



PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

RIN 1212–AB47

Improvements to Rules on Recoupment of Benefit Overpayments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is proposing to improve its rules on recoupment of benefit overpayments under PBGC’s insurance program for single-employer terminated plans trusted by PBGC. These proposed improvements include changing the recoupment methodology to a flat rate of 5 percent of a participant’s monthly benefit and eliminating recoupment from a participant’s surviving beneficiary.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Email:* reg.comments@pbgc.gov. Refer to RIN 1212–AB47 in the subject line.
- *Mail or Hand Delivery:* Legislative and Regulatory Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit comments electronically. Commenters who submit comments on paper by mail should allow sufficient time for mailed comments to be received before the close of the comment period.

All submissions must include the agency’s name (Pension Benefit Guaranty Corporation or PBGC), the title for this rulemaking (Improvements to Rules on Recoupment of Benefit

Overpayments), and the Regulation Identifier Number for this rulemaking (RIN 1212–AB47). Comments received will be posted without change to PBGC’s website, *www.pbgc.gov*, including any personal information provided. Do not submit comments that include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

Copies of comments may also be obtained by writing to Disclosure Division (*disclosure@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–326–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Joseph Krettek (*krettek.joseph@pbgc.gov*), Assistant General Counsel for Legislative and Regulatory Division, Office of the General Counsel, at 202–229–6772; Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and Authority

This proposed rule would amend the Pension Benefit Guaranty Corporation’s (PBGC) recoupment rules under PBGC’s insurance program for single-employer terminated plans trusted by PBGC to simplify the repayment of benefit overpayments. The amendments would provide clarity and predictability, making the repayment process easier to communicate to participants and for participants to understand. The amendments would also allow for greater administrative efficiency.

PBGC's legal authority for this rulemaking comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4022 of ERISA (Single-Employer Plan Benefits Guaranteed), which sets limits on the benefits PBGC guarantees and pays.

B. Major Provisions

The major provisions of this proposed rule would amend PBGC's recoupment rules under subpart E of part 4022 as follows.

- Simplify the recoupment methodology to eliminate the actuarial reduction (capped, generally, at 10 percent of a participant's monthly benefit), and instead recoup at a flat rate of 5 percent of a participant's monthly benefit.
 - Waive overpayment amounts of \$250 or less.
 - Eliminate recoupment of a participant's overpayment from a participant's surviving spouse or other designated beneficiary.
 - Eliminate recoupment on a revised benefit determination, except under specified circumstances such as where there is a post-benefit determination qualified domestic relations order (QDRO).

Major provisions of the recoupment rules that are not changing are as follows.

- No interest is ever charged by PBGC on net overpayments.
- Recoupment ends one month early if the amount remaining to be recouped in the final month is less than the amount of the monthly reduction.
- Recoupment constitutes full repayment of the net overpayment.

The proposed rule would also codify PBGC's policy of administrative correction to correct payment errors and clarify when PBGC uses recovery methods instead of recoupment.

II. Background

PBGC administers two insurance programs for private-sector defined benefit pension plans under title IV of ERISA: a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. In addition, PBGC administers a special financial assistance program for eligible financially distressed multiemployer plans. The proposed amendments in this rulemaking would apply only to the single-employer plan termination insurance program.

Under the single-employer plan termination insurance program, covered plans that are underfunded may terminate either in a distress termination under section 4041(c) of ERISA or in an involuntary termination (one initiated by PBGC) under section 4042 of ERISA. When such a plan terminates, PBGC typically is appointed statutory trustee of the plan and becomes responsible for paying benefits in accordance with the provisions of title IV.

The benefits paid by PBGC under a terminated trusteed plan are determined by several factors. The starting point is the plan — PBGC pays only those benefits that the plan provides under the plan's terms. Thus, PBGC begins by determining each participant's accrued plan benefit.

After PBGC determines the amount of the participant's plan benefit, PBGC determines the amount it can guarantee. There are limitations on the benefits that PBGC can guarantee. One limitation, under sections 4001(a)(8) and 4022(a) of ERISA, is that PBGC guarantees only those benefits that are "nonforfeitable." For purposes of title IV, a benefit is nonforfeitable if the participant had satisfied the plan's (or ERISA's) requirements for the benefit by the plan's termination date (or, if applicable, by the bankruptcy filing date of a contributing plan sponsor).

Another limitation is the maximum guaranteeable benefit rule in section 4022(b)(3) of ERISA, which caps the amount that PBGC can guarantee. The cap for a participant in a plan with a termination date in 2025 (or, if applicable, a bankruptcy filing date of a contributing sponsor in 2025), who retires at age 65 under a straight-life annuity, is \$7,431.82 per month.

PBGC's guarantee is further limited by the phase-in rule, under which PBGC's guarantee of a plan's benefit increases during the 5-year period ending on the plan's termination date (or, if applicable, the bankruptcy filing date of a contributing sponsor) is phased in at the number of years the benefit increase has been in effect, multiplied by the greater of: (1) 20 percent of the amount of the benefit increase; or (2) \$20 per month. The phase-in rule protects the insurance program from losses when the sponsor of an underfunded pension plan increases benefits shortly before the plan terminates. Another limitation is the accrued-at-normal limitation, which is equal to the dollar amount of a participant's benefit in the straight life annuity form at normal retirement age. The portion that exceeds this limitation is not a PBGC guaranteeable benefit.

In some cases, a participant may receive more than the participant's guaranteed benefit under title IV, depending on the allocation of the plan's assets under section 4044(a) of ERISA or the allocation of PBGC's recoveries under section 4022(c) of ERISA, or both.

Although PBGC's obligation to pay benefits at title IV levels arises on the plan termination date, it usually takes several months after becoming the statutory trustee of a plan before PBGC can take any action to reduce benefits to title IV levels.

In a distress termination, the plan administrator is required, beginning on the proposed termination date, to reduce benefits in pay status to the estimated levels payable under title IV. But compliance with this requirement does not always occur. When a plan is terminated in a distress termination, PBGC's preliminary review, upon becoming statutory trustee, focuses on whether the plan administrator's estimates of benefit entitlement were accurate, and PBGC adjusts benefits accordingly.

In a PBGC-initiated termination, the plan administrator does not reduce benefits to estimated title IV levels. Once PBGC becomes statutory trustee, PBGC undertakes a preliminary review of the benefits to which each participant in the plan is being paid. After this review is completed, PBGC makes a preliminary estimate of the title IV benefits to which each participant is entitled. If the amount previously paid exceeds this preliminary estimate, PBGC reduces the

benefit to the amount estimated to be the participant's benefit entitlement under title IV. If the amount previously paid is lower than this preliminary estimate, PBGC increases the benefit to the amount estimated to be the participant's benefit entitlement under title IV and pays the participant the back underpayment amount with interest.

When PBGC pays the estimated title IV benefit amount, PBGC informs participants that their benefit payments at this preliminary stage are only estimates of the amounts to which they are entitled under title IV. PBGC also informs participants that, when PBGC completes its review of the pension plan and the plan's records, PBGC will issue a benefit determination that will set forth PBGC's determination of the amount to which the participant is entitled under title IV. PBGC further informs participants that when the benefit determination is issued, it may be appealed to the PBGC Appeals Board if the participant believes that PBGC's determination is incorrect.

PBGC may pay estimated benefits for an extended period (which can be several years) until PBGC finishes its plan valuation and determines final benefit amounts. In the period between trusteeship and determination of final benefit amounts, overpayments or underpayments may occur, even after the initial adjustments that PBGC implements based on the preliminary estimate. For example, overpayments can occur because the plan-level benefit is higher than the participant's benefit under title IV levels. Overpayments and underpayments may also occur because PBGC was not aware of relevant plan amendments or other information when initial reductions were made.

III. Recoupment, Recovery, and Administrative Correction of Benefit Overpayments

Since the late 1970s, PBGC has sought recoupment of benefit overpayments. Because ERISA does not authorize PBGC to pay benefits in excess of title IV levels and imposes on PBGC an obligation to maintain premiums at the lowest level consistent with its other duties (see section 4002(a) of ERISA), PBGC's position is that failure to recoup excess payments would be

inconsistent with the statutory scheme.¹ In *Bechtel v. PBGC*, the United States Court of Appeals, District of Columbia Circuit, affirmed that PBGC may recoup benefit overpayments and that PBGC's obligation to pay benefits to participants in trustee plans is clearly subject to limitations under ERISA. Because there may be a delay in the calculation of title IV guaranteed benefits, the Court stated that "it's likely that some payments may be made at levels above those guaranteed by ERISA," creating overpayments.² The Court went on to say that "Congress did not intend such delays, even those involving negligence by the PBGC, to create a windfall for some ERISA beneficiaries at the expense of others and the guaranty system as a whole."³

PBGC's current recoupment methodology was established in a final rule published on January 29, 1985, at 50 FR 3892 and codified in subpart E of 29 CFR part 4022. A subsequent rule, published in 1998, amended the regulation to provide that recoupment ends once the total amount of the overpayment is repaid and gives PBGC discretion to waive recoupment of net overpayments that it determines to be de minimis.⁴

PBGC's recoupment rules under § 4022.81(a) provide that if a participant has been paid more (on a net basis) than the amount to which the participant is entitled, and the participant is entitled to future benefit payments (*i.e.*, monthly annuity payments) as of the termination date, PBGC will seek to recoup this net overpayment. Section 4022.81(a) also provides that PBGC may, in its discretion, seek repayment of overpayments by methods other than recouping, but PBGC will not normally do so unless benefits paid after the termination date exceed the participant's benefit entitlement under the plan.

¹ See PBGC's 1985 final rule (50 FR 3892, 3895-96 (Jan. 29, 1985)). See also *Bechtel v. PBGC*, 624 F. Supp. 590, 593 (D.D.C. 1984), *aff'd*, *Bechtel v. PBGC*, 781 F.2d 906, 907 (D.C. Cir. 1986).

² *Bechtel v. PBGC*, 781 F.2d 906, 907 (D.C. Cir. 1986).

³ *Id.*

⁴ See 63 FR 29354 (May 29, 1998). The rules also were amended in 2002 (to clarify that if there is a net overpayment at the time of the participant's death, and the participant was not entitled to future annuity benefits as of the plan's termination date, PBGC may seek repayment of the overpayment from the participant's estate), and in 2011 (explicitly stating that the rules regarding the overpayments (and underpayments) that will be taken into account in determining any amount to be recouped (or reimbursed) by PBGC apply regardless of whether the termination is a Pension Protection Act (PPA) 2006 bankruptcy termination). See 67 FR 16950 (Apr. 8, 2002) and 76 FR 34590 (June 14, 2011)).

PBGC recoups overpayments by reducing future benefit payments by an actuarial reduction, which is the recoupment percentage. Net overpayments are determined using a month-to-month tally of overpayments and underpayments occurring after the plan's termination date or the date PBGC issues a notice of determination under section 4042 of ERISA, if later. Section 4022.82(a) of PBGC's current regulation provides that the recoupment percentage equals the net overpayment divided by the present value (as of the termination date) of the participant's title IV benefit entitlement and is capped at 10 percent in most cases. Recoupment ends at the earlier of when the net overpayment is repaid or when monthly benefit payments cease. Recoupment continues to apply to the survivor benefit if the participant dies before the net overpayment has been repaid. For example, if a participant's net overpayment is \$4,000 and the present value as of the plan's termination date of the benefit entitlement is \$100,000, the recoupment percentage is 4 percent ($4,000/100,000$), regardless of the start date for recoupment, which is often many years after PBGC assumes responsibility for benefit payments. Future monthly benefits are reduced by 4 percent until: (a) the sum of repayments equals \$4,000, or (b) monthly benefits cease (*i.e.*, when the participant and any survivor beneficiary die).

Under § 4022.82(a)(2), PBGC generally limits recoupment of a net overpayment to the greater of either (i) 10 percent of a participant's monthly benefit payment, or (ii) for very large overpayments to a participant with a high benefit, the dollar amount per month in excess of the maximum guaranteeable benefit payable under section 4022(b)(3)(B) of ERISA, determined without adjustment for age and benefit form (what PBGC refers to as "the maximum insurance limitation"). Also, PBGC may recoup at a higher rate or seek repayment by recovery (in accordance with the rules under 29 CFR part 4903) where net benefits paid to a participant after the termination date exceed those to which the participant and any beneficiary is entitled under the terms of the plan, or where benefit payments were based on false information, error, or omission by the participant of information material to the benefit amount, benefit entitlement, or eligibility. PBGC may also recoup at a higher rate or seek repayment by recovery where PBGC

has reason to believe that the person who received a benefit overpayment knew or should have known that the payment was made in error and failed to notify PBGC of the error.

PBGC does not charge interest on net overpayments subject to recoupment. In addition, PBGC has discretion under current § 4022.82(a)(4) to waive overpayments PBGC determines are de minimis.

In addition to recoupment and recovery, PBGC uses administrative correction to correct payment errors. Before PBGC determines there is an overpayment, PBGC first tries to immediately correct any payment errors (*e.g.*, duplicate monthly payments, payments to deceased participants or beneficiaries, and other clerical or arithmetic errors). Administrative correction includes methods such as reversal or reclamation of electronic payments (*e.g.*, through Automated Clearing House (ACH)), stop-payment orders, and benefit suspension for one to two months.

PBGC seeks repayment by recovery if administrative correction and recoupment do not apply, or if administrative correction is unsuccessful. These situations may include, for example, where a lump sum paid by PBGC exceeded the participant's benefit entitlement under the terms of the plan; where the participant was not entitled to a benefit from PBGC (*e.g.*, the participant was not vested, or the benefit amount was paid to the incorrect person); where payments were made to the participant after a communicated end date (such as with a term-certain annuity); or where payments were based on false information, error, or omission by the participant that materially affected the benefit amount, benefit entitlement, or eligibility.

IV. Reasons for Change

Based on PBGC's experience and its review of the recoupment rules, PBGC determined that the current process of correcting benefit overpayments is unclear and unpredictable. In particular, PBGC is concerned that the recoupment methodology, which is based on actuarial concepts unfamiliar to many participants, makes the rules difficult to explain to participants and for participants to understand. The amendments in this proposed rule are designed to improve the

repayment process for benefit overpayments by making that process clearer and predictable, and to allow for greater administrative efficiency.

V. Proposed Amendments

A. Recoupment Methodology Including De Minimis Overpayment Amounts

PBGC proposes to amend its recoupment methodology by replacing the actuarial reduction subject to, generally, a 10 percent cap, with a flat rate of 5 percent. This revised method is straightforward, and therefore simpler to communicate to participants and easier for participants to understand. A flat rate also would be simpler to administer, decreasing the potential for multiple notices to participants about recoupment and their guaranteed benefit. The flat rate would recoup the vast majority of participants at 5 percent. Under the current methodology, a larger percentage of participants with small monthly benefits of \$300 or less are recouped at 10 percent, compared to participants with larger monthly benefits of \$1,500 or more who are often recouped at a lower rate.⁵

PBGC estimates that changing to a flat rate of 5 percent would increase PBGC's expected repayment from participants and beneficiaries subject to recoupment. On average, PBGC collects 51% of a debt under its current method, which would increase to 65% under the proposal. The average, per-participant amount currently being repaid is \$388 each year.

In addition to recoupment at a flat rate of 5 percent, PBGC would not seek to recoup net overpayments of \$250 or less (*i.e.*, those amounts treated as de minimis). PBGC estimates that, under this proposed change, 500 payees will avoid a total of \$5,000 in recoupments each year. Consistent with current § 4022.82(a)(4), under the proposed rule, PBGC would retain discretion to not recoup additional net overpayment amounts that it determines to be de minimis to ensure that, over time, the amount remains appropriate based on changing benefit and overpayment trends in PBGC-trusted plans and the administrative cost of recouping small amounts.

⁵ Of participants being recouped at 10 percent, 48 percent have monthly benefits of \$300 or less and 3 percent have a monthly benefit of \$1,500 or more. PBGC data estimates (2019).

The proposal also would provide that if a participant's net overpayment is equal to or less than the \$250 de minimis amount and the net overpayment increases solely because unadjusted benefit payments are continuing during the pendency of the participant's appeal of their benefit determination to the PBGC Appeals Board, PBGC nevertheless will regard the participant's net overpayment as not having increased during the pendency of such appeal. This means the participant will not be treated as having lost out on the \$250 or less de minimis exception because an appeal is pending. This provision would avoid a potential chilling effect on a participant considering an appeal of their benefit determination.

B. Eliminate Recoupment from a Surviving Beneficiary

Under current § 4022.81(d), recoupment of a participant's net overpayment continues to the surviving spouse or other beneficiary receiving survivor benefits under the participant's pension, if the participant dies and the net overpayment has not been repaid. This is because, in most cases where the benefit is paid in a joint-life form, the actuarial reduction considers the lives of both the participant and the surviving beneficiary. PBGC proposes to eliminate this provision and not recoup any remaining portion of a participant's net overpayment from benefits payable to a surviving beneficiary. In such a case, the surviving beneficiary was not the individual who received the net overpayment and may not even know that there was a net overpayment. Eliminating recoupment of a participant's net overpayment from a surviving spouse or other designated surviving beneficiary would alleviate this unnecessary confusion and be more equitable. PBGC estimates that eliminating recoupment from a surviving beneficiary will save 4,000 beneficiaries approximately a total of \$900,000 per year. In addition, under a flat 5 percent recoupment, the expected benefits to be paid to the participant's surviving beneficiary is not a factor in calculating the recoupment percentage. Finally, this proposed amendment would be consistent with a provision applicable to ongoing pension plans under section

206(h)(4)(E) of ERISA, as added by the SECURE 2.0 Act, under which recoupment of past overpayments to a participant may not be sought from any beneficiary of the participant.⁶

Under § 4022.83(b)(1) of this proposed rule, recoupment would end at the date of death of the participant or beneficiary who received the net overpayment. The provision would be applicable for participants and beneficiaries with a date of death on or after the effective date of the final rule.

C. Eliminate Recoupment on a Revised Benefit Determination

Under certain circumstances, PBGC will revise a benefit determination where the calculation later is found to be incorrect. For example, if after a benefit determination is sent to a participant, PBGC becomes aware of plan information affecting factors used by PBGC in calculating the participant's benefit, PBGC will revise the participant's benefit payment going forward accordingly. If the revision results in a net overpayment, PBGC initiates recoupment. If the participant is receiving benefits and there is a net overpayment on the original benefit determination that is being recouped, the net overpayment amount must be adjusted.

PBGC is proposing to eliminate recoupment on revised benefit determinations in most cases. This means that while future benefit payments must be adjusted to reflect the revised determination, PBGC generally will not initiate recoupment on the revised determination or increase the amount of the net overpayment to be recouped. While revising a benefit determination may be infrequent, it may cause confusion to participants, who rely on the benefit determination they initially received.

The proposed rule provides that PBGC generally will not recoup on revised benefit determinations unless any of the following circumstances exist:

- Benefit payments were made based on false information, error, or omission by the participant that materially affected the benefit amount, benefit entitlement, or eligibility.

⁶ See section 301 of the SECURE 2.0 Act of 2022, Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328 (Dec. 29, 2022).

- PBGC has reason to believe the person receiving the payment knew or should have known the payment was made in error and failed to notify PBGC of the error.

- Benefit payments were reduced by a settlement agreement.

In addition, the proposed change to recoupment on revised benefit determinations would not apply where the participant or beneficiary comes forward with new information that would change their title IV benefit entitlement. This occurs when a domestic relations order (such as a shared payment order or a child support order) is submitted and qualified (so that the order is a “QDRO”) after a benefit determination was issued. PBGC must revise the benefit determination and the net overpayment (if any) where there is a QDRO.

PBGC estimates that, by generally eliminating recoupment on revised benefit determinations, 270 payees will avoid a total of \$8,640 in recoupments each year.

D. Exceptions to Recoupment at 5 Percent

As described earlier in the preamble, PBGC’s current regulation and policy allow for exceptions to the 10 percent cap on recoupment in several situations. PBGC is proposing to codify the policy exceptions that allow PBGC to recoup above the cap to provide more transparency to the recoupment process. The proposed rule provides that PBGC may recoup more than 5 percent of a monthly benefit or use recovery, but generally will not do so unless any of the following circumstances exist:

- Benefit payments were made based on false information, error, or omission by the participant that materially affected the benefit amount, benefit entitlement, or eligibility.
- PBGC has reason to believe the person receiving the payment knew or should have known the payment was made in error and failed to notify PBGC of the error.
- Benefit payments were reduced by a settlement agreement.

E. Administrative Correction and Recovery

As described in the “Background” section earlier in the preamble, recoupment is not the only method of seeking repayment of a benefit overpayment. In appropriate cases, PBGC first

tries to promptly correct a payment error before treating the payment error as a net overpayment subject to recoupment or recovery. This proposed rule would codify this policy of administrative correction. The proposed rule would also codify that if administrative correction was unsuccessful, such as where benefit payments are made after death and PBGC is unable to obtain the funds (*e.g.*, through ACH reclamation or stop payment order), the payment error would be treated as a net overpayment, and PBGC would seek return of the funds via recovery from the person holding the net overpayment, including a financial institution, estate, or other person.

Under the proposed rule, PBGC would also clarify that recovery applies if a participant or beneficiary is not entitled to future benefit payments when a net overpayment is determined (*e.g.*, in a benefit determination). In this situation, there is no payment stream from which to recoup. PBGC would have discretion to use recovery, which reflects current PBGC policy, and PBGC generally would do so in any of the following situations:

- Benefit payments were made after an unambiguous payment end date, that was communicated to the participant by PBGC or the plan administrator of the terminated plan (such as with a term-certain annuity (*e.g.*, a 10-year certain annuity)).
- Benefit payments were made based on false information, error, or omission by the participant that materially affected the benefit amount, benefit entitlement, or eligibility.
- PBGC has reason to believe the person receiving the payment knew or should have known the payment was made in error and failed to notify PBGC of the error.

PBGC is eliminating the discretion it had preserved to seek repayment “by methods other than recouping” where benefits paid after the termination date exceeded the participant’s benefit entitlement under the terminated plan. PBGC has rarely, if ever, relied on this provision as it exists in § 4022.81(a). Eliminating it would enhance clarity for the regulated public and simplify the regulatory structure.

F. Reorganization of Subpart E

PBGC is proposing to reorganize subpart E of part 4022, which includes the regulations for calculating and processing net overpayments and net underpayments. There are no substantive changes to the rules for reimbursement of net underpayments. The rates used to credit interest on net underpayments for May 1998 and earlier are provided in a table to § 4022.82(b)(2). The table is derived from the rates historically used for lump sum valuations, which are posted on PBGC's website at *www.pbgc.gov*. The reorganization and table are only intended to improve the readability and understandability of subpart E.

VI. Section 301 of the SECURE 2.0 Act

In December 2022, Congress enacted SECURE 2.0. Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459. Section 301 addresses the fiduciary duties of ongoing plans regarding correction of benefit overpayments by any pension plan. In addressing plan fiduciaries' discretion for correcting overpayments, it places several limitations on ongoing plans where they decide to pursue collection. For example, a plan cannot seek recovery if the first overpayment occurred more than 3 years before written notification of the overpayment error to the participant or beneficiary, except in the case of fraud or misrepresentation by the participant or beneficiary. Section 301 amends title I of ERISA, adding section 206(h), and its text clearly applies to the duties of fiduciaries of ongoing plans -- for example, it directs a fiduciary to take into account whether the "failure to recover all or part of the overpayment faster than required under [the] funding rules would materially affect the plan's ability to pay benefits due to other participants and beneficiaries[.]" It also amends section 414 of the Code, addressing benefit overpayments and a plan's satisfaction of qualification requirements such as minimum funding and compensation limitations under sections 401(a)(17) and 415(b).

SECURE 2.0, section 301 specifies no changes to PBGC's methodology. And PBGC concludes that section 301's rules for ongoing plans do not carry over to the title IV context. PBGC's termination and trusteeship program is not an individual ongoing pension plan but a government program that pays benefits to participants and beneficiaries of trustee single

employer plans using a combination of trustee plan assets and government insurance funds. Unlike individual pension plans that pay benefits solely in accordance with plan terms, the PBGC program requires PBGC to determine a PBGC-payable benefit, taking into account the detailed limitations under sections 4022 and 4044 of ERISA. PBGC's work often requires years of processing before PBGC can determine final benefit amounts. Clearly PBGC's process for determining title IV benefits contains distinguishing elements not applicable to ongoing plans subject to title I. Lastly, as a government program, PBGC's corrections of overpayments are subject to laws – such as the Federal debt collection procedures and, in some areas, the Payment Integrity Information Act of 2019 – which are not applicable to private, ongoing pension plans.

Notwithstanding the above, PBGC notes that both its current recoupment methodology and the one described in this proposed rule generally conform to the limitations Congress prescribed for ongoing plans in section 301 of SECURE 2.0. The proposed elimination of recoupment on survivor benefits would make this even more so. The special elements and timing in PBGC's determination of title IV benefits, however, prevent PBGC from including a 3-year rule as found in section 206(h)(4)(F) of ERISA.

Request for Public Comments

Section 301 of the SECURE 2.0 Act added section 206(h) to title I of ERISA to address recoupment of inadvertent overpayments from pension plans under title I of ERISA. PBGC is considering to what extent, if any, section 206(h) interacts with this proposed rule and PBGC's recoupment or recovery of overpayments.

PBGC requests comments as to whether the rule should address recoupment or recovery by continuing the actions implemented by the former plan administrator of overpayments made before the termination date and, more broadly, where there is a series of overpayments, some of which occurred before the plan termination date.

VII. Applicability Date

Except as otherwise provided, the amendments described in this proposed rule would apply to recoupment, recovery, or administrative corrections initiated on or after the effective date of the final rule. Recoupment and recovery are initiated by the issuance of a benefit determination or other written notice sent to the participant or beneficiary. Administrative correction is initiated by PBGC action to correct a payment error. The amendments in § 4022.83(b)(1) that would end recoupment at the death of the participant or beneficiary who received the net overpayment would apply for participants and beneficiaries with a date of death on or after the effective date of the final rule. The amendments in § 4022.84(d) that would provide that PBGC will not seek recoupment on a revised benefit determination would apply to revised benefit determinations that are initiated on or after the effective date of the final rule.

However, some of the amendments codify policies and practices that PBGC has followed for many years, and PBGC will continue to follow these policies and practices in the interim.

VIII. Compliance with Rulemaking Guidelines

A. Executive Orders 12866, 13563, and 14192

The Office of Management and Budget (OMB) has determined that this rulemaking is not a “significant regulatory action” under Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed the proposed rule.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Although this proposed rule is not a significant regulatory action, PBGC has examined the economic and policy implications of the rulemaking and has concluded that there would be no significant economic or policy impact because of the proposed rulemaking.

Some of the proposed amendments mentioned earlier in the preamble would merely codify existing PBGC policies and practices. Making these policies and practices more transparent should decrease uncertainty where PBGC has determined there is a benefit overpayment, reducing, in particular, the potential for a participant to be confused by the recoupment method or repayment process generally. Other amendments simplify the recoupment methodology, notably changing it to a flat rate of 5 percent and waiving recoupment on de minimis net overpayment amounts of \$250 or less. PBGC estimates that this change in methodology would not significantly change the overall amount recouped.⁷ A flat rate recoupment would improve overall communications with participants about net overpayments by making recoupment predictable and easier to understand. It would also make administration of recoupment less prone to error, thereby improving PBGC's ability to pay pension benefits on time and accurately.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory programs for rules that “may be outmoded, ineffective, insufficient, or excessively burdensome.” These rules should be modified, streamlined, expanded, or repealed as appropriate. This proposed rulemaking is consistent with the principles for review under Executive Order 13563 because it would improve PBGC's decades-old regulation on recoupment of benefit overpayments by clarifying and simplifying the repayment process and providing greater transparency for when PBGC may administratively correct payment errors and recover net overpayments.

Executive Order 14192 requires agencies to identify at least ten existing regulations to be repealed when the agency issues a new regulation and that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with prior regulations. As OMB explains in its memorandum, “Guidance

⁷ While the amount that PBGC recoups varies year-to-year, overall the amount PBGC recoups is not significant. For example, in calendar year 2023, PBGC recouped \$10.9 million from 43,530 participants and beneficiaries. In the same year, PBGC paid \$6 billion in benefit payments.

Implementing Section 3 of Executive Order 14192, Titled ‘Unleashing Prosperity Through Deregulation,’” an “Executive Order 14192 regulatory action” is defined as a significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero.⁸ Because this proposed rule is not a significant regulatory action under Executive Order 12866, it is not an Executive Order 14192 regulatory action. However, PBGC believes this rule, if finalized, qualifies as an “Executive Order 14192 deregulatory action” (as defined in M-25-20), by simplifying the recoupment methodology, improving communications to participants, and promoting transparency, which are intended to reduce any regulatory burden on the public. This includes eliminating a provision, under current rules, for administrative discretion in cases where benefits paid after the termination date exceeded the participant’s benefit entitlement under the terminated plan.

Moreover, the proposed rule would satisfy the goal of “reduc[ing] the real resources used by Federal agencies to accomplish their goals,” with estimated annual cost savings to PBGC of \$356,000 due to limiting recoupment from surviving beneficiaries. The estimated savings are from letters not sent to participants; time not spent calculating recoupment; and time not spent answering questions from participants. And the proposed rule would further reduce costs on the regulated community, with estimated annual cost savings of \$4,480 due to reduced attorney time and fees where a participant disagrees with PBGC’s application of recoupment or recovery and uses an attorney in preparing an appeal. The proposed rule’s switch to a flat-rate methodology, its removal of the ambiguous discretionary provision, and its clarifications regarding when PBGC will use recovery instead of recoupment (currently described only in internal agency manuals), will reduce attorney review time and the need to obtain documents beyond the regulation.

⁸ Office of Management and Budget, Memorandum M-25-20: Guidance Implementing Section 3 of Executive Order 14192, Titled “Unleashing Prosperity Through Deregulation” (Mar. 26, 2025).

B. Regulatory Flexibility Act

This rulemaking affects only individuals. Therefore, PBGC certifies that, if adopted, the amendments will not have a significant economic effect on a substantial number of small entities. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, PBGC proposes to amend 29 CFR part 4022 to read as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. Revise subpart E to read as follows:

SUBPART E—PBGC RECOUPMENT AND REIMBURSEMENT OF BENEFIT OVERPAYMENTS AND UNDERPAYMENTS

Sec.

4022.81 Correction of benefit overpayments and underpayments — in general.

4022.82 Netting benefit overpayments and underpayments.

4022.83 Recoupment of benefit overpayments — in general.

4022.84 Recoupment — exceptions.

4022.85 Recovery of benefit overpayments.

4022.86 Administrative correction.

4022.87 Reimbursement of benefit underpayments.

§ 4022.81 Correction of benefit overpayments and underpayments — in general.

This subpart sets forth rules about PBGC's responses to overpayments and underpayments of benefits of participants and beneficiaries in plans of which PBGC is trustee.

PBGC's responses include recoupment, recovery, administrative correction, and reimbursement. This subpart is not a complete description of options and methods that may be available to PBGC.

§ 4022.82 Netting benefit overpayments and underpayments.

(a) *Amount to be recouped or reimbursed.* In order to determine the amount to be recouped from, or reimbursed to, a participant or beneficiary, PBGC will calculate a monthly account balance for each month ending after the termination date. PBGC will start with a balance of zero as of the end of the calendar month ending immediately before the termination date and determine the account balance as of the end of each month thereafter as follows:

(1) *Debit for overpayments.* PBGC will subtract from the account balance the amount of overpayments made in that month. Only overpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA will be included.

(2) *Credit for underpayments.* PBGC will add to the account balance the amount of underpayments made in that month. Only underpayments made on or after the termination date will be included.

(3) *PPA 2006 bankruptcy termination.* The provisions of paragraphs (a)(1) and (2) of this section regarding the overpayments and underpayments that will be included in the account balance apply regardless of whether the termination is a PPA 2006 bankruptcy termination.

(b) *Credit for interest on net underpayments.* If at the end of a month there is a positive account balance (a net underpayment), PBGC will add to the account balance interest thereon for that month using —

(1) For months after May 1998, the applicable Federal mid-term rate (as determined by the Secretary of the Treasury pursuant to section 1274(d)(1)(C)(ii) of the Code) for that month (or, where the rate for a month is not available at the time PBGC calculates the amount to be

recouped or reimbursed, the most recent month for which the rate is available) based on monthly compounding; or

(2) For May 1998 and earlier months, the rate for the last day of the month set forth in table 1 to this paragraph (b)(2).

Table 1 to paragraph (b)(2) - Rates Used to Credit Interest on Net Underpayments May 1998 and Earlier

On or after	Before	Rate (Percent)
09/02/1974	10/01/1975	8.00
10/01/1975	01/01/1976	7.75
01/01/1976	03/01/1976	8.00
03/01/1976	06/01/1976	7.25
06/01/1976	09/01/1976	7.25
09/01/1976	12/01/1976	7.00
12/01/1976	03/01/1977	7.00
03/01/1977	06/01/1977	7.00
06/01/1977	12/01/1977	6.75
12/01/1977	03/01/1978	6.75
03/01/1978	06/01/1978	7.00
06/01/1978	09/01/1978	7.25
09/01/1978	03/01/1979	7.25
03/01/1979	06/01/1979	7.50
06/01/1979	09/01/1979	7.50
09/01/1979	12/01/1979	7.75
12/01/1979	03/01/1980	8.50
03/01/1980	06/01/1980	8.75
06/01/1980	09/01/1980	8.75
09/01/1980	12/01/1980	9.00
12/01/1980	01/01/1981	9.25
01/01/1981	02/01/1981	9.50
02/01/1981	04/01/1981	9.75
04/01/1981	06/01/1981	10.00
06/01/1981	07/01/1981	10.25
07/01/1981	08/01/1981	10.50
08/01/1981	10/01/1981	10.25
10/01/1981	11/01/1981	10.50
11/01/1981	12/01/1981	10.75
12/01/1981	01/01/1982	11.00
01/01/1982	02/01/1982	10.50
02/01/1982	03/01/1982	10.75
03/01/1982	06/01/1982	11.00
06/01/1982	08/01/1982	10.75
08/01/1982	10/01/1982	11.00

10/01/1982	11/01/1982	10.75
11/01/1982	12/01/1982	10.50
12/01/1982	01/01/1983	10.25
01/01/1983	02/01/1983	10.00
02/01/1983	04/01/1983	9.75
04/01/1983	06/01/1983	9.50
06/01/1983	09/01/1983	9.25
09/01/1983	02/01/1984	9.50
02/01/1984	03/01/1984	9.75
03/01/1984	04/01/1984	9.50
04/01/1984	05/01/1984	9.75
05/01/1984	07/01/1984	10.00
07/01/1984	08/01/1984	10.50
08/01/1984	09/01/1984	10.75
09/01/1984	11/01/1984	10.50
11/01/1984	12/01/1984	10.25
12/01/1984	01/01/1985	10.00
01/01/1985	03/01/1985	9.75
03/01/1985	04/01/1985	9.50
04/01/1985	05/01/1985	9.75
05/01/1985	06/01/1985	10.00
06/01/1985	07/01/1985	9.75
07/01/1985	10/01/1985	9.25
10/01/1985	01/01/1986	9.00
01/01/1986	02/01/1986	8.75
02/01/1986	04/01/1986	8.50
04/01/1986	05/01/1986	8.00
05/01/1986	10/01/1986	7.75
10/01/1986	11/01/1986	7.50
11/01/1986	12/01/1986	7.75
12/01/1986	03/01/1987	7.50
03/01/1987	06/01/1987	7.25
06/01/1987	07/01/1987	7.50
07/01/1987	10/01/1987	7.75
10/01/1987	11/01/1987	8.00
11/01/1987	03/01/1988	8.25
03/01/1988	04/01/1988	8.00
04/01/1988	06/01/1988	7.75
06/01/1988	09/01/1988	8.00
09/01/1988	11/01/1988	8.25
11/01/1988	04/01/1989	7.75
04/01/1989	06/01/1989	8.00
06/01/1989	08/01/1989	7.75
08/01/1989	09/01/1989	7.50
09/01/1989	10/01/1989	7.25
10/01/1989	12/01/1989	7.50

12/01/1989	03/01/1990	7.25
03/01/1990	06/01/1990	7.50
06/01/1990	07/01/1990	7.75
07/01/1990	09/01/1990	7.50
09/01/1990	10/01/1990	7.25
10/01/1990	11/01/1990	7.50
11/01/1990	12/01/1990	7.75
12/01/1990	01/01/1991	7.50
01/01/1991	03/01/1991	7.25
03/01/1991	06/01/1991	7.00
06/01/1991	07/01/1991	6.75
07/01/1991	10/01/1991	7.00
10/01/1991	01/01/1992	6.75
01/01/1992	02/01/1992	6.50
02/01/1992	03/01/1992	6.25
03/01/1992	07/01/1992	6.50
07/01/1992	08/01/1992	6.25
08/01/1992	09/01/1992	6.00
09/01/1992	12/01/1992	5.75
12/01/1992	01/01/1993	6.00
01/01/1993	02/01/1993	5.75
02/01/1993	03/01/1993	5.50
03/01/1993	04/01/1993	5.25
04/01/1993	08/01/1993	5.00
08/01/1993	10/01/1993	4.75
10/01/1993	11/01/1993	4.25
11/01/1993	01/01/1994	4.25
01/01/1994	04/01/1994	4.50
04/01/1994	05/01/1994	4.75
05/01/1994	07/01/1994	5.25
07/01/1994	08/01/1994	5.50
08/01/1994	09/01/1994	5.75
09/01/1994	11/01/1994	5.50
11/01/1994	12/01/1994	6.00
12/01/1994	01/01/1995	6.25
01/01/1995	04/01/1995	6.00
04/01/1995	05/01/1995	5.75
05/01/1995	07/01/1995	5.50
07/01/1995	09/01/1995	4.75
09/01/1995	10/01/1995	5.00
10/01/1995	12/01/1995	4.75
12/01/1995	02/01/1996	4.50
02/01/1996	04/01/1996	4.25
04/01/1996	05/01/1996	4.75
05/01/1996	08/01/1996	5.00
08/01/1996	11/01/1996	5.25

11/01/1996	12/01/1996	5.00
12/01/1996	01/01/1997	4.75
01/01/1997	02/01/1997	4.50
02/01/1997	03/01/1997	4.75
03/01/1997	04/01/1997	5.00
04/01/1997	05/01/1997	4.75
05/01/1997	06/01/1997	5.00
06/01/1997	08/01/1997	5.25
08/01/1997	09/01/1997	4.75
09/01/1997	10/01/1997	4.50
10/01/1997	11/01/1997	4.75
11/01/1997	01/01/1998	4.50
01/01/1998	06/01/1998	4.25

(c) *No interest on net overpayments.* If at the end of a month there is a negative account balance (a net overpayment), there will be no interest adjustment for that month.

§ 4022.83 Recoupment of benefit overpayments — in general.

(a) *When recoupment applies.* Recoupment is the practice of reducing future periodic benefit payments from PBGC to a participant or beneficiary to correct a net overpayment of benefits to the participant or beneficiary as calculated under § 4022.82. Recoupment is available at any time PBGC determines that —

(1) A participant’s or beneficiary’s account balance is a net overpayment, and the participant or beneficiary is, as of the benefit determination date or if later as of the time the net overpayment is determined, entitled to receive future benefit payments; and

(2) The net overpayment is greater than the “de minimis net overpayment amount” defined for purposes of this part as \$250. PBGC may, in its discretion, decide not to recoup additional net overpayment amounts that it determines to be de minimis.

(b) *How recoupment works.* A net overpayment is recouped by reducing by 5 percent each periodic benefit payment from PBGC to a participant or beneficiary until the earliest of when —

(1) The participant or beneficiary dies;

(2) The amount remaining to be recouped is less than 5 percent of the participant's or beneficiary's benefit payment; or

(3) The net overpayment is repaid in full.

(c) *Effect of recoupment.* When recoupment ends as described in paragraph (b) of this section, the recoupment constitutes full satisfaction of debt for overpayment of the recoverable amount.

(d) *Notice of recoupment.* Before recouping, PBGC will provide a notice to the participant or beneficiary of the amount of the net overpayment and of the amount of the reduced benefit computed under this section.

(e) *Recoupment from surviving beneficiaries.* As provided in paragraph (b)(1) of this section, recoupment of an overpayment made to a participant does not continue to the surviving spouse or any other surviving beneficiary.

(f) *Repayment of a net overpayment.* PBGC may accept repayment ahead of the recoupment schedule.

§ 4022.84 Recoupment — exceptions.

(a) *Fairness.* In exercising its discretion under this subpart, PBGC will treat like cases in like manner.

(b) *Higher recoupment rate.* PBGC may recoup at a rate higher than the 5 percent recoupment rate provided in § 4022.83(b) or use recovery under part 4903 of this chapter in appropriate circumstances, such as —

(1) Where benefit payments were made based on false information, error, or omission by the participant or beneficiary that materially affected the benefit amount, benefit entitlement, or eligibility;

(2) Where PBGC has reason to believe that the person who received a benefit overpayment knew or should have known that the payment was made in error and failed to notify PBGC of the error; or

(3) Where there is a settlement agreement that reduces the participant's or beneficiary's benefit payments.

(c) *No payments to recoup against.* Where no future benefit stream exists as of the benefit determination date or if later as of the time the net overpayment is determined, PBGC may, in its discretion, seek recovery under part 4903 of this chapter.

(d) *Revised benefit determinations.* If a participant's or beneficiary's monthly benefit amount payable going forward is decreased by a revised benefit determination, PBGC will not increase the amount of the net overpayment to be recouped, except in appropriate circumstances, such as where the circumstances in paragraphs (b)(1) through (3) of this section exist, or in the case of a post-benefit determination qualified domestic relations order.

(e) *De minimis net overpayments and appeals.* If a participant or beneficiary has a net overpayment that is not zero and that is equal to or less than the de minimis net overpayment amount described in § 4022.83(a)(2), and the net overpayment increases because unadjusted benefit payments continue during the pendency of the participant's or beneficiary's appeal to the PBGC Appeals Board, PBGC nevertheless will regard the net overpayment as not having increased during the pendency of such appeal.

§ 4022.85 Recovery of benefit overpayments.

(a) *Recovery — in general.* This section deals generally with the scope of recovery for net overpayments. Under § 4903.2 of this chapter, recovery applies to the collection of debts owed to PBGC other than those subject to recoupment. As specified in § 4022.84, PBGC may combine recovery with recoupment in exceptional cases.

(b) *Recovery; cases when sought.* PBGC generally will seek recovery in cases where:

(1) Benefit payments were made to a participant or beneficiary after an unambiguous payment end date that was communicated to the participant or beneficiary by a plan administrator of the terminated plan or PBGC.

(2) Benefit payments were made to a participant or beneficiary based on false information, error, or omission by the participant or beneficiary that materially affected the benefit amount, benefit entitlement, or eligibility.

(3) PBGC has reason to believe that the person who received a benefit overpayment knew or should have known that the payment was made in error and failed to notify PBGC of the error.

(c) *Payments after death.* Where benefit payments are made after death and PBGC is unable to obtain the funds through administrative correction, PBGC generally seeks return of the funds under part 4903 of this chapter from the financial institution, estate, or other person holding the overpayment.

§ 4022.86 Administrative correction.

(a) *Administrative correction —in general.* Administrative correction refers to rectifying payment errors such as duplicate payments, clerical or arithmetic errors, payments made after death, or payments to the incorrect account or payee.

(b) *Administrative correction methods.* PBGC will seek to administratively correct payment errors promptly through methods such as stop payment orders, reclamation or reversal of electronic payments, or delaying or suspending temporarily benefit payments.

(c) *Unsuccessful administrative correction.* If PBGC is unable to administratively correct payment errors, any excess payment constitutes a debt to the Federal Government and PBGC generally seeks recovery under part 4903 of this chapter.

§ 4022.87 Reimbursement of benefit underpayments.

(a) *Reimbursement of benefit underpayments.* At any time PBGC determines that a participant's or beneficiary's account balance is a net underpayment as calculated under § 4022.82, PBGC will reimburse the participant or beneficiary for the net underpayment in a single payment.

(b) *Death of participant.* If PBGC determines that, at the time of a participant's death, there was a net underpayment to the participant —

(1) *Future annuity payments.* If the benefit is in the form of a joint-and-survivor or other annuity under which payments may continue after the participant's death, PBGC will pay the underpayment to the person who is receiving survivor benefits; for this purpose, if the person receiving survivor benefits is an alternate payee under a qualified domestic relations order, PBGC will treat the benefit as if payments do not continue after the participant's death (see paragraph (b)(2) of this section).

(2) *No future annuity payments.* If the benefit is not in the form of a joint-and-survivor or other annuity (*e.g.*, a certain-and-continuous annuity) under which payments may continue after the participant's death or although the benefit is in such a form payments do not continue after the participant's death (*i.e.*, in the case of a joint-and-survivor annuity, the person designated to receive survivor benefits predeceased the participant or, in the case of another annuity under which payments may continue after the participant's death the participant died with no payments owed for future periods), PBGC will pay the underpayment to the person determined under the rules in §§ 4022.91 through 4022.95.

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