

**PBGC OPERATING POLICY MANUAL**

**Chapter 6. Benefit Calculation**

**Title** Repayment of Benefit Overpayments through Recoupment, Recovery and Administrative Correction

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**Approved by Bennie Hagans, Acting COO**

**For further information contact Ask OPSS**

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**A. Background**

Payees or others sometimes receive payments in excess of the levels that they are due. This policy statement provides guidelines on repayment of benefit overpayments through

- recoupment of net benefit overpayments pursuant to the recoupment regulation (subpart E of PBGC regulation Part 4022),
- recovery of net benefit overpayments, for example, when there is no future benefit payable to a payee as of DOPT, and
- administrative correction of overpayments such as duplicate payments.

With this seventh edition of this policy statement, PBGC

- clarifies rules regarding the use of administrative correction instead of recoupment or recovery,
- eliminates accelerated recoupment for
  - benefit reductions that were communicated but not put into effect,
  - failure to implement a QDRO or to suspend the alternate payee's portion of the participant's benefit during a qualification review
- removes redundant provisions regarding monthly benefit changes of \$5 or less (See [Policy 5.8-1, Benefit Changes](#) and [Policy 6.4-3, Computation and Netting of Post-DoPT Overpayments and Underpayments](#)),
- clarifies the treatment of recoupment initiated by the prior plan administrator, and
- adds guidance, formerly in Policy Bulletin 99-2, to Appendix B: Recoupment from Non-Level Benefits that Exceed the Unadjusted (age 65) Maximum Guaranteeable Benefit.

## **B. Scope and effective date**

This policy statement applies, generally, to net overpayments determined in accordance with [Policy 6.4-3, Computation and Netting of Post-DOPT Overpayments and Underpayments](#). It is effective upon issuance in any case where efforts to collect an overpayment have not been initiated.

This policy 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 policy statement does not limit PBGC's right to seek repayment of overpayments by methods, or in circumstances, other than those described herein.

## **C. Definitions**

In this policy statement, the following definitions apply:

- 1. Administrative correction** means a method, other than recoupment or recovery, under which correction for an overpayment is sought when a payment error is made.
- 2. Debtor** means the person who actually received the overpayment. The debtor can be a payee or other person, and there may be more than one debtor for a benefit. For example, a non-vested participant is the debtor for payments he or she received in error. A person who is signatory to the participant's account and who does not return payments made by electronic direct deposit after the death of the participant is the debtor for those post-death payments. A debtor may also be a deceased payee's trust or estate, but only for payments made after the death of the payee that the trust or estate administrator advises are the property of the trust or estate.
- 3. Net overpayment (or net benefit overpayment)** means a negative account balance resulting from the application of [Policy 6.4-3, Computation and Netting of Post-DOPT Overpayments and Underpayments](#).

- 64       **4. Recovery** means the method under which collection of a net overpayment is  
65       sought by means other than by the reduction of future benefits. This is typically  
66       achieved through an installment payment agreement.
- 67       **5. Recoupment** means the method under which collection of a net overpayment is  
68       sought through reduction of future benefit payments to the participant or any  
69       beneficiary.
- 70       **6. Recoupment end date** means the date on which the amount of net benefit  
71       overpayment is fully repaid, without interest, except for any partial final monthly  
72       recoupment amount.

73       **D. Applicability of recoupment, recovery, or administrative correction**

74       When a participant or beneficiary has been overpaid, PBGC seeks repayment  
75       through recoupment, recovery, or administrative correction.

76       **1. Applicability of recoupment**

77               If a participant or beneficiary has received a net benefit overpayment that has  
78               not been repaid and, as of DoPT, any future annuity benefit is payable with  
79               respect to the participant, future benefit payments made with respect to the  
80               participant will be reduced by the method in section I, except as provided in  
81               paragraph D.2.b. for payments received after a communicated end date.

82       **2. Applicability of recovery**

83       **a. No annuity payments due on or after DoPT**

84               PBGC will seek recovery of net overpayments received by a payee, or debtor  
85               if, as of DoPT, no payment was payable either under plan terms or because  
86               of Title IV. For example, PBGC will seek recovery of net overpayments made  
87               with respect to:

- 88               • a participant who was not vested at DoPT (nor entitled to PC6 benefits)
- 89               • a participant who received a pre-DoPT lump sum of his or her full benefit  
90               under the plan
- 91               • a participant who received a pre-DoPT lump sum that is equivalent to an  
92               annuity exceeding the benefit that would have otherwise been paid by  
93               PBGC (e.g., a partial lump sum payment that exceeds the value of the  
94               entire benefit payable by PBGC).
- 95               • a participant who is entitled only to a benefit that is subject to 0% phase-  
96               in.

97       **b. Annuity payments received after communicated end date**

98               PBGC will seek recovery of net overpayments received after the date  
99               payments were to have ended, only if PBGC or the prior plan administrator  
100              communicated the end date to the payee. Only net overpayments made after  
101              the communicated end date are subject to recovery under this paragraph.

102              For example, PBGC will seek recovery of net overpayments from:

- 103              • a beneficiary under a 10C&C annuity who was advised that payments  
104              would continue for only two years after DoPT, but who continued to  
105              receive payments for 30 months after DoPT

- a participant who received benefits after plan benefits should have permanently dropped to \$0 because of an offset from another plan.

**c. Recipient of a de minimis lump sum**

PBGC will seek recovery of net overpayments made to the recipient of a de minimis lump sum even if the payee was offered an annuity in lieu of a lump sum. If the payee accepted an annuity in lieu of a lump sum, the net overpayment would be recouped.

**d. Annuity payments in excess of plan levels**

PBGC may seek recovery of net overpayments remaining after application of recoupment under section I.2a.

**e. Payments made after payee's death to a non-entitled debtor**

PBGC will seek recovery of net overpayments made after a payee's death in cases where the debtor is not entitled to receive benefits payable with respect to the participant at DoPT.

**3. Applicability of administrative correction**

PBGC may seek repayment where payments are made in error and can be corrected promptly by methods such as stop payment orders, reversal of ACH transactions, or temporary suspensions. This process is called an administrative correction, and may be used in lieu of recoupment or recovery. Examples of an administrative correction include:

**a. Duplicate monthly payments**

If duplicate monthly payments are received for one or two months by a payee who is entitled to continuing monthly payments of the same amount, PBGC will attempt to correct the overpayment by one of the methods in the paragraph above. Temporary suspension will be used only when the suspension begins no later than two months after the date of the last duplicate payment. If an administrative correction does not occur, recoupment will apply.

**b. Payments to a deceased payee received by the beneficiary**

If one or two payments made after the death of the payee were received by the payee's sole beneficiary who was entitled to continuing payments after the payee's death, PBGC will attempt to correct the overpayment by one of the methods in the paragraph above. Temporary suspension will be used only with the beneficiary's concurrence. If concurrence is not received, recoupment applies.

**c. Clerical error**

If overpayments result from a clerical error, for example transposed digits in a recent payment, PBGC may pursue administrative correction in lieu of recoupment or recovery. Contact OPSS for guidance.

**E. Discretionary authority**

In section 4022.81(a) of its recoupment regulation, PBGC reserves the right to use its discretion in seeking repayment of overpayments. This policy statement contains rules that apply to some overpayment situations that are not specifically covered in the regulation. The Office of the Chief Counsel, in consultation with the Benefits Administration and Payment Department and the Legislative and Regulatory Department, will determine when PBGC will exercise this authority in other situations not covered by this policy.

**F. Notification requirements**

When a payee has received an overpayment, PBGC will provide written notification as follows:

**1. Initiation of recoupment or recovery: benefit determination letters**

Except as provided below, in every case in which PBGC determines that there is a net benefit overpayment, even if the net benefit overpayment is subject to write-off, PBGC will issue a benefit determination letter (if one has not already been issued) covering the participant's or beneficiary's entitlement to a benefit and the amount of the benefit, and whether the overpayment will be recouped or recovered. The benefit determination letter will be issued to the participant, beneficiary, alternate payee, other individual who received the overpayment and/or estate of a deceased participant or beneficiary, as appropriate. For benefit overpayments subject to recoupment, the benefit determination letter will generally include the amount of the net benefit overpayment and the amount of the monthly benefit reduction for recoupment.

**2. Exception to the benefit determination requirement**

**a. Failure to implement communicated benefit reductions**

If PBGC fails to implement a previously communicated benefit reduction, PBGC will communicate corrective benefit reductions via notification rather than a benefit determination letter.

**b. Administrative corrections**

PBGC will give written notice to the debtor as soon as practicable upon pursuing an administrative correction. Such notice may occur immediately after the issuance of a stop payment order or the reversal of an ACH transaction.

**c. Increased overpayment and/or recoupment amount**

PBGC will give written notice to the payee if it is necessary to apply additional recoupment after the issuance of the benefit determination letter.

**G. Situations in which PBGC does not seek repayment**

**1. No future benefits payable with respect to a payee**

PBGC will not seek repayment of benefit overpayments where benefits were payable at DOPT but there are no future benefits payable at the time that the overpayment is discovered. Examples of this include:

- a participant receiving a straight life annuity who dies before the date of the benefit determination letter

- a payee receiving an overpayment of a certain benefit that has ended, except in cases where the end date has been previously communicated to the payee (see section D2b).

In these cases, although benefits were payable at DoPT, and the overpayment is technically subject to recoupment, there is no future benefit to recoup from.

This section does not apply in cases where the benefit was received by a debtor who is not a payee.

Recovery of de minimis overpayments PBGC will not pursue recovery of net overpayments totaling \$500 or less. There is no de minimis applied to overpayments that are subject to recoupment.

## **2. Final partial monthly recoupment amount**

PBGC will not recoup a final partial monthly recoupment amount calculated under Section I of this policy if the amount remaining to be recouped in the final month is less than the amount of the monthly recoupment reduction. PBGC will follow plan terms or plan administrator communication regarding final monthly amounts under Section L.

## **3. Overpayments outstanding for more than 6 years**

PBGC will not initiate recoupment or recovery of overpayments in instances where PBGC notified the debtor of the overpayment more than 6 years prior, regardless of the amount of the overpayment. However, if fraud is suspected, the case will be referred to the Office of Inspector General for review.

## **H. Prepayment**

PBGC will accept prepayment of the full amount of an outstanding benefit overpayment at any time after notifying the payee of the benefit overpayment. However, PBGC will inform the individual that PBGC does not charge interest during the recoupment period. Installment payments will not be accepted instead of recoupment.

## **I. Recoupment method**

If a participant or beneficiary has received a net benefit overpayment that has not been repaid and, as of DoPT, any future benefit is payable with respect to the participant, future benefit payments made with respect to the participant will be reduced in accordance with PBGC regulation §4022.82(a) and this section. Recoupment will stop as of the recoupment end date. PBGC will not consider financial hardship in recoupment cases,

### **1. Computation of benefit reduction: General rule**

The amount of the recoupment reduction for a payee's benefit is computed by first determining the initial recoupment percentage under paragraph I.1.a., then determining whether the percentage reduction is limited under paragraph I.1.b. The resulting percentage reduction is then multiplied by the payee's monthly benefit in accordance with paragraph [I.2.](#) to obtain the dollar amount of the reduction.

#### **a. Initial recoupment percentage**

The initial recoupment percentage is calculated by:

(1) Dividing the amount of the net benefit overpayment by the present value of the termination benefit payable to the participant or other payee. The amount of the net benefit overpayment is computed under Policy [6.4-3. Computation and Netting of Post-DOPT Overpayments and Underpayments](#). The value of the termination benefit is determined as of the DOPT, using PBGC interest rates and factors in effect on that date.

(2) Multiplying the result attained in step (1) by 100 to obtain a percentage.

**b. Limitation on recoupment reduction: General rule**

Except as provided in paragraph [I.1.b.\(2\)](#), below, the recoupment reduction is limited to 10%.

**Example I-1:**

Beginning 1/1/2007, Participant A is entitled to a termination benefit of \$1000.00 per month in the form of a joint-and-50% survivor annuity. However, Participant A received \$2000.25 per month from PBGC for 36 months from 1/1/2007 until 12/1/2009. This means Participant A received a net benefit overpayment of \$36,009.00 (36 x \$1000.25).

The initial recoupment percentage is greater than 10% so the monthly recoupment reduction is limited by the 10% cap. Thus, the reduction for recoupment is \$100.00 (10% of \$1000.00) per month, and that recoupment begins 1/1/2010. Participant A will start receiving \$900.00 (\$1000.00 - \$100.00) per month and the net benefit overpayment will be fully repaid after 360 months, i.e., on 12/1/2039. The partial final monthly recoupment amount of \$9.00 is disregarded, which means the date of the last recoupment deduction for Participant A is also 12/1/2039. Beginning 1/1/2040, Participant A will be paid \$1000.00 per month without reduction for recoupment.

After receiving payments that have been reduced for recoupment for 6 months Participant A dies on 6/15/2010 and on 7/1/2010 PBGC begins paying \$450.00 per month to Participant A's surviving beneficiary. This amount equals \$500.00 (50% x \$1000.00) less \$50.00 (10% x \$500.00) for recoupment. Note that the remaining net benefit overpayment (\$35,409.00 = \$36,009.00 - \$600.00) will be recouped from Participant A's surviving beneficiary's benefit and the net benefit overpayment will be fully repaid in 708 months, i.e., on 6/1/2069 (the partial final monthly recoupment amount of \$9.00 is disregarded). Beginning 7/1/2069, Participant A's surviving beneficiary will be paid \$500.00 per month without reduction for recoupment.

**2. Exceptions to the 10% limitation**

**a. Payments in excess of plan levels**

If the benefits paid to the payee or payees for a period of time after the DOPT significantly exceed the benefits payable under the terms of the plan, PBGC may compute the reduction percentage without applying the 10% limitation. If the reduction computed under this subparagraph is not sufficient to recoup the entire benefit overpayment, PBGC may seek

recovery of the remaining overpayment. See OPSS before applying this provision.

**b. Fixed-term benefits paid in excess of plan amount**

If a payee, who is entitled to benefits for a fixed period under plan provisions (e.g., a 5 year term certain annuity with no payments due after five years) has received, at any point prior to the end of the fixed period, benefits in excess of the total of all benefits payable under the plan, the recoupment percentage for the remainder of the fixed period will be the lesser of the initial recoupment percentage and 50%.

**c. Error in frequency of benefit payments**

If a payee incurs a net overpayment because payments were made too frequently (e.g., an annual payment amount was paid monthly), the recoupment percentage will be the lesser of the initial recoupment percentage and 50%, provided the payee had been informed by the prior plan administrator or PBGC that the payments were to be made.

**d. Termination benefits in excess of unreduced, age 65 maximum guaranteeable benefit**

If a payee's termination benefit exceeds the monthly dollar amount of the unreduced, age 65 maximum guaranteeable benefit payable under ERISA section 4022(b)(3)(B) (determined without adjustment for age and benefit form), and the initial recoupment percentage is greater than 10%, the recoupment limit will be the greater of 10% of the benefit or the dollar amount by which the termination benefit exceeds the unreduced maximum guaranteeable benefit. See [Appendix B](#) for guidance on determining the recoupment limitation for non-level benefits that exceed the unreduced, age 65 maximum guaranteeable benefit.

**e. Benefit overpayments caused by false information or an error for which the payee is responsible**

If PBGC determines that an overpayment

- resulted from false information provided or verified by a payee,
- was caused by an error for which the payee is responsible,
- resulted from failure to notify PBGC of a payee's death, or
- resulted from failure to notify PBGC of a change in condition or circumstances affecting benefit entitlement or amount

PBGC may seek full repayment of the benefit overpayment. Information that has been provided to a payee with a benefit determination or other written correspondence is considered to have been verified by the payee if he or she knew or reasonably should have known of the error and did not notify PBGC. PBGC may use recoupment, recovery or legal action in such situations.

**f. Change in disability benefit entitlement status**

**1. Timely notification of change in disability status**



If a participant is overpaid due to a change in the award of (and in some cases retroactive payment of) a Social Security disability benefit, or an improvement in health that results in the participant no longer being eligible for a disability benefit under his or her plan, and the participant notifies PBGC within 1 year of the later of:

- the change in his or her disability status, or
- initial notification from PBGC that receipt of the benefit is contingent upon disability status

recoupment as described in the general rule in paragraph I.1. above shall apply.

## **2. Untimely notification of a change in disability status**

If a participant fails to notify PBGC within 1 year of the change in his or her Social Security disability benefit award status, or an improvement in health that results in the participant no longer being eligible for a disability benefit under his or her plan, the participant's termination benefit will be reduced by 40% until the full amount of the resulting overpayment is recouped. Such recoupment will be in addition to any other recoupment reduction in effect for the payee's benefit. Additional recoupment at the rate of 40% would, for example, result in a recoupment reduction of 50% for a participant whose benefit is already being reduced by the maximum amount under the general rule in paragraph I.1.

### **g. Temporary additional 40% recoupment for change in entitlement to a supplemental benefit**

If a participant is overpaid due to a change in the award of (and in some cases retroactive payment of) a worker's compensation or similar benefit that, under the participant's plan, reduces the amount of a payable under the plan, the participant's termination benefit will be reduced by 40% until the full amount of the overpayment is recouped. Such recoupment will be in addition to any other recoupment reduction in effect for the payee's benefit. Additional recoupment at the rate of 40% would, for example, result in a recoupment reduction of 50% for a participant whose benefit is already being reduced by the maximum amount under the general rule in paragraph I.1.

### **h. Temporary 25% Recoupment due to benefit suspension overpayments**

If an early retiree whose benefit should have been suspended upon reemployment with the DOPT employer is overpaid due to failure to notify PBGC of such reemployment, his or her termination benefit will be reduced by 25% until the full amount of the overpayment attributable to delayed suspension is recouped. However, this additional recoupment will be applied only if PBGC has notified the participant that his or her benefit is subject to suspension upon reemployment with the DOPT employer. (See [5.2-2 Working Retirement policy](#).) Such recoupment will be in addition to any other recoupment reduction in effect for the payee's

benefit. Additional recoupment at the rate of 25% will result in a maximum recoupment reduction of 35% for a participant whose benefit is already being reduced by the maximum amount under the general rule in [Section 11](#).

### 3. Application of recoupment percentage

The recoupment percentage computed under paragraph [1.1](#) generally will be applied to future benefits payable, including any lump-sum payment of a termination benefit that becomes payable by PBGC to a payee and any contingent annuitant on or after the date a recoupment reduction is placed into effect. PBGC will stop the recoupment reduction as of the recoupment end date, or, if earlier, at the time the payee prepays in full the outstanding amount of the benefit overpayment. Any additional recoupment reduction computed under the special rules relating to disability benefits, or benefit suspensions will be applied to future benefits payable only until the benefit overpayment to which those reductions apply has been repaid without interest. Any recoupment reduction will be applied to the payee's benefit before any other deductions (e.g., withholding for taxes).

If PBGC establishes that annuity payments due to a payee were made after the payee's death and were received (e.g., deposited into a joint account) by a beneficiary who was entitled to continuing annuity payments after the payee's death, and the payments are not returned, PBGC will treat the payee's benefits as payments made to the beneficiary for recoupment and recovery purposes. If the payee's benefit is otherwise subject to recoupment that would continue to be applied to the beneficiary's benefit, PBGC will adjust the beneficiary's recoupment end date to account for the erroneous receipt of payments made to the payee.

### 4. Revised benefit determinations

If PBGC issues a revised benefit determination under [Policy 5.8-1, Benefit Changes](#), recoupment or recovery will be sought for the additional net overpayment calculated using the method in [Policy 6.4-3, Computation and Netting of Post-DOPT Overpayments and Underpayments](#). Example 1:

### 5. Qualified Domestic Relations Orders (QDROs)

See [Appendix A](#).

## J. Recovery method

PBGC seeks to collect a net overpayment through recovery when recoupment does not apply. PBGC recovers a net overpayment under the terms of an executed installment agreement as detailed in the BAPD Operations Manual. Recovery applies, generally, to the recipient of a net overpayment who was entitled to no future annuity benefits as of DOPT. It also applies to some recipients of net overpayments that might otherwise be subject to recoupment.

### 1. Estates and trusts as debtors

If the estate or trust administrator advises that the overpayments are property of the estate, PBGC will treat the estate or trust as the debtor, and will request that the estate or trust repay the overpayment in a single payment (unless it is \$500 or less and would otherwise be treated as described in [Section G](#)). If the overpayment is not repaid promptly, the case will be referred to the RSD Recovery Coordinator for referral to OGC. In such cases, OGC will take appropriate actions to collect the debt, unless it determines that it is not legally possible or cost-effective to recover the overpayment from the estate or trust.

## **2. Financial hardship**

PBGC may consider financial hardship in recovery cases, and may reduce or eliminate recovery debt in cases of demonstrated financial hardship.

## **3. Interest**

### **a. Installment and single-sum payments**

PBGC will charge no interest on overpayments repaid in a single-sum payment or timely installment payments.

### **b. Failure to repay and default**

If a debtor fails to repay in a single sum or enter into an installment payment agreement, PBGC will charge simple interest beginning on the date the benefit determination becomes effective. If a debtor defaults on installment payments, PBGC will charge simple interest beginning on the date of default, as determined by PBGC. The interest rate will be the U.S. Treasury Department's Current Value of Funds Rate for the month in which interest begins to accrue. This rate will continue to apply until the debt is fully repaid. Debtor payments are first applied to outstanding interest, then to reduce the principal amount.

## **4. Deceased debtors**

In the case of a deceased debtor who failed to execute and return to PBGC an installment payment agreement before death, PBGC will write off the debt and stop its collection activities if the amount of the debt is \$10,000 or less. If the amount of the debt is more than \$10,000, the RSD Recovery Coordinator will refer the case to OGC after the benefit determination becomes effective.

The write-off rule above does not apply to estates as debtors; see [paragraph J.1](#) for rules covering estates as debtors.

In cases where the debtor had executed an installment payment agreement, the entire debt is written off upon the death of the debtor.

## **5. Fraud**

PBGC will forward to the Office of Inspector General any case involving possible fraud, including any case in which a person received payments directed to another person, if the debtor has failed to enter into an installment agreement, receive a hardship waiver, or repay in a single sum.

## **K. Appeals/reconsideration of recovery determinations**

PBGC decisions to seek repayment of overpayments, and decisions regarding reduction or elimination of debt in cases of alleged financial hardship, are not subject to appeal. However, the underlying determinations of benefit entitlement and amount

are subject to appeal. In addition, at the request of a payee or other interested party, PBGC will review any of the other factors underlying its computation of the amount of a benefit overpayment (e.g., the amount the payee actually received) and the calculation of the recoupment reduction or installment payment amount for accuracy, and will make any necessary corrections.

#### **L. Treatment of recoupment initiated by a prior plan administrator**

PBGC will apply benefit reductions that were initiated or communicated by the plan administrator prior to DOPT to recoup pre-DOPT benefit overpayments. PBGC will calculate an affected payee's benefits by first adjusting payments for the application of Title IV while disregarding reductions for pre-DoPT overpayments. PBGC will then reduce the benefits for recoupment of pre-DoPT overpayments.

In these cases, PBGC will apply the same recoupment reduction percentage to the payee's termination benefit that the prior plan administrator applied to the plan benefit, without regard to the 10% limit in section I of this policy. For example, if the plan benefit was \$2,000, and the plan was recouping \$500, the recoupment percentage is 25%. Therefore, if the termination benefit is \$1,600, PBGC will recoup \$400/month ( $\$1,600 \times .25 = \$400$ ) to recoup the pre-DoPT overpayment, and the payee will receive the remaining monthly benefit of \$1,200. PBGC will follow plan practice with regard to recoupment of a final recoupment payment that is less than the full recoupment amount.

Any overpayments that occur after DoPT are subject to the normal recoupment rules in section I of this policy. In determining the post DoPT overpayments, the benefit paid before application of the prior plan administrator recoupment should be used as the amount received. In the example above, this amount is \$1600.

#### **Appendix A: Qualified domestic relations orders (QDROs)**

In general, PBGC will apply its recoupment regulation and policy to participants and alternate payees under a QDRO in accordance with the following methods. PBGC reserves the right to use its discretion under the recoupment regulation (PBGC Reg. 4022.81(a)) to apply its recoupment rules to cases involving QDROs by other methods on a case-by-case basis. Contact OPSS for approval before applying any method other than the rules described in Appendix A. If a QDRO contains specific provisions concerning recoupment of overpayments, PBGC will determine on a case-by-case basis whether to follow such provisions, based on whether the language is consistent with the methods described below and whether it is administratively reasonable.

##### **1. Recoupment from PBGC's Benefit Adjustments Due to Legal Limitations**

The terms of a QDRO may specify how benefit adjustments due to PBGC's legal limitations ("PBGC's benefit adjustments") are to be applied to the participant's and/or alternate payee's benefits. For example, the QDRO may provide that PBGC's benefit adjustments are to be applied on a pro-rata basis to the participant's and alternate payee's benefits; only to one party's benefits, i.e., to the alternate payee's or the participant's benefits; or to one party's benefits before being applied to the other party's benefits.

If the QDRO specifies how PBGC's benefit adjustments are to be applied and, as a direct result of those benefit reductions, recoupment is required, PBGC will generally honor such provisions in the QDRO.,

If there are overpayments for other reasons as well (e.g., because of an administrative error, erroneous benefit amount), PBGC will implement recoupment from the party that received such overpayments using the general recoupment guidelines in this policy. For those overpayments that are due to PBGC's benefit adjustments, however, PBGC will further recoup from the remaining benefits by using the methodology specified by the terms of QDRO for implementing PBGC's benefit adjustments. Contact OPSS for further guidance.

If the QDRO does not specify how PBGC is to apply PBGC's benefit adjustments, PBGC will implement recoupment in accordance with the rules described in Sections 2-4 below.

## **2. QDRO treats alternate payee as surviving spouse or beneficiary**

If the QDRO states that the alternate payee will be treated as the participant's surviving spouse or beneficiary, PBGC will apply the regular recoupment rules that are applicable to surviving spouses or beneficiaries to determine the monthly recoupment amount and recoupment end date for the alternate payee after the participant's death.

## **3. Shared payment QDROs**

For shared payment QDROs, the nature of the payment to the alternate payee (e.g., fixed percentage, specified dollar amount) will determine how recoupment is implemented. To calculate the amount of overpayment to be recouped, the recoupment percentage, the monthly recoupment amount and the recoupment end date, PBGC will use the total benefit being paid (i.e., the amount being paid to both the participant and the alternate payee) and will then apply recoupment to the two parties as follows:

### **Dividing the monthly recoupment amount**

The method for dividing the monthly recoupment amount depends on whether the shared payment QDRO awards the alternate payee a fixed percentage or a specified dollar amount of the participant's benefit. If the shared payment QDRO specifies both a fixed percentage and specified dollar amount, or specifies another type of award to the alternate payee, contact OPSS.

#### **b. Fixed percentage**

If a QDRO awards a fixed percentage of the participant's benefit to the alternate payee, PBGC will divide the monthly recoupment amount between the participant and the alternate payee by the same proportions used to divide the participant's benefit.

#### **Example A-1**

At DOPT, John was married to Renee and receiving a monthly benefit of \$600 per month in QJSA (50%) form. John and Renee divorced two years after DOPT and, under a shared payment QDRO, Renee began receiving 60% of the benefit payable to John (\$360 per month). The QDRO states that Renee will continue to

be treated as the surviving spouse and that benefits payable to Renee will revert to John if she predeceases him.

Five years after DOPT, PBGC issues a benefit determination to John and determines that his PBGC termination benefit is \$500 per month in QJSA (50%) form and that he and Renee were overpaid. Assume that the recoupment reduction is 8%, based on the total overpayment, and the present value of the whole termination benefit. Accordingly, the total monthly recoupment amount is \$40 (8% of \$500). The \$40 recoupment amount will be split between John and Renee using the same proportions used to split the benefit under the QDRO. Thus, \$24 (60% of \$40) will be recouped from payments to Renee and \$16 (40% of \$40) will be recouped from payments to John.

If Renee predeceases John, Renee's net monthly payment of \$276 will revert to John (Renee's 60% share of the final benefit (60% of \$500=\$300) reduced by the recoupment of \$24).

If John predeceases Renee, she will receive the survivor's portion of the QJSA (\$250) reduced by 8% (\$20) for recoupment because the normal recoupment rules applicable to contingent annuitants would apply to her survivor benefit.

Recoupment will end when the amount of the overpayment has been repaid, without interest.

### **c. Specified dollar amount**

If a QDRO specifies the dollar amount of the alternate payee's monthly benefit (rather than a percentage of the participant's benefit), PBGC will recoup first from the participant's benefit, and will not recoup any amount from the alternate payee's benefit unless the monthly recoupment amount exceeds the monthly benefit payable to the participant. If the monthly recoupment amount does exceed 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 alternate payee's benefit.

### **Example A-2**

At DOPT, Simon was 62 years old, married to JoAnn, and had a deferred vested benefit under the plan of \$900 per month in the form of a single life annuity beginning at his age 65. Simon and JoAnn divorced one year after DOPT. JoAnn obtained a shared payment QDRO that awarded her a specified dollar amount of \$500 of Simon's monthly pension until his death, but did not award a spousal survivor benefit. Under the QDRO, benefits payable to JoAnn will revert to Simon if she predeceases him.

Two years after DOPT, Simon marries Samantha.

One year after his marriage to Samantha (at age 65), Simon begins receiving estimated benefits in QJSA (50%) form. The whole estimated PBGC benefit is \$800 per month, of which \$500 is paid to JoAnn and \$300 is paid to Simon. Two years later, PBGC issues a benefit determination to Simon and determines that his PBGC termination benefit is \$700 per month in QJSA (50%) form and that he and JoAnn have been overpaid.

Assume the overpayment (computed on a combined basis) is equal to 12% of the PV of the whole termination benefit and that monthly recoupment is limited to 10% of the whole benefit. Accordingly, the monthly recoupment amount is \$70

(10% of \$700), which will be deducted from Simon's benefit only, because the QDRO awarded JoAnn a specified dollar amount and the \$200 benefit payable to Simon is greater than the \$70 recoupment amount.

When the benefit determination becomes effective, Simon's benefit will be reduced by \$70 per month for recoupment and JoAnn will continue to receive \$500 per month. If JoAnn predeceases Simon, JoAnn's \$500 benefit would revert to Simon and his recoupment amount will not change.

If Simon predeceases JoAnn, Samantha will receive the survivor's portion of the QJSA (\$350) reduced by 10% (\$35) for recoupment because the normal recoupment rules applicable to contingent annuitants would apply to her survivor benefit.

Recoupment will end when the amount of overpayment has been repaid, without interest.

#### **d. Separate interest QDROs**

In general, PBGC will apply its recoupment rules to separate interest QDROs as if the participant and the alternate payee were separate participants under the plan. Accordingly, PBGC will determine separately for the participant and the alternate payee the amount of overpayment to be recouped, the recoupment percentage, the monthly recoupment amount, and the recoupment end date.

##### **1. Determining the separate amounts of overpayment**

The separate amounts of overpayment made to the participant or alternate payee will be determined by comparing actual benefits paid to the correct termination benefit payable. Overpayments made to one party (participant or alternate payee) will not be offset by underpayments made to the other (i.e., if one is overpaid and the other is underpaid, PBGC will separately reimburse the underpayment and recoup the overpayment.). Contact OPSS for guidance for assistance in determining treatment of overpayments when the PBGC benefit adjustments exceed the present value of the benefit payable to the party that was overpaid, but a benefit is still payable to the other party(i.e., a separate interest QDRO that assigns a fixed dollar amount to the alternate payee).

##### **2. Determining the separate present values as of DoPT**

PBGC will determine separately for the participant and the alternate payee the present value of the termination benefit payable as of DOPT. If the actuarial valuation report does not provide separate present values, then PBGC will calculate those values for the purpose of applying recoupment. In cases where it is not administratively practicable to do so, contact OPSS for guidance.

##### **3. Determining the separate recoupment percentages and limits**

- a. In general, PBGC will determine the recoupment percentages separately for the participant and the alternate payee, and apply the 10% recoupment limit separately for the participant and the alternate payee. Contact OPSS for guidance on determining the recoupment percentage in any case in which the participant's whole monthly

benefit amount without regard to the QDRO exceeds the maximum insurance limitation applicable to the plan (i.e., the maximum guaranteeable benefit without adjustment for age or benefit form), and the initial (uncapped) recoupment percentage computed for either the participant or the alternate payee exceeds 10%.

#### **4. Determining the separate recoupment end dates**

Recoupment end dates will be determined separately for the participant and the alternate payee based on the separately determined overpayment amounts to be recouped and monthly recoupment amounts.

#### **Example A-3**

As of DOPT, Carol is married to Joe and has a deferred vested benefit. One year after DOPT, before Carol has started receiving benefits, she and Joe divorce and obtain a separate interest QDRO providing that Joe will receive a 50% interest in the value of the pension benefit to which Carol is entitled from PBGC, computed as of DOPT. Joe's 50% interest in Carol's benefit has a value that is actuarially equivalent, as of DOPT, to half of Carol's monthly termination benefit beginning at her age 65.

If PBGC pays estimated benefits to either or both Carol and Joe, and later, after their final benefits are determined, PBGC determines that one or both have been overpaid, PBGC will treat Carol and Joe as if they were separate participants under the plan for recoupment purposes because of the separate interest QDRO. Accordingly, PBGC will determine separately for Carol and Joe the amounts of overpayments to be recouped, the monthly recoupment amounts and the recoupment end dates. After recoupment begins, the death of one will not affect the monthly benefit amount, monthly recoupment amount or recoupment end date of the other.

#### **Appendix B: Recoupment from non-level benefits that exceed the unreduced, age 65 maximum guaranteeable benefit**

This rule applies to participants, beneficiaries of deceased participants, and alternate payees in PBGC-trusted plans (collectively called "payees") who are entitled to future non-level benefits that exceed the maximum guaranteeable benefit (determined without adjustment for age or benefit form) and whose benefits are subject to recoupment. This policy applies to any benefit determination letter issued on or after April 13, 1999.

**Background** PBGC's regulation and policy on recoupment of benefit overpayments provides a cap on monthly recoupment amounts equal to the GREATER of (1) 10% of the participant's benefit amount, or (II) the dollar amount by which the participant's benefit exceeds the maximum guaranteeable benefit (determined without adjustment for age or benefit form) applicable for the year in which the plan terminated. For participants with non-level benefits, the amount by which the benefit exceeds the maximum guaranteeable benefit will change when the monthly amount changes.

This appendix provides guidance on computation of the recoupment cap when a payee's future benefit is non-level and, at one or more times in the future payment of the benefit, the amount payable exceeds the maximum guaranteeable benefit.



**Action Required** If a participant's benefit is non-level (e.g., a life benefit with a temporary supplement, a social security leveling option, etc.) and at any time in the future the amount payable to the participant exceeds the maximum guaranteeable benefit, determined without adjustment for age or benefit form ("the unadjusted maximum"), the recoupment cap is determined separately for each level at which the benefit is payable. That is, for each benefit level payable, compare the dollar amount by which that benefit amount exceeds the unadjusted maximum to 10% of that benefit amount. The recoupment cap is the GREATER of the two amounts. The amount to be recouped for the period during which that benefit amount is payable is the LESSER of (I) the initial (uncapped) recoupment percentage (the overpayment amount divided by the present value of the benefit as of DoPT) of the participant's benefit amount, or (II) the recoupment cap.

The recoupment cap applicable to the survivor of a participant with a non-level benefit is the same cap (expressed as a percentage reduction) applicable to the participant's benefit from which the survivor's benefit is derived. For example, if the surviving spouse of a participant who received a joint and 50% survivor annuity benefit and a temporary supplement is entitled only to the survivor portion of the J&S benefit (i.e., not to any remaining payments of the temporary supplement), the recoupment cap applicable to the spouse is the same percentage cap applicable to the participant's J&S benefit only.

The examples below show how to compute the recoupment cap and the monthly recoupment amount for payees with non-level benefits that exceed the maximum guaranteeable benefit.

#### **Example M-1**

Participant A is entitled to a termination benefit in the form of a social security levelizing option (SSLO). No survivor benefit is payable under the SSLO. The benefit payable is \$4,000 per month before age 65 and \$2,000 per month thereafter. The present value of the benefit as of DoPT is \$275,000. Participant A has been overpaid by \$32,000 and PBGC is preparing a benefit determination. The participant is age 60 at the time the benefit determination is prepared. The plan terminated in 1990, therefore the unadjusted maximum guarantee is \$2,164.90 (rounded to \$2,165 for purposes of this example).

#### **Step 1. Determine the initial (uncapped) recoupment percentage.**

Overpayment ÷ PV of benefit @ DoPT = uncapped recoupment %

\$32,000 ÷ \$275,000 = 11.6%

#### **Step 2. Determine the recoupment cap for the \$4,000 per month pre-65 benefit amount.**

Greater of: (I) 10% of benefit, or (II) the amount of benefit over unadjusted maximum

\$400 (10%) \$4,000 - \$2,165 = \$1,835 (46% of benefit)

#### **Step 3. Determine the recoupment amount for the \$4,000 per month pre-65 benefit amount.**

Lesser of: (I) uncapped percentage, or (II) recoupment cap

\$464 (11.6%) \$1,835 (46%)

#### **Repeat Steps 2 and 3 for the post-65 benefit**

#### **Step 2. Determine the recoupment cap for the \$2,000 per month post-65 benefit amount.**

Greater of: (I) 10% of benefit, or (II) the amount over unadjusted maximum

\$200 (10%) \$0 (0%)

**Step 3. Determine the recoupment amount for the \$2,000 per month post-65 benefit amount.**

Lesser of: (I) uncapped percentage, or (II) recoupment cap

\$232 (11.6%)    **\$200** (10%)

In this example, the recoupment amount for the pre-65 period is \$464 (11.6%) and will be reduced to \$200 (10%) at the same time the benefit amount is reduced at age 65. The recoupment end date will be computed (by hand) based on this non-level recoupment stream.

**Example M-2:**

Participant A is entitled to a termination benefit in the form of a joint and 50% survivor benefit with a temporary supplement payable until age 62. The J&S benefit payable is \$2,100 per month and the supplement pays an additional \$400 per month. Thus, the participant's total benefit before age 62 is \$2,500 per month and \$2,100 per month thereafter. The temporary supplement benefit has no survivor feature so the surviving spouse will receive half of the participant's J&S benefit (\$1,050) if the participant dies before the spouse. The present value of the benefit as of DoPT is \$250,000. Participant A has been overpaid by \$40,000 and PBGC is preparing a benefit determination. The participant is age 60 at the time the benefit determination is prepared. The plan terminated in 1990, therefore the unadjusted, age 65 maximum guarantee is \$2,164.90 (rounded to \$2,165 for purposes of this example).

**Step 1. Determine the initial (uncapped) recoupment percentage.**

Overpayment ÷ PV of benefit @ DoPT = uncapped recoupment %

\$40,000 ÷ \$250,000 = **16.0%**

**Step 2. Determine the recoupment cap for the \$2,500 per month pre-62 benefit amount.**

Greater of: (I) 10% of benefit, or (II) the amount of benefit over unadjusted maximum

\$250 (10%)    \$2,500 - \$2,165 = **\$335** (13.4% of benefit)

**Step 3. Determine the recoupment amount for the \$2,500 per month pre-62 benefit amount.**

Lesser of: (I) uncapped percentage, or (II) recoupment cap

\$400 (16.0%)    **\$335** (13.4%)

**Repeat Steps 2 and 3 for the post-62 benefit**

**Step 2. Determine the recoupment cap for the \$2,100 per month pre-62 benefit amount.**

Greater of: (I) 10% of benefit, or (II) the amount over unadjusted maximum

**\$210** (10%)    \$0 (0%)

**Step 3. Determine the recoupment amount for the \$2,100 per month pre-62 benefit amount.**

Lesser of: (I) uncapped percentage, or (II) recoupment cap

\$336 (16.0%)    **\$210** (10%)

In this example, the recoupment amount for the pre-62 period is \$335 (13.4%) and will be reduced to \$210 (10%) at the same time the benefit amount is reduced at age 62. If the participant dies before the spouse, the recoupment amount for the spouse will be \$105 (10%) because the surviving spouse's benefit is derived only from the participant's

760 J&S benefit, not the temporary supplement. The recoupment end date will be computed  
761 (by hand) based on the non-level recoupment stream for the participant. When the  
762 participant dies, the recoupment end date will be adjusted to reflect the lower  
763 recoupment amount for the spouse (assuming the spouse is still living).