note:** For trustee plans, a beneficiary designation made before DOTR (that is, with the plan) is generally no longer invalid under PBGC Regulation 4022.94(a). However, if the payee died on or after June 1, 2002, as well as between DOTR and 180 days after DOTR, see section E.2.

Note the surviving spouse exception to the general rule below.

#### **E.1.b.1. Designated Beneficiary Who Predeceased Payee**

If the payee's designated beneficiary has died before or at the same time as the deceased payee and no alternative beneficiary was designated, PBGC will determine the beneficiary as if no beneficiary designation had been made with PBGC.

**Note:** The payee and the payee's designated beneficiary are considered to have died at the same time if they died within 30 days of one another due to the same event. If an alternative beneficiary survives the payee, PBGC will pay the alternative beneficiary.

#### **E.1.b.2. Payee Who Predeceased Designated Beneficiary**

If the designated beneficiary has died after the payee but before receiving payment, PBGC will pay the beneficiary of the designee as though the designee were a deceased payee under the rules in section E.

#### **E.1.b.3. Designated Beneficiary - Surviving Spouse Exception for Trusteed Plans Terminated on or after August 11, 2023**

If (i) the payee was a married plan participant in a trustee plan terminated on or after August 11, 2023, (ii) the benefit owed at death is a de minimis lump-sum benefit, and (iii) the designated beneficiary is someone other than the participant's surviving spouse, then section E.1.b will not apply if such spouse would otherwise be entitled to receive a QPSA under Section 205(a)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Instead, the surviving spouse will have priority and PBGC will pay the surviving spouse in accordance with PBGC Regulation 4022.93(d) and section E.1.c.

#### **E.1.c. Surviving Spouse**

If sections E.1.a-b do not apply, the payee's surviving spouse will have priority with respect to any payments owed at the payee's death and PBGC will pay the surviving spouse of the deceased payee. Payment will be made to the spouse even if the payee and the spouse were separated (or if the payee was abandoned) unless PBGC receives evidence that a decree of divorce or annulment (or abandonment) had been entered by a court.

#### **E.1.d. Children and Descendants of Deceased Children**

If sections E.1.a-c do not apply, then the payee's surviving children and surviving descendants of any deceased children will have priority with respect to any payments owed at the payee's death and PBGC

will pay the deceased payee's children and the surviving descendants of any deceased children of the deceased payee.

If the deceased payee had more than one child, payment will be equally divided among the children.

If a child of the payee died before or after the payee, that child's share will be equally divided among his or her own children (that is, the payee's grandchildren), if any. If a grandchild died before the payee, payment will be made to the grandchild's children (that is, the payee's great grandchildren), and so on.

**Example 1:** PBGC owes \$180.00 to a deceased payee with no surviving spouse. The payee had a son and daughter, both of whom predeceased the payee. The son is survived by a son; the daughter, by four surviving daughters. PBGC pays \$90.00 ( $1/2 \times \$180.00$ ) to the grandson and \$22.50 ( $1/2 \times 1/4 \times \$180.00$ ) to each granddaughter for a total of \$180.00 ( $\$90.00 + 4 \times \$22.50$ ).

**Example 2:** Same facts as Example 1 except the payee is also survived by a child. PBGC pays \$60.00 ( $1/3 \times \$180.00$ ) to the child, \$60.00 ( $1/3 \times \$180.00$ ) to the grandson, and \$15.00 ( $1/3 \times 1/4 \times \$180.00$ ) to each granddaughter for a total of \$180.00 ( $\$60.00 + \$60.00 + 4 \times \$15.00$ ).

#### **E.1.e. Parents**

If sections E.1.a-d do not apply, then the payee's surviving parent(s) will have priority with respect to any payments owed at the payee's death and PBGC will pay the deceased payee's surviving biological parents (unless the legal parent-child relationship was severed under applicable state law) or the deceased payee's surviving adoptive parent(s), but not stepparent(s) or godparent(s). The payment will be equally divided between the parents if both survive the child.

#### **E.1.f. Open Estate of Deceased Payee**

If sections E.1.a-e do not apply or if section G.9 applies, then the payee's estate, if the estate is open, will have priority with respect to any payments owed at the payee's death and PBGC will issue the payment to the estate of the deceased payee.

**Note:** If payment is made with respect to the estate of a deceased payee, PBGC will not make payment directly to the beneficiary of an open estate even if requested by the estate administrator.

If a small estate affidavit is received, see section G.6.

#### **E.1.g. Next of kin in Accordance with State Law**

If sections E.1.a-f do not apply, then the next of kin determined in accordance with applicable state law will have priority with respect to any payments owed at the payee's death and PBGC will pay the next of kin.

PBGC will generally follow the Intestate Succession Rules (see section C.4) of the state in which the deceased payee resided at the time of death. If the payee lived outside of the United States when the payee died, PBGC will pay the next of kin determined in accordance with the law of the District of Columbia.

**Note:** If there are multiple beneficiaries, the payment will be divided among the next of kin as provided under the applicable state law.

## **E.2. Deaths in Trusteed Plans between DOTR and 180 days after DOTR**

This Section E.2 applies to trusteed plans only. It does NOT apply to legacy MPP or EMPP plan benefits.

### **E.2.a. Contingent Annuitant**

If a payee in a trusteed plan dies between DOTR and 180 days after DOTR and there is a Contingent Annuitant, then the Contingent Annuitant will have priority and PBGC will pay the Contingent Annuitant in accordance with section E.1.a (or, if applicable, the participant's surviving spouse under section E.1.a.3) and PBGC Regulation 4022.91(b).

### **E.2.b. PBGC-Designated Beneficiary**

Note the surviving spouse exception to the general rule below.

#### **E.2.b.1 PBGC-Designated Beneficiary - General Rule**

If a payee in a trusteed plan dies between DOTR and 180 days after DOTR and section E.2.a does not apply, then the beneficiary designated on or after DOPT (with PBGC) will have priority and PBGC will pay the designated beneficiary in accordance with section E.1.b (or, if applicable, the participant's surviving spouse under section E.1.b.3).

#### **E.2.b.2. PBGC-Designated Beneficiary - Surviving Spouse Exception for Trusteed Plans Terminated on or after August 11, 2023**

If (i) the payee was a married plan participant in a trusteed plan terminated on or after August 11, 2023, (ii) the benefit owed at death is a de minimis lump-sum benefit, and (iii) the PBGC-designated beneficiary is someone other than the participant's surviving spouse, then section E.2.b.1 will not apply if such spouse would otherwise be entitled to receive a QPSA under Section 205(a)(2) of ERISA. Instead, the surviving spouse will have priority and PBGC will pay the surviving spouse in accordance with PBGC Regulation 4022.93(d) and section E.1.c.

### **E.2.c. Plan-Designated Beneficiary**

Note the surviving spouse exception to the general rule below.

#### **E.2.c.1 Plan-Designated Beneficiary - General Rule**

If a payee in a trusteed plan dies between DOTR and 180 days after DOTR and sections E.2.a-b do not apply, then the beneficiary designated before DOPT (with the plan) will have priority and PBGC will pay the designated beneficiary designated with the plan, in accordance with PBGC Regulation 4022.93(c).

#### **E.2.c.2. Plan-Designated Beneficiary - Surviving Spouse Exception for Trusteed Plans Terminated on or after August 11, 2023**

If (i) the payee was a married plan participant in a trusteed plan terminated on or after August 11, 2023, (ii) the benefit owed at death is a de minimis lump-sum benefit, and (iii) the plan-designated beneficiary is someone other than the participant's surviving spouse, then section E.2.c.1 will not apply if such spouse would otherwise be entitled to receive a QPSA under Section 205(a)(2) of ERISA. Instead, the surviving spouse will have priority and PBGC will pay the surviving spouse in accordance with PBGC Regulation 4022.93(d) and section E.1.c.

#### **E.2.d. Other Beneficiary**

If a payee in a trusteed plan dies between DOTR and 180 days after DOTR and sections E.2.a-c do not apply, then the beneficiary determined in accordance with section E.1 (that is, the beneficiary under sections E.1.d-g) will have priority and PBGC will pay that beneficiary.

### **E.3. Deaths before DOTR/DDD/BDD/BTD – Trusteed Plans, Legacy MPP, or EMPP**

This Section E.3 applies when the payee has died before DOTR (trusteed plans), DDD (legacy MPP plans), BDD (EMPP DB plans), or BTD (EMPP DC plans).

Note the surviving spouse exception to the general rule below.

#### **E.3.a. Deaths before DOTR/DDD/BDD/BTD - General Rule**

If the payee dies before DOTR/DDD/BDD/BTD, then the beneficiary determined by or under the plan's default provisions specifically to receive payments owed with respect to a deceased payee will have priority and PBGC will pay that beneficiary.

However, if the applicable default plan provisions are unclear, unknown, or inconclusive (that is, the plan provisions do not result in a beneficiary to pay – for example, priority is given to the estate under the applicable plan provisions but the estate is now closed), then the beneficiary determined in section E.1 will have priority and PBGC will pay that beneficiary.

#### **E.3.b. Deaths before DOTR/DDD/BDD/BTD - Surviving Spouse Exception for Trusteed Plans Terminated on or after August 11, 2023**

If (i) the payee was a married plan participant in a trusteed plan terminated on or after August 11, 2023, (ii) the benefit owed at death is a de minimis lump-sum benefit, and (iii) the beneficiary under the plan's default provisions specifically to receive payments owed at death is someone other than the participant's surviving spouse, then section E.3.a will not apply if such spouse would otherwise be entitled to receive a QPSA under Section 205(a)(2) of ERISA. Instead, the surviving spouse will have priority and PBGC will pay the surviving spouse in accordance with PBGC Regulation 4022.93(d) and section E.1.c.

## **F. Payments Owed to Deceased Payees - Deaths Before or On May 31, 2002**

This Section F applies to trusteed plans and MPP plans. It describes the rules with respect to benefit payments as described in Internal Guidance Underpayment Reimbursement and Interest Payments that

were owed to a deceased payee as of the date of death (before or on May 31, 2002) but had not been paid.

(For examples of such payments, see section E. For Continuing Annuity Payments owed to a Contingent Annuitant after the payee's death, see section D.)

Specifically, this Section F covers the following types of plans:

- Trusteed plans – any death before or on May 31, 2002
- Legacy MPP plans – any death before or on May 31, 2002
- EMPP plans – any death before or on May 31, 2002

For deaths before or on May 31, 2002, the beneficiary for payments owed with respect to a deceased payee will depend on whether the payee was a plan participant or Contingent Annuitant and will depend on to whom the benefit was due. PBGC will determine the beneficiary as follows:

- If the deceased payee was the plan participant, see section F.1
- If the deceased payee was a Contingent Annuitant, see section F.2

If the beneficiary is determined in sections F.1 or F.2 to be the estate, the payment will be made in accordance with section F.3. If there is no estate to pay, the payment will be made to the next of kin in accordance with state law (see section F.4).

The general priority order of who will receive payments owed to a deceased payee who died before or on May 31, 2002, is as follows:

- (i) Contingent Annuitant – see sections F.1.a or F.2.a
- (ii) Beneficiary Designated with PBGC – see sections F.1.b or F.2.b
- (iii) Beneficiary Designated with Plan – see sections F.1.c or F.2.c
- (iv) Default Plan Provisions – see sections F.1.d or F.2.d
- (v) Estate – see sections F.1.e or F.2.e as well as F.3
- (vi) Next of Kin in Accordance with State law – see section F.4

For rules that may apply in addition to and/or in lieu of the rules in this Section F, see section G.

## **F. 1. Deceased Plan Participant**

If the deceased payee was a plan participant who died before June 1, 2002, the beneficiary of payments owed with respect to the deceased payee will be determined in accordance with this Section F.1.

If the deceased payee was a Contingent Annuitant who died before or on May 31, 2002, see section F.2.

### **F.1.a. Participant's Contingent Annuitant**

If payment is owed with respect to a deceased participant, then the payee's Contingent Annuitant will have priority with respect to payments owed at death and PBGC will pay the plan participant's Contingent Annuitant as provided in sections E.1.a.1-2.

## **F.1.b. Participant's PBGC-Designated Beneficiary**

Note the surviving spouse exception to the general rule below.

### **F.1.b.1. Participant's PBGC-Designated Beneficiary – General Rule**

If section F.1.a does not apply, the participant's beneficiary designated on or after DOPT (with PBGC) will have priority with respect to payments owed at death and PBGC will pay the PBGC-designated beneficiary as provided in sections E.1.b.1-2 (or, if applicable, the participant's surviving spouse under section F.1.b.2).

### **F.1.b.2. Participant's PBGC-Designated Beneficiary - Surviving Spouse Exception for Trusteed Plans Terminated On or After August 11, 2023**

If (i) the payee was a married plan participant in a trusteed plan terminated on or after August 11, 2023, (ii) the benefit owed at death is a de minimis lump-sum benefit, and (iii) the PBGC-designated beneficiary is someone other than the participant's surviving spouse, then section F.1.b.1 will not apply if such spouse would otherwise be entitled to receive a QPSA under Section 205(a)(2) of ERISA. Instead, the surviving spouse will have priority and PBGC will pay the surviving spouse in accordance with PBGC Regulation 4022.93(d) and section E.1.c.

## **F.1.c. Participant's Plan-Designated Beneficiary**

Note the surviving spouse exception below to the general rule below.

### **F.1.c.1. Participant's Plan-Designated Beneficiary – General Rule**

If sections F.1.a-b do not apply, then the participant's beneficiary designated before DOPT (with the plan) will have priority with respect to payments owed at death and PBGC will pay the plan-designated beneficiary as provided in section E.2.c.1 (or, if applicable, the participant's surviving spouse under section F.1.c.2).

### **F.1.c.2. Participant's Plan-Designated Beneficiary - Surviving Spouse Exception for Trusteed Plans Terminated On or After August 11, 2023**

If (i) the payee was a married plan participant in a trusteed plan terminated on or after August 11, 2023, (ii) the benefit owed at death is a de minimis lump-sum benefit, and (iii) the plan-designated beneficiary is someone other than the participant's surviving spouse, then section F.1.c.1 will not apply if such spouse would otherwise be entitled to receive a QPSA under Section 205(a)(2) of ERISA. Instead, the surviving spouse will have priority and PBGC will pay the surviving spouse in accordance with PBGC Regulation 4022.93(d) and section E.1.c.

## **F.1.d. Participant's Beneficiary Under Plan Provisions**

Note the surviving spouse exception to the general rule below.

### **F.1.d.1. Participant's Beneficiary Under Plan Provisions – General Rule**

If sections F.1.a-c do not apply, then the participant's beneficiary under applicable plan provisions that specifically apply to payments owed at death will have priority and PBGC will pay the beneficiary under those plan provisions as provided in section E.2.c.1 (or, if applicable, the participant's surviving spouse under section F.1.d.2).

#### **F.1.d.2. Participant's Beneficiary Under Plan Provisions - Surviving Spouse Exception for Trusteed Plans Terminated on or after August 11, 2023**

If (i) the payee was a married plan participant in a trusteed plan terminated on or after August 11, 2023, (ii) the benefit owed at death is a de minimis lump-sum benefit, and (iii) the beneficiary under plan provisions is someone other than the participant's surviving spouse, then section F.1.d.1 will not apply if such spouse would otherwise be entitled to receive a QPSA under Section 205(a)(2) of ERISA. Instead, the surviving spouse will have priority and PBGC will pay the surviving spouse in accordance with PBGC Regulation 4022.93(d) and section E.1.c.

#### **F.1.e. Participant's Estate**

This section applies to payments for which the estate of the plan participant is the beneficiary. However, as provided below, payment is made to the participant's surviving spouse instead of the to the estate in limited circumstances:

- For trusteed plans terminated before or on August 10, 2023, and for any MPP plan, a "small payment exception" (total payment amount under \$500.00) may apply – see section F.1.e.2
- For trusteed plans terminated on or after August 11, 2023, the "surviving spouse exception" (de minimis lump-sum benefit) may apply – see section F.1.e.3

##### **F.1.e.1. Payment to Estate of Participant - General Rule**

If sections F.1.a-d do not apply or if section G.9 applies, then the estate will have priority of payments owed at death and PBGC will issue the payment to the estate in accordance with section F.3.a (or, if applicable, the participant's surviving spouse under sections F.1.e.2 or F.3.b).

##### **F.1.e.2. Small Payment Exception for Married Plan Participants in trusteed plan terminated before or On August 10, 2023, or in a MPP plan**

If (i) section F.1.e.1 is applicable, (ii) the plan participant's spouse is alive, (iii) the total amount payable including interest is not greater than \$500.00, (iv) if there is no open estate of the deceased plan participant, and (v) the plan is either (a) a trusteed plan terminated before or on August 10, 2023, or (b) the plan is a MPP plan, then the participant's surviving spouse will have priority and PBGC will pay the plan participant's surviving spouse (but not a former spouse treated as a surviving spouse under a QDRO).

**Note:** When payments are owed with respect to a deceased plan participant and the deceased participant's beneficiary has also died, section F.2 does not apply.

**Example:** A plan participant was receiving an estimated benefit of \$600.00 a month in the form of a straight-life annuity. The final benefit was determined to be \$660.00 a month. A net underpayment of \$540.00 is owed with respect to the plan participant's benefit. However, the plan participant died before

the underpayment could be paid. The plan participant had not designated a beneficiary with PBGC but had designated a beneficiary under the plan before DOPT. Payment is owed to the pre-DOPT beneficiary. If the pre-DOPT beneficiary died before the participant, payment would be owed to the participant's estate. If the plan participant's designated beneficiary died *after* the plan participant, the payment owed with respect to the participant is payable to the deceased beneficiary's estate – not a beneficiary of the deceased beneficiary.

#### **F.1.e.3. Payment to Estate - Surviving Spouse Exception for Trusteed Plans Terminated On or After August 11, 2023**

If (i) the payee was a married plan participant in a trusteed plan terminated on or after August 11, 2023, (ii) the benefit owed at death is a de minimis lump-sum benefit, and (iii) the beneficiary is the estate rather than the participant's surviving spouse (if such spouse would otherwise be entitled to receive a QPSA under Section 205(a)(2) of ERISA), then section F.1.e.1 will not apply. Instead, the surviving spouse will have priority and PBGC will pay the surviving spouse in accordance with PBGC Regulation 4022.93(d) and section E.1.c.

### **F.2. Deceased Contingent Annuitant**

If the deceased payee was a Contingent Annuitant who died before or on May 31, 2002, the beneficiary of payments owed with respect to the deceased payee will be determined in accordance with this Section F.2.

If the deceased payee was a plan participant who died before or on May 31, 2002, see section F.1.

#### **F.2.a. Contingent Annuitant's Contingent Annuitant**

If the deceased payee (who was a Contingent Annuitant) also has a Contingent Annuitant (for example, remaining payments of a certain-and-continuous annuity, modified cash-refund payment, or employee contributions), the surviving Contingent Annuitant will have priority of payments owed at death and PBGC will pay the Contingent Annuitant's Contingent Annuitant in accordance with sections E.1.a.1-2.

#### **F.2.b. Contingent Annuitant's Beneficiary Designation On or After DOPT (with PBGC)**

If section F.2.a does not apply, the Contingent Annuitant's beneficiary designated on or after DOPT (with PBGC) will have priority of payments owed at death and PBGC will pay the PBGC-designated beneficiary in accordance with sections E.1.b.1-2.

#### **F.2.c. Contingent Annuitant's Beneficiary Designation Before DOPT (with Plan)**

If sections F.2.a-b do not apply, the Contingent Annuitant's beneficiary designated before DOPT (with the plan) will have priority of payments owed with respect to payments owed at death and PBGC will pay the plan-designed beneficiary in accordance with section E.2.c.1.

#### **F.2.d. Contingent Annuitant's Beneficiary Under by Plan Provisions**

If sections F.2.a-c do not apply, the Contingent Annuitant's beneficiary under applicable plan provisions specifically to receive payments owed with respect payments owed at death will have priority and PBGC will pay the beneficiary under those plan provisions in accordance with section E.2.d.

#### **F.2.e. Contingent Annuitant's Estate**

Note the surviving spouse exception to the general rule below.

##### **F.2.e.1. Contingent Annuitant's Estate – General Rule**

If sections F.2.a-d do not apply or if section G.9 applies, then the estate will have priority of payments owed at death and PBGC will issue the payment to the Contingent Annuitant's estate in accordance with section F.3.a.

##### **F.2.e.2. Contingent Annuitant's Estate – Small Payment Exception for Married Contingent Annuitants**

If (i) section F.2.e.1 applies, (ii) the Contingent Annuitant's spouse is alive, (iii) the total amount payable including interest is not greater than \$500.00, and (iv) if there is no open estate of the deceased Contingent Annuitant, then the Contingent Annuitant's surviving spouse will have priority and PBGC will pay the Contingent Annuitant's surviving spouse (but not a former spouse treated as a surviving spouse under a QDRO).

**Example:** A plan participant elected the plan's QJSA and received annuity payments of \$1,000.00 per month. After the participant's death, the surviving spouse begins receiving Continuing Annuity Payments (that is, a survivor benefit) of \$500.00 per month. Before PBGC can start making payments to the surviving spouse, the spouse dies. Three payments totaling \$1,500.00 are owed with respect to the survivor annuity of the QJSA. The deceased spouse's beneficiary is determined in accordance with section F.2. The spouse had designated a beneficiary with PBGC and payment is made to that designee.

Shortly after payment is made to the beneficiary of the plan participant's deceased spouse, PBGC determines that the plan participant also was owed a net underpayment of \$2,000.00 for two missed payments that were not made to the participant prior to the participant's death. Under section F.1.a, the spouse as the contingent annuitant would also have been owed the underpayment with respect to the deceased participant's net underpayment. However, because the spouse died *after* the participant, payment is owed to the deceased spouse's estate.

#### **F.3. Payments to an Estate**

If an estate is determined to be the beneficiary under sections F.1 (the deceased payee is the plan participant) or F.2 (the deceased payee is a Contingent Annuitant) or if section G.9.a applies, PBGC will issue the payment to the estate of the deceased payee, so long as the estate is open and an estate administrator is in place.

**Note:** If payment is made with respect to the estate of a deceased payee, PBGC will not make the payment directly to the beneficiary of an open estate even if requested by the estate administrator.

If a small estate affidavit is received, see section G.6.

#### **F.4. Next of Kin in Accordance with State Law**

Because of the passage of time, some estates that were once open have long been closed. For potential estate beneficiaries, it may be too burdensome to incur the time, effort, and expense of petitioning a probate court to reopen an estate. If (i) it is impractical for potential beneficiaries to reopen an estate, (ii) section G.6 does not apply, and (iii) at least ten years has passed since the payee's death, then PBGC will give priority to and pay the deceased payee's next of kin as determined in accordance with state law (see section E.1.g).

### **G. Miscellaneous Rules**

PBGC will apply the following additional rules for payments owed with respect to deceased payees:

- Change in Designated Beneficiary – see section G.1
- Lump Sum Death Benefits – see section G.2
- Multiple Beneficiaries – see section G.3
- Pre-retirement Survivor Annuity – see section G.4
- Employee Contributions – see section G.5
- Small Estate Affidavits – see section G.6
- MPP – see section G.7
- Disclaiming Benefits – see section G.8
- Special Requests – see section G.9
- Acceptable Designation of Beneficiaries – see section G.10

#### **G.1. Change in Beneficiary Designated to Receive Payments owed to Deceased Payee**

PBGC will permit an individual, at any time, to change his or her designation of the beneficiary for payments that may be owed to the individual at the time of his or her death.

For purposes of this guidance, the most recent valid beneficiary designation will supersede all previous beneficiary designation.

For acceptable beneficiary designations, see section G.10.

#### **G.2. Lump-Sum Death Benefits**

If a lump-sum death benefit is payable, payment is made to the beneficiary designated by or under the plan specifically for the lump-sum death benefit. If a beneficiary cannot be determined under plan provisions, the beneficiary will be determined as provided in sections E (for deaths on or after June 1, 2002) or F (for deaths before or on May 31, 2002).

##### **G.2.a. Post-DOPT Lump-Sum Death Benefits**

For a post-DOPT death, the lump-sum death benefit will be converted to an annuity as provided in PBGC Regulation 4022.7(c), unless the beneficiary is an estate or unless the benefit is payable under the MPP.

**Note:** For post-DOPT deaths in a trustee plan, a lump-sum death benefit is not a guaranteed benefit and is payable only as a Priority Category Six benefit.

#### **G.2.b. Pre-DOPT Lump-Sum Death Benefits**

For a pre-DOPT death, if an Internal Revenue Code Section 436(d) limitation on prohibited payments was in effect as of DOPT, the lump-sum death benefit will be converted to an annuity as provided in PBGC Regulation 4022.7(c), unless the beneficiary is an estate or unless the benefit is payable under the MPP.

**Note:** For pre-DOPT deaths in a trustee plan, a lump-sum death benefit in excess of the QPSA is payable as a pre-termination liability.

#### **G.3. Multiple Beneficiaries or Contingent Annuitants**

For purposes of this guidance, the term “beneficiary” generally means “beneficiary (or beneficiaries)” unless otherwise noted.

If a payee has designated multiple beneficiaries and/or if PBGC determines that payment will be made to multiple beneficiaries, PBGC will generally divide the payment equally among the beneficiaries unless the payee has specified a different division in writing or unless a different division is required under this guidance.

**Note 1:** Participants may elect multiple Contingent Annuitants for a certain-and-continuous annuity.

**Note 2:** PBGC generally does NOT pay joint-life annuities with multiple Contingent Annuitants. However, if a QDRO requires that the Alternate Payee will be treated as surviving spouse for part (but not all) of the participant’s benefit, the participant’s benefit will generally be paid as two distinct annuities, one in the form of the QJSA with the Alternate Payee and the other in a form of benefit unaffected by the terms of the QDRO (for example, straight-life annuity).

#### **G.4. Pre-retirement Survivor Annuity**

A Pre-retirement Survivor Annuity is a death benefit payable under plan provisions to the surviving spouse or other beneficiary of a vested participant who dies before his or her annuity starting date.

##### **G.4.a. QPSA**

Effective August 23, 1984, under Section 205 of ERISA, a plan must provide a QPSA to the surviving spouse of a vested participant when specific conditions are met.

For guidance on payment of a QPSA, see Internal Guidance Qualified Pre-Retirement Survivor Annuities - Plans Terminating on and after August 23, 1984.

##### **G.4.b. A Pre-retirement Survivor Annuity Which is Not a QPSA**

Plans may also provide a Pre-retirement Survivor Annuity that is not a QPSA. If a Pre-retirement Survivor Annuity is payable, payment is made to the beneficiary designated by or under the plan specifically for the Pre-retirement Survivor Annuity. If a beneficiary cannot be determined under plan provisions, the

beneficiary will be determined as otherwise provided in sections E (for deaths on or after June 1, 2002) or F (for deaths before or on May 31, 2002).

**Note:** For post-DOPT deaths in a trustee plan, a Pre-retirement Survivor Annuity which is not a QPSA is not a guaranteed benefit and is payable only as a Priority Category Six benefit.

#### **G.5. Death Benefits Derived from Accumulated Mandatory Employee Contributions (AMEC)**

PBGC will pay death benefits derived from AMEC as provided in sections G or H of Internal Guidance Priority Category 2 Benefits Payment.

#### **G.6. Small Estate Affidavit**

In situations where no estate is open for a deceased payee, it is possible for PBGC to recognize an individual who executes a small estate affidavit (or files a petition to become a small estate administrator and the court grants the request). In these situations, next of kin or a non-blood relative are allowed under state law to avoid probate to settle an estate. The value and criteria for what constitutes a small estate will vary from state to state. If a small estate affidavit is submitted by a potential beneficiary, request guidance by emailing [PSDGGuidance@pbgc.gov](mailto:PSDGGuidance@pbgc.gov).

**Note:** PBGC will generally treat an individual who executed the small estate affidavit as an estate administrator and issue the payment to the estate of the deceased payee, in accordance with sections E.1.f (for deaths on or after June 1, 2002) or F.3 (for deaths before or on May 31, 2002). After PBGC issues the payment, if the small estate administrator alleges difficulty with negotiating payment, request guidance by emailing [PSDGGuidance@pbgc.gov](mailto:PSDGGuidance@pbgc.gov).

#### **G.7. MPP**

With respect to benefits owed under the MPP, when the Qualified Survivor rules (see section C.7) are inapplicable, PBGC will generally follow the rules in sections E (for deaths on or after June 1, 2002) and F (for deaths before or on May 31, 2002).

For deaths before or on May 31, 2002, the rules in section F do not differ between trustee plans and MPP plans. However, for deaths on or after June 1, 2002, PBGC will follow the rules in section E except:

- PBGC will treat the date specified in section G.7.a as DOTR and
- PBGC will give priority to and pay a Qualified Survivor in accordance with section G.7.b.

##### **G.7.a. Dates Treated as DOTR in the MPP**

To determine the beneficiary owed benefits with respect to a deceased payee in the MPP, PBGC will use the plan's DDD, BDD, or BTD (as applicable) as DOTR.

###### **G.7.a.1. DDD for Legacy MPP DB Plan**

To determine the beneficiary owed benefits with respect to a deceased payee, PBGC will use DDD as DOTR for Legacy MPP plans (see section C of Internal Guidance Missing Participants Program, Original).

#### **G.7.a.2. BDD for EMPP DB Plans**

To determine the beneficiary owed benefits with respect to a deceased payee, PBGC will use BDD as DOTR for EMPP DB plans (see section C of Internal Guidance Missing Participants Program, Expanded in 2018).

#### **G.7.a.3. BTD for EMPP DC Plans**

To determine the beneficiary owed benefits with respect to a deceased payee, PBGC will use BTD as DOTR for EMPP DC plans (see section C of Internal Guidance Missing Participants Program, Expanded in 2018).

#### **G.7.b. Priority of Qualified Survivors**

To determine the beneficiary owed benefits with respect to a deceased payee in the EMPP, if a Missing Distributee died on or after BDD (in a DB plan) or on or after BTD (in a DC plan), PBGC will give priority to the Qualified Survivor and will pay the Qualified Survivor.

To determine the beneficiary owed benefits with respect to a deceased payee in the EMPP, if the Missing Distributee died before BDD (in a DB plan) or BTD (in a DC plan), PBGC will determine the beneficiary with respect to the deceased payee in accordance with sections E.3 (for deaths on or after June 1, 2002) or F (for deaths before or on May 31, 2002).

#### **G.8. Disclaiming Benefits Owed to Deceased Payee**

If the beneficiary of a deceased payee wishes to disclaim in full or in part payments owed with respect to the deceased payee, PBGC will review a valid disclaimer received by PBGC (that is, the disclaimer is notarized as well as drafted and submitted to PBGC in accordance with applicable state and federal law, including but not limited to statutory time limits). PBGC will NOT enforce a disclaimer seeking to direct the disclaimant's share unequally to other beneficiaries. See section H.4.

**Note:** A plan participant may NOT disclaim his or her PBGC benefit. Upon receipt of a benefit disclaimer, request guidance by emailing [PSDGGuidance@pbgc.gov](mailto:PSDGGuidance@pbgc.gov).

#### **G.9. Special Requests**

##### **G.9.a. Requests to Pay Open Estate in Lieu of Another Beneficiary**

PBGC may receive a request in writing from a court-appointed administrator to pay an open estate in lieu of the beneficiary determined in accordance with sections E (for deaths on or after June 1, 2002) or F (for deaths before or on May 31, 2002).

PBGC will generally accommodate such a request, based on the facts and circumstances of the case, with concurrence from PSD Federal and Office of General Counsel (OGC). This applies to payments in the legacy MPP and EMPP as well as in PBGC-trusteed plans.

##### **G.9.b. Other Requests**

PBGC may receive a written notice from a party other than the beneficiary determined in section E or section F claiming entitlement to a payment owed with respect to the deceased payee. Examples of such parties include (but are not limited to): a creditor seeking repayment of a debt; a stepchild who was not adopted by the payee; the payee's fiancé at death; or someone alleging that the payee's spouse or biological child was estranged from the payee.

If section G.9.a does not apply and PBGC receives in writing a claim to the entitlement of benefits from a party who is NOT the beneficiary determined in sections E (for deaths on or after June 1, 2002) or F (for deaths before or on May 31, 2002), request guidance by emailing [PSDGGuidance@pbgc.gov](mailto:PSDGGuidance@pbgc.gov). PBGC will generally deny such requests by issuing a benefit determination to the claimant in accordance with Internal Guidance Limited Scope Benefit Determinations.

#### **G.10. Acceptable Means of Designating the Beneficiary**

PBGC will generally recognize a written beneficiary designation, so long as the designation was:

- In writing and signed by the payee
- Specific to (i) payments owed at death and/or (ii) the contingent annuitant
- Made in a manner acceptable to the plan or PBGC – see sections G.10.a-b
- Submitted generally before payee's death – see section G.10.c

#### **G.10.a Beneficiary Designations Recognized by PBGC**

PBGC will pay benefits in accordance with a beneficiary designation so long as the beneficiary was designated in an acceptable manner. Examples include (but are not limited to):

- For a trusteed or MPP plan, a PBGC beneficiary designation form submitted to PBGC on or after DOPT
- For a MPP plan, a plan beneficiary designation form submitted to the plan before DOPT
- For a trusteed or MPP plan, a written statement, signed and dated by the payee and submitted to PBGC after DOPT, not on a PBGC form or plan form – request guidance by emailing [PSDGGuidance@pgbc.gov](mailto:PSDGGuidance@pgbc.gov).

#### **G.10.b Beneficiary Designations Not Recognized by PBGC**

PBGC will NOT recognize a beneficiary designated in an unacceptable form. Examples include (but are not limited to):

- For a trusteed plan, a plan beneficiary designation form submitted to the plan before DOPT if the payee died more than 180 days after DOTR
- For a trusteed or MPP plan, an affidavit from someone attesting to whom the payee wanted as the beneficiary with respect to payments owed at death and/or the contingent annuitant
- For a trusteed or MPP plan, an electronic message (email, text message, and so forth) or record of telephone call in which a payee purportedly designates verbally the beneficiary with respect to payments owed at death and/or contingent annuitant (PBGC will ask the payee to submit a PBGC beneficiary designation)

#### **G.10.c. Submission after Payee's Death**

A valid beneficiary designation for a payee cannot be made after the payee's death. If a beneficiary designation was made (for example, was signed) before the payee's death but is submitted to PBGC after the payee's death, request guidance by emailing [PSDGGuidance@pbgc.gov](mailto:PSDGGuidance@pbgc.gov).

## H. Examples

The scenarios described in this Section H are for illustration only, are not comprehensive in scope, and assume that:

- Payee's death was after June 1, 2002
- Next of kin has been determined under applicable state law
- Plan rules are known and being followed in accordance with applicable plan document provisions

If the example is silent on the following items, it is also assumed solely for purposes of that example that there is none:

- Beneficiary designation (under plan or PBGC) or beneficiary predeceased the payee
- Surviving spouse or the spouse predeceased the payee
- Children of the payee (living or deceased)
- Siblings of the payee (living or deceased)
- Open estate
- Valid disclaimer of the benefits
- Benefits payable under small estate rules

### **H.1. Example – Death after BDD (EMPP Plan)**

Participant A died 15 years before BDD. In the plan filing, Missing Distributee is listed as "the estate". Under plan rules, in the absence of a valid beneficiary designation, benefits owed to a deceased payee are payable to the surviving spouse; if none, to the payee's estate. Next of Kin is Participant A's second cousin. The benefit transfer amount is \$50,000.00.

Participant A died before BDD, so PBGC first follows the plan rules. Because there is no surviving spouse or open estate, plan rules do not result in a beneficiary to pay. Under section E.1.g, the beneficiary is the next of kin. PBGC pays the second cousin \$50,000.00 plus interest from BDD.

### **H.2. Example – Death after BTD (EMPP Plan), No Qualified Survivor**

Plan Participant B died 2 years after BTD. Next of kin is Participant B's niece. Benefit transfer amount is \$75,000.00.

Participant B died after BTD, so PBGC first follows the Qualified Survivor rules. PBGC determines there is no Qualified Survivor to pay. The benefit is not paid.

### **H.3. Example – Death before DOTR (Trusted Plan)**

Participant C died one year before DOTR. Under plan rules, in the absence of a designated beneficiary and surviving spouse, benefits owed at death are payable to "participant's descendants, per stirpes, who shall be living at the time of the participant's death, or, if there are no such descendants then living, then to the participant's estate". Benefit owed is \$100,000.00 plus interest from DOTR. Next of kin are Participant C's five (5) living siblings (A, B, C, D, E).

In accordance with section E.3, PBGC first attempts to follow plan rules. Plan rules do not result in a beneficiary to pay, so PBGC makes the payment in accordance with section E.1. Only section E.1.g applies. PBGC pays each of the five siblings \$20,000.00 plus interest.

#### **H.3.a. Example – Benefit Disclaimer**

Same facts as in section H.3 except Sibling A wishes to forgo 80% of the share (that is, all but \$4000.00 plus interest). However, Sibling A also wants the foregone share to be paid only to Sibling B.

PBGC notifies Sibling A that PBGC can recognize a valid disclaimer but cannot pay the forgone share only to Sibling B because any disclaimed funds are divided equally among all remaining beneficiaries. If Sibling A did submit a valid disclaimer (see section G.8), PBGC would pay Sibling A \$4000.00 and Siblings B, C, D, and E each \$24,000.00 ( $\$20,000.00 + \$16,000.00 / 4$ ).

#### **H.3.b. Example – Siblings, Parents**

Same facts as in section H.3 except both of Participant C's parents are also alive and therefore the siblings are NOT next of kin. Plan rules still do not result in a beneficiary to pay. Thus, in accordance with section E.1.e, PBGC pays each parent \$50,000.00 plus interest from DOPT.

#### **H.3.c. Example – Siblings, Parents, Estate**

Same facts as in section H.3.b except there is also an open estate. In accordance with section E.3, plan rules result in the estate being the beneficiary. Thus, PBGC pays the estate.

#### **H.4. Example – Death after DOTR (Trusted Plan)**

Same facts as in section H.3.c except Participant C died 1 year after DOTR. In accordance with section E.1.e, PBGC pays each parent even though there is an open estate. If both parents submit valid disclaimers of their entire shares, then in accordance with section E.1.f, PBGC would pay the estate \$100,000.00 plus interest from DOPT. PBGC would NOT pay the siblings directly.