

(ii) For May 1998 and earlier months, the immediate annuity rate established for lump sum valuations as set forth in Table II of Appendix B of part 4044 of this chapter.

(4) *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.

(d) *Death of participant*—(1) *Benefit overpayments.* If the PBGC determines that, at the time of a participant's death, there was a net overpayment to the participant—

(i) *Future annuity payments.* If the participant was entitled to future annuity payments as of the plan's termination date, the PBGC will (except as provided in paragraph (a) of this section) recoup the overpayment from the person (if any) who is receiving survivor benefits under the annuity.

(ii) *No future annuity payments.* If the participant was not entitled to future annuity benefits as of the plan's termination date, the PBGC may seek repayment of the overpayment from the participant's estate.

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

(i) *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, the 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, the PBGC will treat the benefit as if payments do not continue after the participant's death (see paragraph (d)(2)(ii) of this section).

(ii) *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), the PBGC will pay the underpayment to the person determined under the rules in §§ 4022.91 through 4022.95.

[63 FR 29354, May 29, 1998, as amended at 67 FR 16956, Apr. 8, 2002]

§ 4022.82 Method of recoupment.

(a) *Future benefit reduction.* The PBGC will recoup net overpayments of benefits by reducing the amount of each future benefit payment to which the participant or any beneficiary is entitled by the fraction determined under paragraphs (a)(1) and (a)(2) of this section, except that benefit reduction will cease when the amount (without interest) of the net overpayment is recouped. Notwithstanding the preceding sentence, the PBGC may accept repayment ahead of the recoupment schedule.

(1) *Computation.* The PBGC will determine the fractional multiplier by dividing the amount of the net overpayment by the present value of the benefit payable with respect to the participant under title IV of ERISA. The PBGC will determine the present value of the benefit to which a participant or beneficiary is entitled under title IV of ERISA as of the termination date, using the PBGC interest rates and factors in effect on that date. The PBGC may, however, utilize a different date of determination if warranted by the facts and circumstances of a particular case.

(2) *Limitation on benefit reduction.* Except as provided in paragraph (a)(1) of this section, the PBGC will reduce benefits with respect to a participant or beneficiary by no more than the greater of—

(i) Ten percent per month; or

(ii) The amount of benefit 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.

(3) *PBGC notice to participant or beneficiary.* Before effecting a benefit reduction pursuant to this paragraph, the PBGC will notify the participant or beneficiary in writing of the amount of

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