

Recoupment, Recovery and Administrative Correction

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A. Background

PBGC sometimes makes benefit overpayments. This internal guidance statement describes how PBGC corrects payment errors and collects benefit overpayments through:

- Administrative correction—for example, when PBGC makes duplicate payments
- Recoupment pursuant to PBGC’s recoupment and reimbursement regulation (PBGC Reg. 4022.81-.82)—for example, when annuity payments are larger than the correct entitlement
- Recovery pursuant to PBGC’s debt collection regulation (PBGC Reg. 4903.1-.22)—for example, when no future benefit is payable as of DOPT

The tenth edition of this internal guidance statement clarifies:

- Administrative correction of payments made with respect to deceased payees—see section D.1
- Overpayments made to non-entitled debtors—see section D.3.e
- The repayment situation known as recoupment from zero—see section G.1
- Overpayments due to a delay in implementing a legal settlement with PBGC—see section I.2.e
- Repayment of overpayments made to shared payment QDRO alternate payees—see Appendix A.3
- Examples of overpayment situations including recoupment from zero and recovery—see Appendix D

B. Scope and effective date

This internal guidance statement generally applies to payment errors and overpayments. See PBGC Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments.

This internal guidance statement does not apply to payments made pursuant to agreements settling lawsuits under which PBGC has agreed to pay benefits other than guaranteed benefits, except as otherwise provided in the agreement.

This internal guidance statement does not limit PBGC’s right to correct payment errors or to collect overpayments by methods or in circumstances other than those described in this internal guidance.

This internal guidance statement is effective upon issuance.

C. Definitions

C.1. ACH reclamation means reclaiming through the Automated Clearing House funds credited to the account at a financial institution of a recipient who is the deceased payee as described under 31 C.F.R. Part 210, Subpart B.

C.2. ACH reversal means reversing through the Automated Clearing House an entry of funds to a recipient’s (for example, a participant’s) account as described under 31 C.F.R. § 210.6(f). ACH reversal typically results in the recipient’s financial institution returning to PBGC’s paying agent funds electronically deposited into the payee’s bank account in error.

C.3. Administrative correction means promptly correcting a payment error before PBGC treats the payment error as an overpayment. PBGC uses administrative correction before recoupment or recovery. Examples of administrative correction methods are ACH reversals and reclamation, stop payment orders, and suspending or delaying benefit payments.

C.4. Date of delinquency means the thirty-first day after PBGC gives the debtor written notice in accordance with PBGC Reg. 4903.5 that an overpayment is subject to recovery.

C.5. Debtor means an individual or legal entity that owes a debt to PBGC.

A debtor can be a payee who was entitled to a PBGC benefit ("payee debtor") or another person who was not entitled to a PBGC benefit ("non-payee debtor").

More than one debtor may owe PBGC a debt for the same pension benefit. For example, a non-vested participant is the debtor for payments PBGC makes by mistake. After the participant dies, a signatory to the participant's account who does not return payments made by electronic direct deposit after the participant's death is the non-payee debtor for those payments.

A deceased payee's trust or estate is the debtor for payments PBGC made after the payee's death if the trust or estate administrator notifies PBGC that the payments are the property of the trust or estate.

C.6. Overpayment means a net benefit overpayment--that is, the negative account balance resulting from an improper payment or payments. See PBGC Internal guidance Computation and Netting of Post-DOPT Overpayments and Underpayments.

C.7. Recoupment means collecting an overpayment by reducing future benefit payments to the payee (for example, the participant or any beneficiary).

C.8. Recoupment end date means the date on which the overpayment is repaid through recoupment and in full except for any partial final monthly recoupment amount.

C.9. Recovery means collecting an overpayment other than by reducing future benefits. Payments that PBGC did not stop paying on a communicated end date are also subject to recovery, subject to the 6-year rule described in **section G.3.b**. Recovery typically involves full repayment or installment payments. Recovery may also involve collection efforts made by the U.S. Department of the Treasury.

D. When to use administrative correction, recoupment, and recovery

When PBGC makes a payment error, PBGC will try to correct the payment error promptly through administrative correction. See section D.1.

When PBGC does not correct a payment error through administrative correction, PBGC will treat the payment error as an overpayment. PBGC will try to collect the overpayment through recoupment and/or recovery. For recoupment, see section D.2. For recovery, see section D.3.

- For PBGC's discretionary authority, see section E
- For notice requirements, see section F
- For not collecting overpayments, see section G
- For administrative correction methods, see section H
- For recoupment methods, see section I
 - For QDROs, see Appendix A
 - For non-level benefits over the MIL, see Appendix B
 - For appeals and de-minimis recoupment and recovery amounts, see Appendix C
- For recovery methods, see section J
- For appeals and reconsiderations, see section K
- For prepaying overpayments, see section L
- For fraud cases, see section M

D.1. When to use administrative correction

PBGC will try to administratively correct a payment error promptly when:

- PBGC makes duplicate monthly payments

- PBGC issues one or more payments to a deceased payee
- PBGC makes a clerical error

When possible, PBGC will correct the payment error before treating the payment error as an overpayment subject to PBGC's recoupment and recovery rules.

For the administrative correction notice requirements, see section F.3.b.

For the administrative correction methods, see section H.

D.1.a. Duplicate monthly payments

If a payee is entitled to continuing monthly payments and receives duplicate monthly payments for one or two months, PBGC will try to correct the payment error by the methods in section H.

D.1.b. Payments to a deceased payee received by the beneficiary

If a deceased payee's sole beneficiary receives the deceased payee's payments and the beneficiary is entitled to continuing payments, PBGC will try to correct the payment error by the methods in section H.

D.1.c. Clerical errors

If a payment error results from a clerical error, PBGC will try to correct the payment error by the methods in **section H**.

Examples of clerical errors are (this list is not exhaustive):

- A payment error due to transposing digits in the dollar amount
- A payment error due to paying the wrong person

D.2. When to use recoupment

PBGC will generally recoup from benefit payments made with respect to a payee when the payee has received an overpayment and, as of DOPT, PBGC pays a future annuity benefit with respect to the payee.

For example, PBGC overpays a joint-life annuity. PBGC will recoup from the participant's benefit and, if necessary, continue recouping from the survivor's benefit. If spousal consent for waiving the plan's QJSAs was invalid under PBGC Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities), see section G.5.

For payment errors that PBGC can correct promptly through administrative correction, see section D.1.

For payments that PBGC did not stop on a previously communicated end date, see section D.3.b.

For the recoupment notice requirements, see section F.

For the recoupment methods, see section I.

D.3. When to use recovery

If the methods of administrative correction in section H are unsuccessful or inapplicable, PBGC will generally try to collect overpayments by recovery when no future annuity benefits as of DOPT are payable and PBGC's recoupment rules do not apply.

PBGC will also try to collect by recovery some overpayments otherwise subject to recoupment:

- For payments that PBGC did not stop on a previously communicated end date, see section D.3.b.
- For payments from false information or an error by the payee, see section D.3.f.

For the recovery notice requirements, see section F.

For the recovery methods, see section J.

For overpayments outstanding for more than 6 years, see section G.3.b.

D.3.a. No annuity payments on or after DOPT

Recovery applies when the debtor received an overpayment and, as of DOPT, the debtor was not entitled to receive future annuity benefits from PBGC, under either plan terms or Title IV of ERISA.

Examples (this list is not exhaustive):

- A participant who was not vested at DOPT and whose termination benefit is \$0
- A participant who received a pre-DOPT lump sum equivalent to an annuity exceeding the benefit otherwise payable by PBGC (for example, a partial lump sum payment that exceeds the value of the entire benefit payable by PBGC)

D.3.b. Benefits after a communicated end date

PBGC will try to collect an overpayment by recovery when PBGC makes the overpayment after the benefit end date and PBGC or the prior plan administrator communicated the benefit end date to the payee. PBGC will not try to collect any payments outstanding for more than 6 years. See section G.3.b.

For example, PBGC starts paying a participant \$1,000.00 per month on 01/01/2012. On 02/01/2012, a letter from PBGC notifies the participant that the last payment will be sent on 08/01/2012. The last payment to the participant was made on 12/01/2012 – 4 months too late. PBGC will try to collect the \$4,000.00 overpayment (\$1,000.00 x 4 months) by recovery. If PBGC did not discover the error until 09/15/2018 and sent a demand letter for repayment on 09/20/2018, PBGC would not try to collect the 08/01/2012 or 09/01/2012 payments because as of 09/20/2018, those payments were outstanding for more than 6 years.

If PBGC or the prior plan administrator does not communicate to the payee the benefit end date, PBGC will not try to collect these overpayments.

Examples (this list is not exhaustive):

- A letter from PBGC notifies a beneficiary under a 10-year certain-and-continuous annuity that payments will last for 24 more months, but PBGC pays the beneficiary for 30 months
- A letter from the prior plan administrator notified a participant that payments drop to \$0 in 2014 because of an offset from another plan, but PBGC pays the participant until 2016

D.3.c. De-minimis lump sums

PBGC will try to collect an overpayment by recovery when PBGC paid the benefit in the form of a de-minimis lump sum.

If PBGC pays the benefit as an annuity instead of a lump sum, PBGC will try to collect the overpayment by reducing future benefits. See **section D.2**.

D.3.d. Payments over plan levels and recoupment insufficient

PBGC will try to collect an overpayment by recovery when the benefit PBGC paid significantly exceeded the payee's total plan benefit and recoupment is insufficient for PBGC to collect the entire overpayment.

For example, if a participant was overpaid \$10,000.00 and the monthly benefit decreased at age 65 to \$5.00 per month due to an offset from a purchased annuity, PBGC will try to collect the entire overpayment by recovery and will not recoup from the participant's benefit.

See sections E and I.2.a.

D.3.e. Payments after death to a non-entitled debtor

If the methods of administrative correction in section H are unsuccessful or inapplicable, PBGC will try to collect an overpayment by recovery when PBGC pays a debtor after the payee's death and the debtor is not entitled to benefits with respect to the payee. For example, a debtor who received payments after the payee's death and who is not entitled to the payee's survivor annuity is subject to recovery.

D.3.f. Payments from false information or an error by the payee

PBGC will try to collect an overpayment by recovery, recoupment, and/or legal action when PBGC made the overpayment because of false information or an error the payee is responsible for.

- For recoupment and payments from false information or an error by the payee, see section I.2.c.

- For PBGC's discretionary authority, see section E.

E. PBGC's discretionary authority

Except as prohibited by law, PBGC may simultaneously use multiple collection methods to collect a debt. PBGC has discretion under its recoupment and recovery regulations to determine whether to collect a debt and which methods are most advantageous to the Government.

- For payments over plan levels, see sections D.3.d and I.2.a.
- For payments from false information or an error by the payee, see sections D.3.f and I.2.c.

F. Notice requirements

When PBGC learns that a payee has received an overpayment, PBGC will send the payee a benefit determination letter, a separate demand letter, and/or other written notice.

F.1. Benefit determinations

Except as described in **sections F.2.b** and **F.3**, in every case in which PBGC learns of an overpayment, PBGC will send an initial (if PBGC has not already sent one) or revised benefit determination covering the payee's entitlement to a benefit, the amount of the benefit, and the right to appeal the benefit determination.

In addition to the information listed above, for overpayments subject to recoupment, the benefit determination will generally include the amount of the overpayment and the amount of the monthly benefit reduction for recoupment (or whether PBGC intends to seek collection of the overpayment).

If PBGC revises the benefit determination under Internal Guidance Benefit Corrections, PBGC will try to collect any additional overpayments. See Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments.

F.2. Demand letters

To collect an overpayment subject to recovery, PBGC will send a demand letter complying with the requirements of PBGC Reg. 4903.5.

F.2.a. Demand letters to a payee debtor

In addition to the benefit determination discussed in section F.1, if the recipient of an overpayment subject to recovery is a debtor who was also the correct payee, PBGC will send a separate demand letter when the benefit determination becomes final. (A benefit determination generally becomes final either (1) on the 46th day after PBGC issues the benefit determination if the participant does not appeal or (2) when the Appeals Board decides the appeal and the decision goes into effect).

F.2.b. Demand letters to a non-payee debtor

If the recipient of an overpayment subject to recovery is a debtor who was not the correct payee, PBGC will send the debtor a demand letter and try to collect the overpayment.

F.3. Written notices

F.3.b. Administrative correction

If PBGC administratively corrects a payment error, PBGC will send written notice (not a benefit determination) to the payee (or debtor) as soon as practicable. See section D.1.

Such written notice may occur immediately after the issuance of a stop payment order or after an ACH reversal but, when possible, prior to implementing ACH reclamation. See section H.

F.3.c. Increased overpayment and/or recoupment amount

If the overpayment increases after PBGC sends the benefit determination (for example, when PBGC does not recoup on time), PBGC will give written notice (not a revised benefit determination) to the payee of the increased overpayment and/or recoupment amount.

G. Situations in which PBGC does not collect an overpayment

G.1. No future benefits (“recoupment from zero”)

PBGC will generally not try to collect an overpayment of annuity benefits if benefits are payable from PBGC at DOPT but no future benefits are payable with respect to the payee (for example, the participant or beneficiary). See PBGC regulation 4022.81(a).

Examples (this list is not exhaustive – see also Appendix D):

- A participant received a straight life annuity of \$100.00 per month and died before PBGC sends a benefit determination advising that the monthly entitlement was only \$85.00 per month and that the benefit would be subject to recoupment
- A participant continued to receive payments after the benefit end date and neither PBGC nor the prior plan administrator communicated the benefit end date to the participant until after the overpayment occurred
- A surviving spouse entitled only to a 50%-survivor benefit continued to receive payments equal to the deceased participant's full benefit amount and died before PBGC discovered that the spouse was being overpaid
- A shared payment alternate payee who received payments from PBGC after the participant's death and no further benefits are payable to the alternate payee with respect to the participant's benefit (see Appendix A.3)

In these examples, PBGC paid benefits in the form of a periodic (usually monthly) annuity at DOPT. (Overpayments of de minimis lump sums are generally subject to recovery. See section D.3.c.) Neither PBGC nor the plan administrator told the payee that benefits would stop. The overpayments therefore were subject to recoupment until the earlier of the recoupment end date and the date benefit payments end (see **section I**). Because payments later stopped, PBGC has no future payments from which to recoup. Thus, the overpayments are now subject to “recoupment from zero” and no longer collectible.

Note that some overpayment scenarios involving annuity payments that stop after DOPT are subject to administrative correction (if applicable) and/or recovery (not “recoupment from zero”), including but not limited to:

- Benefit payments that were never payable from PBGC but (due to administrative error or lack of relevant information) were erroneously paid after DOPT (see sections D.3.a)
- Under some circumstances, benefits that PBGC does not stop after a communicated end date (see section D.3.b)
- Benefit payments made to a non-payee debtor after a participant's death (for example, SLA payments received by someone with access to the participant's bank account) (see sections D.3.e and F.2.b)

G.2. Final partial monthly recoupment amount

PBGC will generally not recoup the final partial monthly recoupmemt amount if the overpayment that remains in the final month is less than the monthly recoupmemt reduction amount. See section I.

If the prior plan administrator started the recoupmemt, PBGC will follow plan terms or plan administrator communication about the final monthly amounts. See section I.4.

G.3. Overpayments outstanding for more than 6 years

G.3.a. Recoupmemt

PBGC will not start (or resume) recoupmemt of overpayment(s) in instances where PBGC or the plan administrator notified the debtor of the overpayment by a method consistent with section F.1, more than 6 years ago, regardless of the amount of the overpayment, except in cases of fraud (see section M).

For example, on 12/01/2014, PBGC sends a retiree a benefit determination. The benefit determination says PBGC will start recoupmemt on 02/01/2015. If PBGC does not start recoupmemt by 02/01/2021, PBGC will not try to collect the overpayment. If PBGC started recoupmemt on 02/01/2015 and on 06/01/2015 stopped recoupmemt due to administrative oversight, PBGC would not try to collect the remaining overpayment unless PBGC resumed recoupmemt by 06/01/2021.

G.3.b. Recovery

PBGC will not try to recover overpayments that PBGC or the plan administrator made more than 6 years ago, except in cases of fraud (see section M).

Examples (this list is not exhaustive):

- On 10/01/2000, PBGC begins making monthly payments of \$100.00 to a payee. PBGC subsequently discovers that the payee was not entitled to benefits under the plan. On 09/10/2017, PBGC notifies the payee that PBGC will cease payments on 11/01/2017 and that PBGC will not attempt to recover any monthly payments made on and before 11/01/2011. Instead, PBGC will seek recovery of only \$7,200.00 (6 years x 12 months/year x \$100.00/month).
- On 12/10/2018, PBGC pays a participant a de-minimis lump sum (with interest) of \$3,000.00. PBGC later discovers that the participant was entitled only to a lump sum (with interest) of \$2,000.00. If PBGC does not try to recover the overpayment of \$1,000.00 by 12/10/2024, PBGC will write off the debt and administratively close the case.
- On 11/01/2019, PBGC makes a single erroneous payment to the wrong person. If PBGC does not try to recover the overpayment by 11/01/2025, PBGC will write off the debt and administratively close the case.

G.4. Debtors who are minors

PBGC will not try to collect an overpayment by recovery if the debtor was a minor when PBGC made the overpayment.

G.5. Invalid spousal consent

If PBGC makes an overpayment because of benefit changes required to correct a past failure to obtain spousal consent that is valid under PBGC Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities), OBA will generally not seek repayment of the overpayment. Request guidance by emailing PSDGuidance@pbgc.gov.

H. Methods of administrative correction

PBGC's methods of administrative correction include:

- Stop payment orders
- ACH reversals
- ACH reclamations

- Suspending or delaying benefit payments

PBGC will generally first try to use a stop payment order, ACH reversal, or ACH reclamation.

For ACH reversals and reclamation, PBGC will follow the National Automated Clearing House Association (NACHA) Operating Rules.

If efforts to stop payment or to effect an ACH reversal fail, PBGC will try to suspend or delay benefit payments.

If PBGC's methods of administrative correction fail or do not apply, PBGC will treat the payment error as an overpayment. See PBGC Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments. PBGC will try to collect any resulting overpayment by recoupment or recovery, as applicable. See sections D.2 and D.3.

For when to use administrative correction, see **section D.1**.

I. Methods of recoupment

If PBGC recoups from future benefit payments to collect an overpayment, PBGC will reduce future benefit payments with respect to the payee in accordance with PBGC Reg. 4022.81-82.

PBGC will reduce benefits through the entire benefit stream—with recoupment continuing after the participant's death and applying to payments to any surviving contingent annuitants—until the earlier of the recoupment end date and the date of the last benefit payment from PBGC.

PBGC will not consider financial hardship in recoupment cases.

For when to use recoupment, see section D.2.

I.1. Computation of benefit reduction: general rule

To collect an overpayment through recoupment, PBGC will reduce future monthly payments by the Initial Recoupment Percentage. See section I.1.a.

PBGC will generally limit the monthly recoupment reduction to 10% of the monthly benefit payment. See section I.1.b.

I.1.a. Initial Recoupment Percentage

PBGC will calculate the Initial Recoupment Percentage by:

- Dividing the amount of the overpayment by the present value of the termination benefit payable with respect to the payee
- Multiplying the result by 100 to obtain a percentage

PBGC will use the present value of the termination benefit as of DOPT. PBGC will use PBGC interest rates and factors in effect on DOPT.

I.1.b. 10% limitation on recoupment reduction: general rule

PBGC will limit the monthly recoupment reduction to 10% of the monthly benefit payment unless PBGC applies an exception in section I.2.

Example I-1

A participant is entitled to a termination benefit of \$1,000.00 per month in the form of a joint-and-50% survivor annuity. For 36 months from 01/01/2007 until 12/01/2009, PBGC pays \$2,000.25 per month.

- The monthly overpayment is \$1,000.25 (\$2,000.25 - \$1,000.00)
- The overpayment is \$36,009.00 (36 x \$1,000.25)
- The present value of the termination benefit is \$100,000 for this example
- The Initial Recoupment Percentage is 36.01% (\$36,009.00/\$100,000 x 100)

The Initial Recoupment Percentage is greater than 10%. PBGC will limit the monthly recoupment reduction to 10%. PBGC will reduce the monthly payments by \$100.00 (10% of \$1,000.00).

Recoupment begins on 01/01/2010. PBGC pays the participant \$900.00 per month (\$1,000.00 - \$100.00).

The recoupment end date is 12/01/2039. Starting 01/01/2040, the participant will receive \$1,000.00 per month without reduction for recoupment. PBGC will not try to collect the partial final monthly recoupment amount of \$9.00.

PBGC recoups for 6 months. The participant dies on 06/15/2010.

PBGC will collect the remaining overpayment of \$35,409.00 (\$36,009.00 - \$600.00) by reducing the survivor benefit for 708 months.

On 07/01/2010, PBGC begins paying the survivor \$450.00 per month. The survivor's monthly payment equals \$500.00 per month (50% x \$1,000.00) less \$50.00 per month (10% x \$500.00) for recoupment.

The recoupment end date is 06/01/2069. Starting 07/01/2069, the survivor will receive \$500.00 per month without reduction for recoupment. PBGC will not try to collect the partial final monthly recoupment amount of \$9.00.

I.2. Exceptions to the 10% limitation

I.2.a. Payments over plan levels

If total benefit payments for a period of time after DOPT significantly exceed the benefits actually payable under the terms of the plan for that period, PBGC may use its discretionary authority to collect the overpayment. For example, PBGC may remove the 10% limit on the monthly recoupment reduction. See **section E**. PBGC may also try to collect any remaining overpayment by recovery. See section D.3.d.

I.2.b. Benefits over the Maximum Insurance Limitation (MIL)

PBGC will limit the monthly recoupment reduction to the greater of 10% of the monthly benefit payment and the dollar amount by which the termination benefit exceeds the MIL if:

- A payee's termination benefit exceeds the MIL and
- The Initial Recoupment Percentage is greater than 10%

(The MIL is the monthly dollar amount of the unreduced, age 65 maximum guaranteeable benefit payable under section 4022(b)(3)(B) of ERISA without adjustment for age and benefit form.)

PBGC will not reduce the monthly benefit by more than the Initial Recoupment Percentage.

For recoupment from non-level benefits over the MIL, see Appendix B.

I.2.c. False information or an error or omission by the payee of information material to benefit amount, entitlement, or eligibility

PBGC will not limit the monthly recoupment reduction if PBGC learns that PBGC overpaid a payee due to false information or an error by the payee.

Examples (this list is not exhaustive):

- The payee gave or verified false information
- The payee was responsible for the error
- The payee was deceased and someone else continued to receive the payee's payments
- The payee did not notify PBGC of a change in condition or circumstances affecting benefit entitlement or amount
- An interested party under a legal settlement with PBGC who was overpaid due to a delay in implementing a benefit reduction under the terms of that settlement (see section I.2.e)

PBGC will consider information in a benefit determination or other written correspondence verified if the payee knew of, or reasonably ought to have known of, the error and did not tell PBGC. Similarly, PBGC will consider whether the payee knew of, or reasonably ought to have known of, a change in circumstances affecting his or her benefit entitlement amount or eligibility for benefits but failed to notify PBGC.

PBGC may also try to collect the overpayment in full by recovery and/or legal action. See sections D.3.f and E.

I.2.d. Disability status

I.2.d.1. Timely notice of change in disability status: regular recoupment

If PBGC overpays a participant due to either:

- A change in the award of (and in some cases retroactive payment of) a Social Security disability benefit or
- An improvement in health making the participant ineligible for disability benefits under the plan

and if the participant notifies PBGC within one year of the later of:

- The change in disability status and
- The first notice from PBGC that disability benefits are contingent upon disability status

and, as a result, the participant is no longer eligible for disability benefits under the plan, PBGC will limit the monthly recoupment reduction to 10% of the monthly benefit payment. See section I.1.

I.2.d.2. Untimely notice in change in disability status: temporary 40% reduction

If PBGC overpays a participant due to either:

- A change in the award of (and in some cases retroactive payment of) a Social Security disability benefit or
- An improvement in health making the participant ineligible for disability benefits under the plan

and if the participant does not notify PBGC within one year of the later of:

- The change in disability status and
- The first notice from PBGC that disability benefits are contingent upon disability status

and, as a result, the participant is no longer eligible for disability benefits under the plan, PBGC will temporarily reduce monthly benefit payments by 40%.

PBGC will stop reducing monthly benefit payments by 40% when PBGC collects the full amount of the resulting overpayment.

Temporary 40% reduction will be in addition to any other recoupment reduction in effect for the benefit. Thus, temporary 40% reduction will result in a total reduction of 50% for benefit payments that PBGC is already reducing by 10%. See section I.1.

I.2.e. Legal Settlements with PBGC

In accordance with section E, if a legal settlement between PBGC and the interested parties was not implemented in a timely manner by OBA and, as a result thereof, an interested party has been overpaid, PBGC may seek repayment of those overpayments by recoupment without regard to the limits described in section I.1.b and/or recovery methods described in section J. Request guidance by emailing PSDGuidance@pbgc.gov.

Note: Except as set forth in the legal settlement itself, this section I.2.e neither supersedes nor is intended to supersede any provision of any legal settlement between PBGC and interested parties that relates to the repayment of benefit overpayments that are owed to the plan and/or to PBGC.

For purposes of this section I.2.e, interested parties to a legal settlement with PBGC may include (but are not limited to):

- Majority owners who elect to forgo all or part of the benefit
- Participants settling a fiduciary breach claim with PBGC through a benefit offset

I.3. When to use the recoupment percentage

PBGC will generally use the recoupment percentage computed under section I.1 to reduce future benefits payable on or after the date a recoupment reduction goes into effect.

PBGC will stop the monthly recoupment reduction as of the recoupment end date or, if earlier, at the time the payee prepays in full the outstanding amount of the overpayment. See section L.

For temporary benefit reduction by 40% due to untimely notice in change in disability status, see section I.2.d(2).

PBGC will reduce benefit payments for recoupment before reducing benefit payments for other deductions (for example, withholding for taxes).

For recoupment purposes, PBGC will treat a payee's benefit payments as payments made to the payee's beneficiary if:

- PBGC makes the annuity payments after the payee's death
- The payee's beneficiary receives those annuity payments (for example, the payments were deposited into a joint account)
- The payee's beneficiary is entitled to continuing annuity payments after the payee's death, and
- The payee's beneficiary does not return those payments to PBGC

If PBGC was reducing a joint-life benefit for recoupment and an overpayment remains when the survivor benefit starts, PBGC will generally continue to reduce benefit payments by the same recoupment percentage and adjust the recoupment end date. If spousal consent for waiving the plan's QJSA was invalid under PBGC Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities), see section G.5.

I.4 Recoupment by the prior plan administrator

PBGC will continue temporary benefit reductions that the prior plan administrator started before DOPT or communicated before DOPT to recoup pre-DOPT benefit overpayments.

Benefit overpayments made on or after the Overpayment Accrual Commencement Date are subject to PBGC's administrative correction, recoupment, and recovery rules. See PBGC Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments.

PBGC will reduce the payee's termination benefit by the same recoupment percentage that the prior plan administrator reduced, or would reduce, the payee's plan benefit. PBGC will not limit the monthly reduction to 10%.

For example, a plan benefit was \$2,000.00 per month. The plan recouped \$500.00 per month. The plan's recoupment percentage is 25.00% ($\$500.00 / \$2,000.00 \times 100$).

The PBGC termination benefit is \$1600.00 per month.

PBGC will continue to recoup at 25.00%. PBGC will reduce the termination benefit by \$400.00 per month (25.00% of \$1,600.00) to collect the pre-DOPT overpayment. The payee will receive the remaining benefit of \$1,200.00 per month ($\$1,600.00 - \400.00).

For the final monthly partial recoupment payment, PBGC will follow plan practice. See section G.2.

Any additional overpayments that PBGC makes after DOPT will be subject to the PBGC's recoupment rules. See section I.

In calculating PBGC's recoupment for post-DOPT overpayments, PBGC will treat the benefit paid before the prior plan administrator's recoupment reduction as the amount the payee received. In the example above, PBGC will treat the amount of \$1,600.00 per month as the amount the payee received.

I.5 Joint-and-survivor "pop up" and similar annuities

To recoup from benefits that increase (or decrease) due to the death of the surviving beneficiary—for example, joint-and-survivor “pop up” annuity—and similar annuities, PBGC will continue to reduce the participant’s benefit by the same monthly recoupment amount, with the same recoupment end date, if recoupment started before the participant’s monthly benefit increased (or decrease).

For example, if a participant’s joint-and-survivor “pop up” annuity of \$900.00 was being recouped at \$50.00 per month for 130 months and, as a result of the death of the participant’s survivor, the participant’s monthly benefit increased to \$1,000.00 per month, PBGC will continue to reduce the participant’s benefit by \$50.00 per month and will not adjust the recoupment end date (unless there is a subsequent overpayment requiring the initial recoupment percentage to be recalculated).

J. Methods of recovery

PBGC's methods to recover an overpayment include:

- By means of a single lump-sum payment
- Under the terms of an installment payment agreement
- Through referral to the U.S. Department of the Treasury
- Through litigation

PBGC may reduce or waive the debt. Reducing and waiving debts will be subject to the Federal Claims Collection Standards and Part 4903 of PBGC’s regulations.

For when to use recovery, see section D.3.

For fraud, see section M.

J.1. Estates and trusts as debtors

If an estate or trust administrator tells PBGC that the overpayments are property of the estate, PBGC will treat the estate or trust as the debtor. PBGC will tell the estate or trust to repay the overpayment in a single payment.

If the estate or trust administrator does not repay the overpayment promptly, OBA will generally refer the case to the OBA Recovery Coordinator for referral to OGC. In such cases, OGC will take appropriate actions to collect the debt unless OGC determines that it is not legally possible or cost-effective to recover the overpayment from the estate or trust.

J.2. Financial hardship

PBGC will consider demonstrated financial hardship in recovery cases. If the debtor establishes financial hardship, PBGC may:

- Reduce the recovery debt
- Eliminate the recovery debt
- Permit an installment payment agreement

For installment payment agreements, see section J.4.

J.3. Single-sum payments

PBGC will not charge interest, penalties, or administrative costs on overpayments repaid in a single-sum payment before the date of delinquency. See PBGC Reg. 4903.6.

J.4. Instalment payment agreements

PBGC will permit an installment payment agreement only in cases of financial hardship. For financial hardship, see section J.2.

PBGC will generally not permit an installment payment agreement under which the installment period exceeds 36 months.

All installment agreements will include interest as described in section J.5.a.

J.5. Interest, penalties, and administrative charges in the case of default

If the debtor fails, before the date of delinquency, to repay the overpayment in full and refuses or is not eligible to enter into an installment payment agreement—or if the debtor defaults on making payments under an installment agreement—PBGC will charge simple interest, penalties, and administrative costs, in accordance with 31 U.S.C. § 3717 and 31 C.F.R. § 901.9 (per PBGC Reg. 4903.6).

J.5.a. Interest

PBGC will charge simple interest for amounts not repaid in full before the date of delinquency. The rate of interest will remain fixed for the duration of the indebtedness.

PBGC will use the first day of the month coincident with or else next following the date of delinquency to determine:

- The date on which PBGC begins to add interest, when applicable, for recoveries
- The rate of interest, which is the U.S. Department of the Treasury's Current Value of Funds Rate in effect

J.5.b. Penalties

PBGC will assess penalties for late payments, for default on installment agreements, and for other recovery situations, as appropriate.

J.5.c. Administrative costs

PBGC will charge administrative costs that reflect the actual or estimated costs of collecting overpayments through recovery, as appropriate.

J.5.d. Order and suspension of charges

PBGC will apply debtor payments first to outstanding penalties, second to administrative costs, third to outstanding interest, and last to the principal amount.

The OBA Recovery Coordinator will determine whether OBA suspends or waives interest, penalties, and administrative costs, based on the facts and circumstances of the debt.

J.6. Deceased debtors

In the case of a deceased debtor who was the intended payee (for example, the participant, beneficiary, or alternate payee) and who failed to execute and to return an installment payment agreement before death:

- If the amount of the outstanding debt is \$10,000.00 or less, PBGC will write off the outstanding debt and stop collection activities. This write-off rule will not apply to estates as debtors. See section J.1.
- If the amount of the outstanding debt is more than \$10,000.00, the OBA Recovery Coordinator will refer the case to OGC after the benefit determination becomes final.

If a deceased debtor and PBGC had executed an installment payment agreement, PBGC will write off the debt that remains as of the debtor's death.

K. Appeals and reconsideration of recovery determinations

Decisions by OBA to collect overpayments, to reduce or eliminate debt, and to permit installment payment agreements, will not be subject to review by the Appeals Board.

The underlying determinations of benefit entitlement and amount will be subject to review by the Appeals Board.

At the request of a payee or other interested party, OBA will review any of the other factors underlying its computation of the amount of a benefit overpayment (for example, the amount the payee actually received) and the calculation of the recoupment reduction or installment payment amount for accuracy. OBA will make any necessary corrections.

L. Prepayment

PBGC will accept prepayment of the full amount of an outstanding overpayment.

If the method of repayment is recoupment of future annuity payments, PBGC will tell the payee that:

- PBGC does not charge interest during the recoupment period
- PBGC will not try to collect the partial final monthly recoupment amount

M. Fraud

PBGC will forward to the Office of Inspector General any overpayment case involving possible fraud, including any case in which a person received payments directed to another person.

For overpayments outstanding for more than 6 years, see section G.3.

Appendix A. Qualified Domestic Relations Orders (QDROs)

PBGC will apply its recoupment regulation and internal guidance to participants and alternate payees (APs) under a QDRO in accordance with this Appendix A.

Except as discussed below, PBGC will generally seek repayment of benefit overpayments only from the party who was overpaid. For example, if PBGC overpaid the participant due to a failure to reduce the participant's benefit in accordance with the terms of the QDRO, PBGC will seek repayment only from the participant (not the AP). However, PBGC also reserves the right to use its discretion under the recoupment regulation (PBGC Reg. 4022.81(a)) to use other methods for QDROs on a case-by-case basis.

Before using any repayment method for overpayments involving a QDRO other than the rules described in this Appendix A or elsewhere in this internal guidance, request guidance by emailing PSDGGuidance@pbgc.gov.

A.1. Recoupment due to PBGC's guarantee limitations

The QDRO may say how to adjust the participant's and/or AP's benefits for PBGC's guarantee limitations ("PBGC's benefit adjustments"). For example, the QDRO may say that PBGC will adjust:

- The participant's and AP's benefits on a pro-rata basis
- Only one party's benefits, that is, the AP's or the participant's benefits
- One party's benefits before adjusting the other party's benefits

If the QDRO says how to treat the participant's and AP's benefit payments for PBGC's benefit adjustments, PBGC will generally honor those QDRO provisions. If the QDRO is silent on how to treat benefit payments for PBGC's benefit adjustments, PBGC will adjust on a pro-rata basis.

If overpayments occur for reasons besides PBGC's benefit adjustments (for example, because of an administrative error, erroneous benefit amount), PBGC will generally try to collect the overpayment from the party that received the overpayment, based on the general repayment guidelines in this internal guidance.

A.2. QDRO treats AP as surviving spouse or beneficiary

If the QDRO states to treat the AP as the participant's surviving spouse or beneficiary, PBGC will use the regular recoupment rules for surviving spouses or beneficiaries to determine the monthly recoupment amount and recoupment end date for the AP after the participant's death. See section I.3.

A.3. Shared payment QDROs

For shared payment QDROs, the method for dividing the monthly recoupment amount will depend on whether the shared payment QDRO awards the AP a fixed percentage or a specified dollar amount of the participant's benefit.

If the shared payment QDRO awards the AP both a fixed percentage and specified dollar amount, or awards the AP another type of benefit, request guidance by emailing PSDGuidance@pbgc.gov.

If a participant predeceases the AP and PBGC continues making payments to the AP by mistake following the participant's death and no further payments are owed with respect to the QDRO to the AP, PBGC will cease payments to the AP and treat the overpayments as "recoupment from zero". See **section G.1**. However, if in this situation the participant's form of benefit was a joint-life annuity with the AP as contingent annuitant, PBGC will generally recoup from the AP's survivor benefit.

A.3.a. Fixed percentage

If a shared payment QDRO awards the AP a fixed percentage of the participant's benefit, PBGC will divide the monthly recoupment amount between the participant and the AP in the same proportion (pro rata).

Example A-1

At DOPT, a participant was married and receiving an estimated monthly benefit of \$600.00 per month in the form of the plan's qualified joint-and-50% survivor annuity. Two years after DOPT, a shared payment QDRO awards the former spouse (the AP) 60.00% of the participant's monthly benefit payments (\$360.00 per month). Five years after DOPT, PBGC sends a benefit determination to the participant and AP. The termination benefit is \$500.00 per month instead of \$600.00 per month:

- The AP's monthly benefit is \$300.00 (60.00% of \$500.00)
- The participant's monthly benefit is \$200.00 (40.00% of \$500.00)
- The recoupment reduction is 8.00% (assumed)
- The total monthly recoupment amount is \$40.00 (8.00% of \$500.00)

PBGC divides the \$40.00 monthly recoupment amount between the participant and AP. PBGC uses the same proportions that the QDRO uses to divide the participant's benefit between the participant (40%) and the AP (60%):

- PBGC reduces the AP's payments by \$24.00 per month (60.00% of \$40.00)
- PBGC reduces the participant's payments by \$16.00 per month (40.00% of \$40.00)

If the AP dies before the participant, the AP's net monthly payment of \$276.00 (\$300.00 - \$24.00) will return to the participant. If the participant dies before the AP, the AP will receive the survivor's portion of the QJSA (\$250.00). PBGC will reduce the survivor benefit by 8.00% (\$20.00) for recoupment.

A.3.b. Specified dollar amount

If a shared payment QDRO awards the AP a specified dollar amount, PBGC will generally recoup only from the participant's benefit. PBGC will generally not recoup from the AP's benefit.

If the participant's monthly recoupment reduction exceeds the participant's monthly benefit amount, PBGC will recoup the entire amount of the participant's benefit and recoup the monthly recoupment amount that exceeded the participant's benefit from the AP.

Example A-2

At DOPT, a participant aged 62 was married. The participant had a deferred vested benefit under the plan of \$900.00 per month in the form of a straight-life annuity beginning at age 65. The participant divorces one year after DOPT. A shared payment QDRO awards the former spouse as AP a flat-dollar amount of \$500.00 of the monthly pension until death. The QDRO does not require the plan to treat the AP as the surviving spouse. Two years after DOPT, the participant remarries a different spouse. At age 65, the participant starts receiving estimated benefits in the form of the plan's qualified joint-and-50% survivor annuity with the current spouse. Of the estimated termination benefit of \$800.00 per month:

- PBGC pays \$500.00 per month to the AP
- PBGC pays \$300.00 per month to the participant

Four years after DOPT, PBGC issues the benefit determination. The termination benefit is \$700.00 per month instead of \$800.00 per month.

On a combined basis, the Initial Recoupment Percentage is 12.00%. PBGC limits the monthly recoupment reduction to 10%. The monthly recoupment amount is \$70.00 (10% of \$700.00). PBGC reduces the participant's monthly benefit payments by \$70.00. PBGC does not reduce the AP's monthly benefit payments. If the AP dies before the participant, the AP's monthly benefit of \$500.00 will return to the participant. The participant's recoupment amount will not change. If the participant dies before the AP, the current spouse will receive the survivor's portion of the QJSA (\$350.00) reduced by 10% (\$35.00) for recoupment.

A.4. Separate interest QDROs

For recoupment from separate interest QDROs, PBGC will treat the participant and the AP as separate plan participants.

PBGC will determine separately for the participant and the AP:

- The amount of overpayment to be recouped
- The recoupment percentage
- The monthly recoupment amount
- The recoupment end date

A.4.a. Determining the separate amounts of overpayment

To determine the participant's and AP's separate overpayment amounts, PBGC will separately compare:

- The participant's actual benefits paid with the participant's correct termination benefit payable
- The AP's actual benefits paid with the AP's correct termination benefit payable

PBGC will not offset overpayments PBGC made to one party (for example, the participant) by net benefit underpayments PBGC owes to the other party (for example, the AP).

If PBGC overpays one party and owes a net benefit underpayment to the other party, PBGC will separately reimburse the underpayment and recoup for the overpayment.

A.4.b. Determining the separate present values as of DOPT

PBGC will determine separate present values of the participant's and AP's termination benefits payable as of DOPT.

A.4.c. Determining the separate recoupment percentages and limits

PBGC will determine separate recoupment reduction percentages for the participant and for the AP. PBGC will limit recoupment to 10% for the participant and to 10% for the AP.

Request guidance by emailing PSDGuidance@pbgc.gov if both:

- The monthly termination amount without regard to the QDRO exceeds the MIL and
- The Initial Recoupment Percentage computed for overpayments made to either the participant or the AP exceeds 10%

A.4.d. Determining the separate recoupment end dates

PBGC will determine separate recoupment end dates for the participant and for the AP.

Appendix B. Recoupment from non-level benefits over the MIL

Appendix B applies to payees entitled to future non-level benefits exceeding the MIL:

- Whose benefits are subject to recoupment
- Whose benefit determination PBGC sent on or after 04/13/1999

PBGC will compare the Initial Recoupment Percentage with the dollar amount by which the termination benefit exceeds the MIL to determine the payee's monthly recoupment reduction. See sections I.1.a and I.2.b.

If the payee's benefit is non-level (for example, a life benefit with a temporary supplement or a social security leveling option) and future benefit amounts exceed the MIL, then for each benefit level exceeding the MIL, PBGC will limit the payee's monthly recoupment reduction to the greater of:

- 10% of the monthly benefit and
- The dollar amount by which the termination benefit exceeds the MIL in effect the year the plan terminated

If the benefit level does not exceed the MIL, PBGC will limit the recoupment reduction to 10% of the monthly benefit.

PBGC will reduce the payee's monthly benefit for recoupment until the payee has repaid the overpayment, except for any partial final monthly recoupment amount.

PBGC will recalculate the recoupment reduction for non-level benefits over the MIL if PBGC begins to pay survivor benefits to the payee's beneficiary. See Appendix example B-2. PBGC will generally not recalculate the Initial Recoupment Percentage after survivor benefits begin. See sections I.1.b and I.3.

If the payee dies before the payee's beneficiary, PBGC may adjust the recoupment end date to reflect a lower recoupment amount from decreased spousal benefits.

Example B-1

A participant's form of benefit is a social security leveling option (SSLO):

- No survivor benefit is payable
- The benefit is \$4,000.00 per month before age 65 and \$2,000.00 per month thereafter
- The present value of the benefit as of DOPT is \$275,000 for this example
- The participant is age 60
- PBGC overpays the participant by \$32,000.00
- DOPT is in 1990
- The MIL is \$2,164.90

The Initial Recoupment Percentage is 11.64%:

$$\begin{array}{r} \$32,000.00 \quad (\text{Overpayment}) \\ \div \quad \$275,000 \quad (\text{Present value of termination benefit}) \\ \times \quad 100 \quad (\text{Percentage}) \\ \hline 11.64\% \quad (\text{Initial Recoupment Percentage}) \end{array}$$

For the pre-65 benefit level, the monthly recoupment reduction is \$465.46:

$$\begin{array}{r} 11.64\% \quad (\text{Initial Recoupment Percentage}) \\ \times \quad \$4,000.00 \quad (\text{Monthly termination benefit}) \\ \hline \$465.46 \quad (\text{Monthly recoupment reduction}) \end{array}$$

PBGC limits the pre-65 monthly benefit reduction to \$1,835.10 per month (the greater of 10% of benefit and the monthly termination benefit amount exceeding the MIL):

$$\begin{array}{r} \$4,000.00 \quad (\text{Monthly termination benefit}) \\ \times \quad 10\% \quad (10\% \text{ recoupment}) \\ \hline \$400.00 \quad (10\% \text{ recoupment limit}) \\ \\ \$4,000.00 \quad (\text{Monthly termination benefit}) \end{array}$$

- \$2,164.90 (MIL for 1990)
\$1,835.10 (Monthly termination benefit less MIL)

PBGC will reduce the pre-65 benefit amount by \$465.46 per month (not \$1,835.10 per month or \$400.00 per month).

PBGC will reduce post-65 benefit payments (\$2,000.00 per month) by PBGC's regular recoupment rules:

- The post-65 benefit level does not exceed the MIL (\$2,164.90).
- At age 65, PBGC will limit the participant's recoupment reduction to 10% of the monthly benefit (\$200.00 per month).

Example B-2

A participant is receiving a joint-and-50% survivor annuity with a temporary supplement payable until age 62:

- The regular benefit payable to the participant is \$2,100.00 per month
- The temporary supplement is an additional \$400.00 per month
- The total benefit before age 62 is \$2,500.00 per month and \$2,100.00 per month thereafter
- The temporary supplement benefit includes no survivor benefit
- The total survivor benefit is \$1050.00 (50% x \$2,100.00)
- The present value of the termination benefit is \$250,000 for this example
- The participant is age 60
- PBGC overpays the participant by \$40,000.00
- DOPT is in 1990
- The MIL is \$2,164.90

The Initial Recoupment Percentage is 16.00%:

$$\begin{array}{rcl} \$40,000.00 & \text{(Overpayment)} \\ \div & & \\ \$250,000 & \text{(Present value of termination benefit)} \\ \times & & \\ 100 & \text{(Percentage)} \\ \hline 16.00\% & \text{(Initial Recoupment Percentage)} \end{array}$$

For the pre-62 benefit level, the monthly recoupment reduction is \$400.00:

$$\begin{array}{rcl} 16.00\% & \text{(Initial Recoupment Percentage)} \\ \times & & \\ \$2,500.00 & \text{(Monthly termination benefit)} \\ \hline \$400.00 & \text{(Monthly recoupment reduction)} \end{array}$$

PBGC limits the pre-62 monthly benefit reduction to \$335.10 per month (the greater of 10% of benefit and the monthly termination benefit amount exceeding the MIL):

$$\begin{array}{rcl} \$2,500.00 & \text{(Monthly termination benefit)} \\ \times & & \\ 10\% & \text{(10\% recoupment)} \\ \hline \$250.00 & \text{(10\% recoupment limit)} \\ \\ \$2,500.00 & \text{(Monthly termination benefit)} \\ - & & \\ \$2,164.90 & \text{(MIL for 1990)} \\ \hline \$335.10 & \text{(Monthly termination benefit less MIL)} \end{array}$$

PBGC will reduce the pre-62 benefit by \$335.10 per month (not \$400.00 per month or \$250.00 per month).

PBGC will reduce post-62 benefit (\$2,100.00 per month) payments by PBGC's regular recoupment rules:

- The post-62 benefit does not exceed the MIL (\$2,164.90)
- At age 62, PBGC will limit the participant's benefit reduction to 10% of the monthly benefit (\$210.00)

For the survivor benefit, PBGC will reduce benefit payments by \$105.00 per month ($10\% \times \$1,050.00$). In this case, the participant's age at his death does not matter because:

- The survivor benefit is derived only from the participant's joint-and-50% survivor portion of the termination benefit—not the temporary supplement
- The survivor benefit never exceeds the MIL (\$2,164.90)

For the survivor benefit, PBGC will limit the recoupment reduction to 10% of the monthly benefit.

PBGC will not recalculate the Initial Recoupment Percentage for recouping from the survivor benefit unless PBGC has further overpaid the survivor.

Appendix C: Appeals and de minimis repayment amounts for plans trusteeed before 08/23/2007

On 11/04/2002, PBGC issued Internal Guidance Bulletin 2003-2: Effect of Appeals on De Minimis Recoupment and Recovery Amounts. Under the recoupment and recovery internal guidance then in effect, PBGC treated an overpayment of \$500.00 or less as a de minimis amount. PBGC did not try to collect overpayments under the de minimis threshold.

Sometimes, overpayments that were de minimis at the time of benefit determination issuance increased to over \$500.00 by the time the benefit determination became final. It was unclear whether PBGC would try to collect overpayments that increased above the de minimis threshold by the time the Appeals Board closed the appeal.

Under Internal Guidance Bulletin 2003-02, PBGC froze de minimis overpayments as of when PBGC issued the benefit determination. Internal Guidance Bulletin 2003-02 covered benefit determinations:

- That described de minimis recoupment and recovery amounts which PBGC processed on or after 10/28/2002 and
- That PBGC issued for which an appeal was filed but unresolved as of 10/28/2002

For recoupment, PBGC removed the de minimis threshold for plans trusteeed on or after 08/23/2007. The rules in this Appendix C are irrelevant for overpayments from plans trusteeed on or after 08/23/2007.

For recoveries, the rules in this Appendix C are no longer relevant due to the scope and effective date of this internal guidance. See section B.

Example C-1

PBGC overpays a participant by \$22.00 per month for 22 months:

- PBGC sends the benefit determination
- The overpayment is \$484.00
- The participant appeals
- The Appeals Board closes the appeal
- The benefit determination becomes final
- The overpayment increases to \$600.00

PBGC will adjust his benefit to the new lower level. PBGC will not try to collect the overpayment.

Appendix D: Examples of Overpayment Situations

This Appendix presents examples of overpayment situations where it may not be clear whether PBGC treats the overpayment as a recoupment from zero (see section D.1 above) or recovery (see **section J** above).

NOTE: All examples described in this Appendix D are assumed to be hypothetical and to involve no (i) relevant legal settlements, (ii) fraudulent payments, or (iii) payments made to a minor.

Example 1: PBGC staff discover the following overpayment situation.

- A participant was receiving a monthly benefit \$1,000.00 per month as an SLA
- All payments were made electronically to a joint-checking account with the participant's only son
- Participant died two months *before* BD issuance
- Prior to the participant's death and after the OACD, PBGC made 15 payments
- Following the participant's death, PBGC made 3 additional erroneous payments, of which PBGC was able to reclaim one payment from the financial institution
- When PBGC finalized the valuation of plan benefits and issued BDs, PBGC determined that the participant had been entitled to \$600.00 per month

Prior to the participant's death, the participant was overpaid \$6,000.00 ($= [\text{$1,000.00 less $600.00}] \times 15$).

- The net overpayment from payments made before the participant's death are treated as recoupment from zero from the payee debtor.
- Although the BD will reflect the fact that the participant was overpaid, PBGC will not seek repayment of the \$6,000.00 overpayment.

Following the participant's death, a non-payee debtor – in this scenario, the participant's son who was the joint-account holder – was overpaid \$3,000.00 ($= \text{$1,000.00} \times 3$).

- Immediately upon notification of the participant's death, PBGC sought reclamation of \$3,000.00 from the financial institution.
- If administrative correction was successful for only one of the three erroneous payments, the net overpayment of \$2,000.00 (\$3,000.00 less \$1,000.00) will be subject to immediate collection by PBGC by recovery.
- With respect to the recoverable overpayments, PBGC will notify the non-payee debtor, the son, of PBGC's intention to seek immediate repayment under the rules described in section F.2.b.
- PBGC will NOT wait until regular BD issuance to seek repayment of the overpayment from the son.
 - The intended recipient of the payment was never the participant's son – the son just happened to be on the account and as a result received erroneous funds that never belonged to the son.

Example 2: Same facts as **Example 1** above except that either:

- The participant's son is now also deceased, or
- The son received all three erroneous payments nine years ago

If the son is now deceased, then in accordance with section J.6:

- PBGC will not seek repayment of \$2,000.00 overpayment
- If administrative correction had been unsuccessful, PBGC would not seek repayment of the \$3,000.00 overpayment
- The non-payee debtor, the son, is now also deceased and the net overpayment for which the son was the non-payee debtor is under \$10,000.00

If the overpayments to the son were made nine years ago, then in accordance with section G.3.b:

- PBGC will not seek repayment of the \$2,000.00 overpayment
- If administrative correction had been unsuccessful, PBGC would not seek repayment of the \$3,000.00 overpayment
- PBGC does not seek recovery of overpayments made over six years ago

Example 3: Same facts as **Example 2** above except that:

- There is a shared payment QDRO

- PBGC was paying the AP \$500.00 per month
- The AP's monthly benefit were always of the correct amount
- PBGC paid the AP erroneously for 24 months after the participant's death
- Upon PBGC's discovery of the payment error, PBGC ceased payment to the AP
- The net overpayment of erroneous payments made to the AP is \$12,000.00 (= \$500.00 x 24)

In accordance with section D.2, if administrative correction is unsuccessful or inapplicable, then PBGC treats such overpayments as recoupment from zero and will not seek repayment of the \$12,000.00 overpayment (see also section A.3 of Appendix A):

- The overpayments made to the AP are the result of PBGC paying a shared payment AP after the participant's death
- Even though the AP is a payee debtor (that is, the AP was the intended recipient of the payments), PBGC will not seek repayment of the AP's net overpayment by recovery

Example 4: Same facts as **Example 3** above except that:

- The participant's monthly annuity was a joint-and-75% survivor annuity (not an SLA)
- In addition to the shared payment, AP is also sole contingent annuitant of the participant's benefit
- AP's survivor benefit commenced on time in the following amounts:
 - For two months before BD issuance, AP received at survivor benefit \$750.00 per month (75% of \$1000.00) for two months
 - After BD issuance, AP received the correct survivor benefit of \$450.00 per month (75% of \$600.00)
 - For two months before BD issuance, the AP was overpaid \$300.00 per month (\$750.00 less \$450.00) for a total net overpayment of \$600.00 (\$300.00 x 2)

In accordance with section A.3 of Appendix A, PBGC will recoup from the AP's survivor benefit:

- Because the AP is entitled to ongoing survivor benefits with respect to the participant's benefit, this is neither a recovery case nor a recoupment from zero case
- The net overpayment subject to recoupment is \$12,600.00, which consists of
 - The net overpayment of \$12,000 (see **Example 3**)
 - The net overpayment of \$600.00 that the AP received before BD issuance