

§ 4022.83

29 CFR Ch. XL (7-1-05 Edition)

the net overpayment and of the amount of the reduced benefit computed under this section.

(4) *Waiver of de minimis amounts.* The PBGC may, in its discretion, decide not to recoup net overpayments that it determines to be *de minimis*.

(5) *Final installment.* The PBGC will cease recoupment one month early if the amount remaining to be recouped in the final month is less than the amount of the monthly reduction.

(b) *Full repayment through recoupment.* Recoupment under this section constitutes full repayment of the net overpayment.

[63 FR 29354, May 29, 1998]

§ 4022.83 PBGC reimbursement of benefit underpayments.

When the PBGC determines that there has been a net benefit underpayment made with respect to a participant, it shall pay the participant or beneficiary the amount of the net underpayment, determined in accordance with § 4022.81(c), in a single payment.

[61 FR 34028, July 1, 1996, as amended at 63 FR 29355, May 29, 1998]

Subpart F—Certain Payments Owed Upon Death

SOURCE: 67 FR 16957, Apr. 8, 2002, unless otherwise noted.

§ 4022.91 When do these rules apply?

(a) *Types of benefits.* Provided the conditions in paragraphs (b) and (c) of this section are satisfied, these rules (§§ 4022.91 through 4022.95) apply to any benefits we may owe you (including benefits we owe you because your plan owed them) at the time of your death, such as a payment of a lump-sum benefit that we calculated as of your plan's termination date but have not yet paid you or a back payment to reimburse you for monthly underpayments. We may owe you benefits at the time of your death if—

(1) You are a participant in a terminated plan;

(2) You are a beneficiary (including an alternate payee) of a participant; or

(3) You are a designee or other payee (*e.g.*, a participant's next of kin) under these rules, as explained in § 4022.93.

(b) *Payments do not continue after death.* These rules apply only if payments do not continue after your death. (If payments continue after your death, we will make up any underpayment to you at the time of your death under the rule in § 4022.81(d)(2)(i) by paying it to the person who is entitled to receive those continuing payments.) Payments do not continue after your death if—

(1) Your benefit is not in the form of a joint-and-survivor or other annuity under which payments may continue after your death (*e.g.*, a certain-and-continuous annuity);

(2) Your benefit is in the form of a joint-and-survivor annuity and the person designated to receive survivor benefits died before you; or

(3) Your benefit is in the form of another type of annuity under which payments may continue after your death (*e.g.*, a certain-and-continuous annuity) but you die with no payments owed for future periods.

(c) *Time of death.* These rules apply only if you die—

(1) On or after the date we take over your plan (as trustee); or

(2) Before the date we take over your plan, to the extent that, by that date, the plan administrator has not paid all benefits owed to you at the time of your death.

(d) *Effect of plan or will.* These rules apply even if there is a contrary provision in a plan or will.

§ 4022.92 What definitions do I need to know for these rules?

You need to know three definitions from § 4001.2 of this chapter (PBGC, person, and plan) and the following definitions:

“We” means the PBGC.

“You” means the person to whom we may owe benefits at the time of death.

§ 4022.93 Who will get benefits the PBGC may owe me at the time of my death?

(a) *In general.* Except as provided in paragraphs (b) and (c) of this section (which explain what happens if you die before the date we take over your plan or within 180 days after the date we take over your plan), we will pay any benefits we owe you at the time of your

death to the person(s) surviving you in the following order—

(1) *Designee with the PBGC.* The person(s) you designated with us to get any benefits we may owe you at the time of your death. See § 4022.94 for information on designating with us.

(2) *Spouse.* Your spouse. We will consider a person to whom you are married to be your spouse even if you and that person are separated, unless a decree of divorce or annulment has been entered in a court.

(3) *Children.* Your children and descendants of your deceased children.

(i) *Adopted children.* In determining who is a child or descendant, an adopted child is treated the same way as a natural child.

(ii) *Child dies before parent.* If one of your children dies before you, any of your grandchildren through that deceased child will equally divide that deceased child's share; if one of your grandchildren through that deceased child dies before that deceased child, any of your great-grandchildren through that deceased grandchild will equally divide that deceased grandchild's share; and so on.

(4) *Parents.* Your parents. A parent includes an adoptive parent.

(5) *Estate.* Your estate, provided your estate is open.

(6) *Next of kin.* Your next of kin in accordance with applicable state law.

(b) *Pre-trusteeship deaths.* If you die before the date we take over your plan and, by that date, the plan administrator has not paid all benefits owed to you at the time of your death, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get those benefits (provided the designation clearly applies to those benefits). If there is no such designation, we will pay those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a) (2) through (a)(6) of this section.

(c) *Deaths shortly after trusteeship.* If you die within 180 days after the date we take over your plan and you have not designated anyone with the PBGC under paragraph (a)(1) of this section, we will pay any benefits we owe you at the time of your death to the person(s) designated by or under the plan to get

those benefits (provided the designation clearly applies to those benefits) before paying those benefits to your spouse, children, parents, estate, or next of kin under the rules in paragraphs (a) (2) through (a)(6) of this section.

§ 4022.94 What are the PBGC's rules on designating a person to get benefits the PBGC may owe me at the time of my death?

(a) *When you may designate.* At any time on or after the date we take over your plan, you may designate with us who will get any benefits we owe you at the time of your death.

(b) *Change of designee.* If you want to change the person(s) you designate with us, you must submit another designation to us.

(c) *If your designee dies before you.* (1) *In general.* If the person(s) you designate with us dies before you or at the same time as you, we will treat you as not having designated anyone with us (unless you named an alternate designee who survives you). Therefore, you should keep your designation with us current.

(2) *Simultaneous deaths.* If you and a person you designated die as a result of the same event, we will treat you and that person as having died at the same time, provided you and that person die within 30 days of each other.

§ 4022.95 Examples.

The following examples show how the rules in §§ 4022.91 through 4022.94 apply. For examples on how these rules apply in the case of a certain-and-continuous annuity, see § 4022.104.

At the time of his death, Charlie was receiving payments under a joint-and-survivor annuity. Charlie designated Ellen to receive survivor benefits under his joint-and-survivor annuity. We underpaid Charlie for periods before his death. At the time of his death, we owed Charlie a back payment to reimburse him for those underpayments.

(a) *Example 1: where surviving beneficiary is alive at participant's death.* Ellen survived Charlie. As explained in § 4022.91(b), because Ellen is entitled to survivor benefits under the joint-and-survivor annuity, we would pay Ellen the back payment.