

Disability Benefits

Issue Date 11/07/2019

A. Background

Prior versions of this internal guidance established rules that:

- Determine whether a disability benefit is guaranteed by PBGC;
- Apply the Disability Maximum Guarantee (and not applying the Accrued-at-Normal Limit) to disability benefits paid to disabled participants;
- Apply the Disability Maximum Guarantee (and not applying the Accrued-at-Normal Limit) to the benefits of certain disabled participants who are receiving non-disability benefits;
- Clarify that a disabled participant's continued eligibility for a benefit is dependent on the participant's remaining disabled, including:
 - notifying a disabled participant that the benefit is payable only upon continued disabled status (e.g., continued eligibility for Social Security Disability);
 - requiring a disabled participant to periodically certify to PBGC that he is still disabled.
- Clarify that PBGC offers annuity form elections to certain disabled participants who must choose a form of retirement benefit at conversion date (section H.2); and
- Clarify the rules that apply to participants in PPA 2006 Bankruptcy Plans who become disabled between the Bankruptcy Petition Date (BPD) and DOPT.

In this 4th edition, PBGC is expanding the internal guidance to do the following:

- Expand the definitions to add clarity within the internal guidance (section C);
- Document how PBGC determines and communicates whether a participant has a pre-DOPT entitlement to a guaranteed disability benefit in the absence of a determination by the prior plan administrator (section D.2);
- Incorporate previously issued internal guidance decisions about Railroad Retirement Board disability determinations in the following internal guidance decision logs which are herein incorporated (Section E):
 - Internal Guidance Decision Log 2006-06: Disability Maximum Guaranty Limitation; and
 - Internal Guidance Decision Log 2014-05: Disability Exemption from Accrued-At-Normal Limit.
- Address how to rectify errors made by the prior plan administrator (or PBGC) in communicating and/or administering disability benefits (Sections J and K), including:
 - Auxiliary disability benefit corrections, incorporating and superseding the guidance in previously issued Internal Guidance Decision Log 2012-02: Disability Failure to Convert; and
 - Non-auxiliary disability benefit corrections.

B. Scope and Effective Date

This internal guidance statement applies to disabled and formerly disabled participants in PBGC-trusteed plans and is effective upon issuance. Most of the rules contained herein have been effective for many years; however, the revisions in Sections D.2.b. and G are effective for plans with a DOTR on or after 3/30/2011, or which have a valuation completed on or after January 1, 2012.

This internal guidance provides guidance for the treatment of disability benefits provided in the pension plan. Disability benefits provided outside of the pension plan — for example, in a separate disability plan — are not payable by PBGC. In addition, the Special Guarantee Rules for Disabled Participants (Section E) are applicable only if the pension plan provides a disability benefit.

C. Definitions

1. **Auxiliary Disability Benefit - A benefit payable upon the participant's disability, which does not reduce the benefit payable at normal (or early) retirement,** known as the conversion date. The disability benefit paid through the conversion date is a temporary benefit, payable until the participant reaches his or her conversion date and is eligible for retirement benefits. Auxiliary disability benefits are defined by 26 C.F.R. § 1.401(a)-20 Q&A 10(c). The normal Joint and Survivor Annuity rules for a married participant must be satisfied as of the conversion date to a retirement benefit. Auxiliary benefits are often paid without a benefit election, in the amount that would be payable as a straight-life annuity. However, some plans will permit a participant to elect a form for the auxiliary benefit. For example: a plan may provide that a participant who satisfies the plan's eligibility requirements for a disability benefit may begin receiving benefits as early as age 55. This early commencement does not reduce the benefit that is payable at normal retirement. This is an auxiliary benefit.
2. **Bankruptcy Petition Date (BPD)** - See PBGC's Internal Guidance Benefits in PPA 2006 Bankruptcy Plans.
3. **Conversion Date** - the date at which an auxiliary benefit ends, and a retirement benefit begins. This is typically the plan's normal retirement date. A determination that a plan's auxiliary disability ends or converts as of a date earlier than the normal retirement date (e.g. early retirement) requires OGC concurrence, referred through request guidance by emailing PSDGuidance@pbgc.gov.
4. **Disability Maximum Guarantee** - the Retirement Protection Act of 1994 (RPA) eliminated the reduction for ages less than 65 in the maximum guarantee limit for certain benefits paid to disabled participants. The higher maximum guarantee limit is referred to as the "Disability Maximum Guarantee" and applies in plans with Termination Initiation Dates on or after December 8, 1994, to participants who meet the conditions described in Sections E.2 and E.3.
5. **Non-Auxiliary Disability Benefit** - a benefit payable upon the participant's disability, which reduces the benefit payable at normal (or early) retirement. A non-auxiliary benefit is a type of retirement benefit and does not convert into a retirement benefit at a later date. The normal Joint and Survivor Annuity rules for a married participant must be satisfied as of the ASD of the non-auxiliary disability benefit.

For example, a plan may provide that a participant who satisfies the plan's eligibility requirements for a disability benefit may begin receiving benefits as early as age 55 for the life of

the participant. The benefit is actuarially reduced for early commencement. This is a non-auxiliary benefit.

6. **PPA 2006 Bankruptcy Plan** - See PBGC's Internal Guidance Benefits in PPA 2006 Bankruptcy Plans.
7. Special Guarantee Rules for Disabled Participants: There are two special rules that may apply in determining the guaranteed benefit for a disabled participant. Together, these two rules are referred to as the Special Guarantee Rules for Disabled Participants.
 - a) The first rule is that the Accrued-at-Normal (AAN) Limit **is not applied** to the participant's benefit if the requirements in Section D.1.a. of this internal guidance are satisfied.
 - b) The second rule is that the Disability Maximum Guarantee, as described above **is applied**.
8. **Termination Initiation Date ("TID")** - See PBGC's Internal Guidance Due and Unpaid Employer Contributions (DUEC) Recovery.

D. Guarantee of Disability Benefits

For a disability benefit to be guaranteed, it must be a guaranteeable benefit, as described in Section D.1, and the participant must be entitled to the benefit on or before DOPT, as described in Section D.2.

1. Guaranteeability of Disability Benefits

- a. **General Rule** - Under PBGC's regulation on Guaranteed Benefits (29 CFR part 4022), an annuity benefit that is payable under plan terms on account of the total and permanent disability of a participant that is expected to last for the lifetime of the participant is a guaranteeable benefit (§ 4022.6(a)) unless the plan standard for determining disability falls under the exception described in Section D.1.b below. PBGC guarantees a disability benefit for a participant only if the plan provides a disability benefit. In addition to guaranteeing disability benefits when a plan disability standard is the same as the Social Security Administration disability standard, PBGC will generally guarantee disability benefits under a plan standard that either is reasonably similar to the Social Security Administration disability standard (i.e., one that defines disability as inability to engage in any substantial gainful activity) or is a typical occupational-disability standard (i.e., one that requires only that the participant be unable to perform the duties of his particular job or, sometimes, "similar" jobs).
- b. **Exception** – Notwithstanding a. above, under 29 CFR §4022.6(b), the disability benefit under a plan will be guaranteed only for a participant whom the Social Security Administration or the Railroad Retirement Board has determined eligible for a disability benefit, if PBGC determines (with PSD Federal's concurrence) that a plan's standards for determining total and permanent disability:
 - i. are unreasonable either as written or as administered, for example the standard for disability is unreasonably low or in cases where the plan standards were applied arbitrarily or not according to plan procedures; or
 - ii. were modified in anticipation of plan termination.

2. Participant Entitlement to a Disability Benefit

- a. **Initial Entitlement determined by Plan** For a disability benefit to be guaranteeable, the pension plan must provide a disability benefit and a participant's disability must have begun, or be attributable to a disabling event that occurred, on or before the plan's DOPT.
 - i. **Plan determined participant entitled to a disability benefit** If a participant was determined by the plan administrator to be eligible for the plan's disability benefit and properly in pay status on or before the plan's DOPT, the benefit is guaranteeable. If a participant had satisfied all of the plan's conditions for receipt of a disability benefit on or before the plan's DOPT, but the benefit was not in pay status on DOPT because the participant either did not apply or was in a waiting period required under the plan, or because of administrative delay, the benefit is also guaranteeable, provided PBGC has evidence that the plan's conditions were met and a disability entitlement determination made by the plan.
 - ii. **Plan determined participant not entitled to a disability benefit** If a participant made a pre-DOPT claim for a disability benefit that was denied by the plan administrator, and after DOPT the participant makes a new claim for a disability benefit with PBGC, PBGC may evaluate and determine disability benefit entitlement. Request guidance by emailing PSDGuidance@pbgc.gov if such a claim is made.
- b. **Initial Entitlement determined by PBGC** If a participant did not make a claim for a disability benefit with the plan administrator, or if a participant did make a claim for a disability benefit on which the plan administrator did not make a determination, PBGC will evaluate and determine eligibility.
 - i. **Determining participant's disability** - PBGC will apply the plan's disability provisions relating to eligibility requirements other than the definition of disability. In all disability benefit eligibility determinations performed by PBGC, PBGC will require a Social Security Administration disability eligibility determination or a Railroad Retirement Board's disability eligibility determination as evidence that the participant is totally and permanently disabled. The plan's definition of disabled will be disregarded to the extent that the plan's disability standard is **not** a determination by the Social Security Administration of disability eligibility. (PBGC does not have a "Plan Committee" that will examine medical evidence, nor does it employ physicians to conduct physical exams in order to make or review independent medical evidence when SSA disability eligibility is not the standard used by the plan.) The Social Security disability eligibility determination provides an "onset date" which is the

“disabling event” date. The onset date must be on or before the plan’s DOPT. If a plan’s disability provisions include disability “exceptions”, e.g. disability attributable to commission of a crime or drug addiction, PBGC will include the plan’s disability exclusions in making its determination.

- ii. **Determining applicability of other disability benefit provisions.** In addition, PBGC may identify a disability plan provision as an administrative requirement rather than a basic plan requirement. PBGC always follows basic plan requirements (such as required age, years of service or participation, employment at a specific location or job category) but generally does not require a participant’s satisfaction of administrative requirements. Examples of administrative requirements include: application by the participant for a disability benefit; or placement of the participant into a certain leave category by the employer. Request guidance by emailing PSDGuidance@pbgc.gov if a plan’s disability benefit provision appears to be an administrative requirement.

- c. **Continued Entitlement As further described in Section G,** PBGC will require a disabled participant to periodically certify that he or she remains disabled to:
 - i. Continue receiving payment of the disability benefit, or
 - ii. Continue having the Special Guarantee Rules for Disabled Participants apply to his benefit (see Section E) in the case of a participant receiving a non-disability benefit (as described in Section E.6).
- d. **Medical Evidence** In some instances, before PBGC commences payment of a disability benefit or as a condition for continued entitlement to a disability benefit, PBGC in its discretion may require a participant to:
 - i. Submit to an examination or provide other proof of disability; or
 - ii. Provide proof of continued disability

See also Section G.

- 3. **PPA 2006 Bankruptcy Plans** For a disability benefit to be guaranteeable in a PPA 2006 Bankruptcy Plan, the disability must have begun, or be attributable to a disabling event that occurred, on or before the plan sponsor’s bankruptcy petition date (BPD) (see Internal Guidance Benefits in PPA 2006 Bankruptcy Plans, section D.3). Although PBGC determines its guarantee of disability benefits using the BPD, eligibility for the disability benefit and therefore entry into pay status depends on the conditions that were satisfied under the plan on or before DOPT (see Internal Guidance Benefits in PPA 2006 Bankruptcy Plans, section D.3).

E. Special Guarantee Rules for Disabled Participants

- 1. **Requirements for Not Applying the Accrued-at-Normal (“AAN”) Limitation to Benefits Paid to Disabled Participants** - The Accrued-at-Normal limitation is not applied where the participant meets the requirements under Section D.2 above for entitlement to the plan’s disability benefit on or before DOPT (or BPD, when applicable) and –

- a. The participant retired under the plan’s *disability benefit* (e.g. permanent incapacity retirement); or

- b. The participant retired under a *non-disability type of retirement* (e.g., reduced or unreduced early retirement, 70/80, 30-year), and PBGC is able to determine that either one of the following determinations was made with respect to the participant effective as of the date of the non-disability retirement;
- i. The Social Security Administration has determined that he or she satisfied the definition of disability under Title II or XVI of the Social Security Act and the regulations thereunder (SSA disability eligibility determination); **Or**
 - ii. The Railroad Retirement Board (RRB) has determined that he or she is eligible to receive a disability benefit from RRB.
- 2. Requirements for the Disability Maximum Guarantee - The Disability Maximum Guarantee** applies where a participant meets the requirements under Section D.2 above for entitlement to the plan's disability benefit on or before DOPT (or BPD, when applicable) and -
- a. The plan's Termination Initiation Date was on or after December 8, 1994;
 - b. The participant retired under *any type of retirement* (e.g., permanent incapacity retirement, early reduced or unreduced, 70/80, 30-year); and
 - c. PBGC is able to determine that the Social Security Administration has determined that the participant satisfied the SSA disability definition on or before the earlier of the date of retirement or DOPT (or BPD, when applicable). A Railroad Retirement Board disability determination does not suffice for this treatment.
3. **Continuation of Disability Maximum Guarantee** – The Disability Maximum Guarantee continues to apply if the plan disability benefit converts under the plan's terms to a retirement benefit, unless the participant no longer meets the SSA disability definition.
4. **Cessation of Disability Maximum Guarantee** – The Disability Maximum Guarantee ceases to apply if the participant no longer satisfies the SSA disability definition or the plan's disability requirements. A participant receiving a disability benefit may be eligible for a different benefit from the plan under the plan's terms for a normal or early retirement benefit, which would be subject to the PBGC's normal guarantee limitations. See Section G.
5. **PPA 2006 Bankruptcy Plans** – For PPA 2006 Bankruptcy Plans, PBGC will calculate and apply the Disability Maximum Guarantee based on the participant's age on BPD (not DOPT) (see Internal Guidance Benefits in PPA 2006 Bankruptcy Plans, Section D.4.b).
- 6. Calculation Rules When Disabled Participant Retired Under Non-Disability Provision of Plan**
- a. For a disabled participant who retired under a non-disability plan provision (i.e., reduced or unreduced early retirement) but who satisfied the requirements under Section E.1 or E.2, the amount the participant will receive will be the greater of:
 - i. The benefit that he or she would have received had the participant retired under the disability provisions of the plan, after PBGC applies the Special Guarantee Rules for Disabled Participants, and PBGC applies the appropriate adjustment for the form of benefit elected at early retirement; or

- ii. The benefit under the non-disability retirement type elected at date of retirement (after PBGC applies “normal” guarantee rules, i.e. not the Special Guarantee Rules for Disabled Participants.)
- b. Continued entitlement to the greater amount (a “disability conditioned amount”) determined in a.i. above, will be based on the participant’s continuing to meet the plan’s disability requirements and continuing to be determined eligible for disability benefits by the Social Security Administration, as further described in Section G. The participant’s non-disability retirement application including the form of benefit election elected remains valid.

F. Priority Category 3 Benefits

1. This Section F is effective for participants who receive a benefit determination on or after August 20, 2003.
2. The disability benefit of a participant whose disability benefit was, or could have been, in pay status on the date three years before DOPT (or, in the case of a PPA 2006 Bankruptcy Plan, on the date three years before BPD – see Internal Guidance Benefits in PPA 2006 Bankruptcy Plans), is assigned to Priority Category 3 for purposes of asset allocation. PBGC will look to plan provisions to determine if a participant who was in a waiting period on the date three years before DOPT (or BPD, when applicable) has a benefit assigned to Priority Category 3. If the plan provides that participants receive payments retroactive to a date that is on or before the beginning of the three-year period, then participants who are in a waiting period three years before DOPT/BPD will have a disability benefit assigned to Priority Category 3. However, if the plan provides that disability benefits do not begin until the end of the waiting period, then participants who are in a waiting period three years before DOPT/BPD will not have a disability benefit assigned to Priority Category 3.

G. Continued Entitlement to Disability Benefits and Disability-Conditioned Amounts

- 1. Notice to Participants.** Continued payment of a disability benefit or disability-conditioned amount to which the participant is entitled as of DOPT (or BPD, where applicable) is contingent on the participant’s continuing to meet the same conditions (Section D.2.c). In its Benefit Determination, PBGC will notify a participant with a disability benefit or a disability-conditioned amount that:
 - a) The disability benefit or for a non-disability benefit, the disability-conditioned amount is conditioned upon the participant’s remaining disabled and the benefit will be terminated or reduced if the participant’s disability status changes;
 - b) The participant will be required to periodically certify to his continued disability status; and
 - c) The participant is responsible for repaying any overpayments that occur after a change in disability status.

2. Certification of Continued Entitlement to Disability Benefits. PBGC will periodically request that a participant receiving a disability benefit or disability-conditioned amount certify as to his continued disability status. PBGC will provide a reasonable amount of time for the participant to respond and certify that the disability continues, or, if it has ceased, the disability cessation date. If the participant does not certify to continuing disability, PBGC will discontinue the disability benefit as described in Section G.3, or reduce the disability-conditioned amount as described in Section G.4. PBGC will generally rely on a participant's certification that he or she remains disabled. However, PBGC may also require a disabled participant to submit to an examination or provide other proof to demonstrate continued disability.

a. Continued entitlement to the disability benefit under a plan

- i. **Plan Disability Requires SSA Disability Eligibility.** A disabled participant determined eligible by SSA for disability must certify that he or she has remained eligible for SSA disability, when requested by PBGC. A participant who has been determined by SSA to no longer be eligible for SSA disability standard ceases to be eligible for the plan's disability benefit as of the SSA disability cessation date.
- ii. **Plan Disability Does Not Require SSA Disability Eligibility.** A disabled participant must certify that he remains disabled under the plan's provisions, when requested by PBGC. A participant who ceases to meet the plan's disability provisions ceases to be eligible for the plan's disability benefit as of the disability cessation date.

b. Continued entitlement to the Special Guarantee Rules for Disabled Participants for participants who are receiving disability benefits under the plan.

- i. Accrued-at-Normal (AAN) Limitation. A participant whose benefit is exempt from the AAN limitation due to his disability status must certify that he remains disabled under the plan's provisions, when requested by PBGC.
- ii. Disability Maximum Guarantee. A participant whose benefit is affected by the Disability Maximum Guarantee must certify that he continues to meet the plan's disability requirements and the SSA disability definition, when requested by PBGC.

c. Continued entitlement to the Special Guarantee Rules for Disabled Participants for participants who are receiving a non-disability benefit under the plan.

A participant whose benefit is affected by the Special Guarantee Rules for Disabled Participants must certify that he continues to be determine eligible by SSA for disability, when requested by PBGC.

3. Cessation of Disability Benefits. If PBGC finds that a participant receiving a disability benefit is no longer disabled under the plan's standards, regardless of whether the plan's standard requires a determination of SSA disability eligibility (see Section G.1.a and b), PBGC will:

- a) Discontinue payment of the disability benefit,
- b) Determine whether the participant has a current or future entitlement to a non-disability benefit (retirement benefit) under the plan. The participant may apply for the retirement benefit when he or she becomes eligible for such benefit. And
- c) Take other appropriate action based on the participant's Benefit Determination status.

- i. If the participant has not received a Benefit Determination, PBGC will provide an estimate of the non-disability benefit entitlement and of overpayments and (future) recoupment, as appropriate. Or
- ii. If the participant has already received a Benefit Determination, PBGC will issue a new Benefit Determination describing the non-disability benefit entitlement and any overpayments and recoupment, as appropriate. (See Section I.)

4. Cessation of application of the Special Guarantee Rules for Disabled Participants for Participants Retired Under Non-Disability Provisions

a. Benefit Adjustment If PBGC learns that a participant who is receiving a non-disability benefit that is increased by the Special Guarantee Rules for Disabled Participants no longer meets the requirements for such Special Guarantee Rules, PBGC will recalculate the benefit payable without applying the Special Guarantee Rules. For example,

- i. If the Disability Maximum Guarantee was applied to the benefit and resulted in an increase to the benefit amount otherwise payable, but the participant is no longer determined eligible by SSA for a disability benefit, PBGC will apply the regular Maximum Guarantee Limit for non-disabled participants determined as of the date as of which the participant was found by the SSA to no longer be eligible for a disability benefit and adjust benefits accordingly.
- ii. If not applying the Accrued at Normal (AAN) limit to the participant's benefit resulted in an increase in the benefit amount otherwise payable, but the participant no longer meets the plan's disability definition, PBGC will recalculate the benefit including the AAN limit and adjust benefits accordingly.

b. Notice of Benefit Adjustment

- i. If the participant has not yet received a Benefit Determination, PBGC will provide an estimate of the participant's benefit entitlement (without the Special Guarantee Rules for Disabled Participants), showing overpayments and (future) recoupment as appropriate and adjust the estimated benefit.
- ii. If the participant previously received a Benefit Determination reflecting the benefit determined contingent upon the participant's continued SSA disability eligibility, PBGC will issue a revised Benefit Determination reflecting the change in circumstances, the new benefit entitlement, overpayments, and recoupment, as appropriate. (See Section I) and adjust the benefit.
- iii. If the participant previously received a Benefit Determination that did not address the disability benefit and its contingent nature, request guidance by emailing PSDGuidance@pbgc.gov to determine whether and what type of BD may be appropriate.

H. Benefit Form for Disability Benefits

1. General

The survivor benefit payable upon the death of a participant who was receiving a disability benefit depends on the plan provisions and whether the disability benefit is an Auxiliary Disability Benefit or a Non-Auxiliary Disability Benefit. Auxiliary disability benefits are often automatically payable in a form (ex. SLA) that does not provide survivor benefits. Instead, the plan QPSA is payable to the surviving spouse of a participant who dies while receiving such a benefit, i.e., before conversion date. If a plan's auxiliary disability benefit provisions appear to provide survivor benefits, request guidance by emailing PSDGuidance@pbgc.gov. A non-auxiliary disability benefit does not have a conversion date and the QJSA requirements apply at the time of disability retirement. Therefore, survivor benefits payable in the event of the death of a participant receiving a non-auxiliary disability benefit will be based on the benefit form paid to/elected by the participant with spousal consent if the QJSA is waived.

If a married participant receiving a disability benefit died after benefit conversion, a QJSA would be payable unless the participant (with spousal consent) had elected a different benefit form at conversion. When disability benefits are non-auxiliary benefits, the normal benefit form is required to be a QJSA because the participant is deemed to have retired as soon as he began receiving the disability benefit, there is no conversion date later to a retirement benefit.

See PBGC's Internal Guidance Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984, and Annuity Benefit Forms for detailed rules on survivor benefits.

2. Participant Form Elections at Conversion Date

In a plan where the disability benefit is an auxiliary benefit, PBGC will offer a benefit form election when the benefit converts to a retirement benefit. See Internal Guidance Annuity Benefit Forms. See Section J if either the plan or PBGC failed to convert the benefit correctly or at the appropriate time.

3. Application of Disability Maximum Guarantee to Survivor Benefits

When a disabled participant dies who was receiving a disability benefit or non-disability benefit that met the requirements for application of the Disability Maximum Guarantee (Section D.2), the Disability Maximum Guarantee, rather than the regular maximum guarantee limit, continues to apply to any survivor benefits. The Disability Maximum Guarantee will **not** apply to a survivor benefit where the participant no longer met the conditions for the Disability Maximum Guarantee at date of death or where the participant's death is before DOPT.

- a. Example:** A disabled participant dies while receiving an auxiliary disability benefit, and his spouse is eligible for the plan's QPSA, the Disability Maximum Guarantee will be applied, rather than the regular maximum guarantee limit. If the auxiliary disability benefit form provides survivor benefits, request guidance by emailing PSDGuidance@pbgv.gov.
- b. Example:** A disabled participant dies while receiving a non-disability benefit that meets the requirements for application of the Disability Maximum Guarantee, the Disability Maximum Guarantee will be applied to any survivor benefits payable under the participant's benefit form.

4. PPA 2006 Bankruptcy Plans

In the case of a participant whose disability benefit entitlement date occurred after BPD, and on or before DOPT, PBGC will calculate the benefit in accordance with Internal Guidance Benefits in PPA 2006 Bankruptcy Plans, Section D.3.b. If the disability benefit was an auxiliary benefit, PBGC

will offer an annuity election form for the recalculated non-disability benefit as soon as possible after trusteeship. If a plan has significant PC5 funding, request guidance by emailing PSDGuidance@pbvg.gov.

I. Overpayments and Recoupment

Payments to a disabled or formerly disabled participant in excess of any amounts due are treated as overpayments in accordance with Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments and will be subject to recoupment as described in Internal Guidance Recoupment, Recovery and Administrative Correction.

J. Auxiliary Disability Benefit corrections

1. Auxiliary Disability Benefits – when a participant receiving an auxiliary disability benefit reaches his or her conversion date, the disability benefit converts to the applicable retirement benefit. The retirement benefit is *not reduced by any disability benefit payments* made before the conversion date.

a. Typical Form of Auxiliary Disability Benefit - An auxiliary disability benefit provision often provides a single form of benefit (typically an SLA) to all participants, regardless of marital status at disability ASD. An auxiliary disability benefit's normal form rarely provides survivor benefits or optional form of benefit selection. For death benefits, the plan QPSA is payable to the surviving spouse of a participant who dies before the conversion date.

b. Atypical Form of Auxiliary Disability Benefits - An auxiliary disability provision will rarely provide participants a normal form of benefit that includes a survivor benefit or allow for election of an optional form of benefit. If a participant receiving an auxiliary disability benefit dies prior to the conversion date and was paid in an optional form of benefit that includes a survivor benefit, request guidance by emailing PSDGuidance@pbvg.gov.

2. Auxiliary Disability Benefit administered incorrectly - At conversion date the participant should apply for retirement benefits in the same manner as any other participant who is eligible for retirement including the opportunity to elect an optional form of benefit (FOB), with spousal consent if married. Occasionally, OBA will determine that a plan or OBA administered an auxiliary disability benefit incorrectly. Once OBA uncovers mistakes for one or more participants, OBA will take steps to correct the auxiliary disability benefit(s). Corrections will be based on the processing errors and whether the participant is alive or deceased (DOD if deceased) and marital status at disability retirement date and currently and whether the participant has reached his or her conversion date.

a. Correcting a form of benefit erroneously elected at disability retirement date – If the plan's disability provisions are to automatically pay participants in a prescribed FOB (ex. SLA) and the plan or PBGC erroneously offered the participant optional FOBs **and** the participant elected a FOB other than the plan's normal disability benefit form, the benefit amount needs to be adjusted/corrected to the correct amount and FOB effective as of the disability ASD. OBA will notify the participant of the amount and FOB error and adjust the benefit as soon as possible, effective as of the disability ASD through the conversion date.

i. Note, this FOB correction most likely creates a net underpayment to be reimbursed by PBGC following Internal Guidance Underpayment Reimbursement and Interest Payments. Request guidance by emailing PSDGGuidance@pbgc.gov if this adjustment results in an overpayment.

b. Pre-conversion date benefit adjustment corrections - When the FOB error is discovered prior to the participant's conversion date, the benefit will be adjusted to the correct disability retirement FOB retroactively effective as of the disability ASD. A retirement benefit application from the participant is not needed until the conversion date.

c. Post-conversion date correction - In many plans, the disability benefit is equal to the accrued benefit unreduced for early commencement; therefore, the participant's disability benefit amount is the same as the normal retirement benefit amount, prior to any reductions for an FOB election. At conversion date the participant should have applied for retirement in the same manner as any other participant who is eligible for retirement. When an auxiliary disability benefit does end at the conversion date and participant continues to receive a benefit in the same amount, rather than being notified of his or her eligibility to apply for a retirement benefit, OBA acts to correct as soon as practicable. OBA will contact the participant to notify them of the processing error and to determine the marital status and spousal information. OBA will determine marital status looking at marital status as of the conversion date (retirement ASD) and currently (retirement "application date"). Marital status at the disability ASD is not relevant. For participants with different marital status at the two dates PBGC will treat the participant as follows for benefit administration purposes (i.e. determining marital status for optional form availability under Internal Guidance Annuity Benefit Forms):

- i. No ASD Spouse – participant married at application date: treat participant as single
- ii. ASD spouse – spouse deceased at application date: treat participant as single
- iii. ASD spouse – now divorced from participant: treat participant as married to ASD spouse
- iv. QDRO situation is referred to QDRO coordinator for guidance
- v. ASD spouse – still married to participant, currently unlocatable: follow unlocatable spouse guidance in Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities).

3. Application Process to correct Failure to Convert, post-conversion date - PBGC will notify the participant that a retirement application is required and will provide the participant with a PBGC retirement application and calculation as of his or her conversion date and advise the participant that the application must be returned within *180 days* or the benefit will be terminated.

a. If the participant fails to return the application within the prescribed timeframe, then the auxiliary disability benefit will be terminated, pending receipt of a completed retirement application including FOB election. The ASD will still be the conversion date, that does not change.

b. When a completed retirement application is received, depending on the FOB elected and whether the application is returned timely, the benefit will be adjusted and/or reinstated, if the application was not received timely.

4. Benefit adjustments – After a participant’s benefit is adjusted and/or reinstated under the above scenarios, PBGC will determine whether there is a net underpayment or net overpayment to be reimbursed or recouped pursuant to Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments, Underpayment Reimbursement and Interest Payments and Recoupment, Recovery and Administrative Correction.

K. Non-Auxiliary Disability Benefit corrections

1. Non-Auxiliary Disability Benefits – A non-auxiliary disability benefit is a permanent retirement benefit payable due to disability. It is not a temporary benefit that converts to a retirement benefit when a participant reaches his or her conversion date.

- a. The non-auxiliary disability retirement benefit is payable in normal forms, married or single, with optional forms as allowed by the plan, when the initial disability entitlement is made by the Plan. When the initial entitlement is made by PBGC, the participant is offered optional forms, pursuant to Internal Guidance Annuity Benefit Forms. Once the participant begins to receive their non-auxiliary disability retirement benefit, the benefit form continues through NRD, there is no conversion date where the benefit changes to a retirement benefit and the participant chooses a (new) form of benefit.
- b. Normal spousal consent requirements apply to the waiver of a QJSA at the non-auxiliary disability retirement date. Survivor benefits are payable based on the benefit form elected at the disability retirement date.

2. Non-Auxiliary Disability Benefit administered incorrectly - Occasionally, OBA will determine that a plan or OBA administered a non-auxiliary disability benefit incorrectly. Once OBA discovers a mistake for one or more participants, OBA will take steps to correct the disability benefit(s) and put participants in the position they should have had the mistake(s) not occurred. Corrections will be based on: the processing errors; marital status at the disability retirement ASD and currently; and, whether the participant is alive or deceased. Typically, the associated errors may include not offering optional form election at the non-auxiliary disability retirement date with the benefit simply being paid in an SLA or other automatic form, regardless of the participant’s marital status. Also, the benefit may not have been actuarially reduced for the early commencement. Errors associated with incorrect administration of non-auxiliary disability retirement benefits usually result in a net overpayment to the participant.

a. Participant is alive. The participant should receive corrective communications and be notified that he/she must choose an optional FOB which will be retroactively effective as of the disability retirement annuity starting date (ASD), or his benefit will be adjusted retroactively to the plan’s normal form, based on his marital status as follows:

- i. No disability ASD Spouse (single) – participant married at application date: treat participant as single

- ii. Disability ASD spouse (married) – spouse deceased at application date : treat participant as single
- iii. Disability ASD spouse (married) – still married at application date: treat participant as married.
- iv. Disability ASD spouse (married) – still married to participant, currently unlocatable: follow unlocatable spouse guidance in Internal Guidance Spousal Consent (Qualified Joint-and-Survivor Annuities).
- v. Disability ASD spouse (married) – spouse now divorced from participant: treat participant as married to ASD spouse
- vi. QDRO situation is referred to QDRO coordinator for guidance

b. Participant is deceased. Plan administration errors may include giving the participant retirement applications and processing benefit form elections effective as of the NRD rather than the disability retirement ASD. If benefit form election *were* provided to the participant incorrectly as of NRD (or other mistaken conversation date) refer these situations to PSDGuidance@pbgc.gov for guidance. Otherwise, handle as follows:

- i. If the participant was married at disability ASD, generally the survivor benefit from the plan's QJSA is payable to surviving spouse, unless there was an incorrect "conversion date" election made by the participant and spouse that provided for an optional J&S form of benefit with the surviving spouse as the beneficiary, and the optional form provides a survivor annuity of 50-100%, in which case the surviving spouse will receive the elected annuity form as the QPSA.
- ii. If the participant was single at disability ASD and was paid an SLA, no survivor benefits are payable, regardless of whether the participant married after the disability ASD.
- iii. If the participant was single at disability retirement ASD and later married there are no surviving spouse death benefits.

3. Benefit adjustments – After a participant's benefit is adjusted or reinstated under the above scenarios, PBGC will determine whether there is a net underpayment or net overpayment to be reimbursed or recouped pursuant to Internal Guidance Computation and Netting of Post-DOPT Overpayments and Underpayments, Underpayment Reimbursement and Interest Payments and Recoupment, Recovery, and Administrative Correction.

Examples

1. Application of Disability Maximum Guarantee – Participant Retired under Early Retirement Provision (*Section D.3*)

A participant retired on February 1, 2002, under the plan's 70/80 retirement, but could have retired under the plan's disability provisions. After PBGC trustees the plan, he demonstrates to PBGC's satisfaction that SSA has determined him eligible for disability with an onset date on or before his date of retirement. The participant is receiving \$4,000 per month as a

straight life annuity. The monthly benefit amount is the same under the 70/80 retirement and disability retirement. The Date of Plan Termination is July 31, 2002. The monthly Maximum Insurance Limit for 2002 is \$3,579.55 at age 65 in the form of a straight life annuity. Since the participant was determined eligible for a Social Security Disability benefit on or before his date of retirement and met the requirements for a disability retirement under plan provisions, he would receive a benefit from PBGC with the Disability Maximum Guarantee applied. This participant's Disability Maximum Guarantee is \$3,579.55 even if he is younger than age 65 at DOPT.

2. Application of the Special Guarantee Rules for Disabled Participants A– Participant Retired under an Early Retirement Provision (*Section E.3*)

Assume the same facts as above, but in addition, the participant is receiving a temporary monthly supplement of \$400 that ends at age 62, resulting in a benefit of \$4,400 per month to age 62 and \$4,000 per month thereafter. Since the participant demonstrated he was eligible for a Social Security Disability benefit with an onset date on or before the earlier of (a) his date of retirement or (b) DOPT and met the requirements for a disability retirement under plan provisions, the Accrued-at-Normal Limit is not applied. In addition, the Disability Maximum Guarantee would apply to his benefit. If we assume that the monthly level life annuity is \$4,100, the participant would receive \$3,841.64 $((3,579.55/4,100.00) \times \$4,400)$ per month to age 62, and \$3,492.40 $((3,579.55/4,100.00) \times \$4,000)$ per month thereafter.

3. Survivor Annuity – Auxiliary Disability Benefit - Participant's Date of Death occurs before Conversion Date (*Section H*)

A married participant retired at age 52 with a plan disability benefit that is an auxiliary benefit that does not provide a survivor benefit (e.g. SLA). At the plan's DOPT, July 31, 2002, the participant is age 60. Under plan provisions, the disability benefit would have been converted to a normal retirement benefit at age 65 and, at that time, the QJSA would have been payable unless the participant elected another form of benefit with spousal consent to the QJSA waiver. He is receiving \$4,000 per month from the plan and demonstrates to PBGC that he meets the requirements for the Disability Maximum Guarantee. His Disability Maximum Guarantee is \$ 3,579.55, as a straight life annuity.

If he dies at age 61 (before the conversion date of age 65, but after attaining eligibility for an actuarially reduced early retirement benefit), his surviving spouse will receive the plan's qualified pre-retirement survivor annuity. PBGC will calculate the spouse's benefit as follows:

The participant's benefit is converted to a joint-and-survivor annuity, e.g., 50%, with an annuity starting date of the first of the month following the participant's date of death. For this example, assume the participant and the spouse are the same age. If we assume that the form conversion factor for the plan benefit is .9200 and that the early retirement factor for the first of the month following his date of death is .7600, the participant's plan benefit is \$2,796.80 $(\$4,000 \times .9200 \times .7600)$ per month as a joint-and-50% survivor annuity. His surviving spouse's benefit under the plan is a straight life annuity of \$1,398.40 per month $(\$2,796.80 \times .50)$.

The participant's Disability Maximum Guarantee under a joint-and-50% survivor annuity is \$3,221.60 $(\$3,579.55 \times .9000)$ (Disability Maximum Guarantee as a straight life annuity) x .9000

(PBGC form conversion factor)) per month; his surviving spouse's Disability Maximum Guarantee is \$1,610.80 ($\$3221.60 \times .50$). Because the surviving spouse's plan benefit (\$1,398.40 per month) is less than her Disability Maximum Guarantee (\$1,610.80), her benefit is not cut by the Disability Maximum Guarantee. Had the regular maximum guarantee applied, the surviving spouse benefit would be limited to \$1,159.78 per month (50% of \$3,221.60 (50% J & S maximum guarantee at age 65) $\times .7200$ (PBGC age reduction factor for a participant age 61)). Note the surviving spouse annuity form options under Internal Guidance Annuity Benefit Forms and the annuity starting date options under Internal Guidance Qualified Preretirement Survivor Annuities in Plans Terminating on and after August 23, 1984.

4. **Continued Entitlement – Participant Ceases to be eligible for a disability benefit conditioned on SSA Disability Eligibility (Section G)**

A participant retired on disability on February 1, 2010, in a plan that requires a determination of SSA disability eligibility. The plan is trusteeed on October 1, 2011. The participant's monthly disability amount is \$2,000. PBGC communicates to the participant in the benefit determination that the continued payment of the disability benefit is contingent upon the participant continuing to be eligible SSA disability. The participant notifies PBGC in May 2013 that SSA determined him no longer eligible for SSA disability, and provides an SSA disability cessation date of January 15, 2013. The participant is not yet eligible for an early or normal retirement benefit in May 2013. PBGC terminates payment of the disability benefit as of May 2013 (last payment 5/1/2013) and notifies the participant that he has been overpaid \$8,000 (February, March, April and May 2013 at \$2,000 per month), which will be recouped when he begins to receive a retirement benefit.