# PUBLIC SUBMISSION

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## General Comment

See attached file(s)

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## Attachments

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Submitted via www.regulations.gov (and by email to reg.comments@pbgc.gov)

Joseph Krettek

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**RE: Comments on RIN 1212-AB47 — "Improvements to Rules on Recoupment of Benefit Overpayments," 91 FR 40954 (July 6, 2026)**

Dear Mr. Krettek:

I submit the following comments on PBGC's proposed rule simplifying recoupment of benefit overpayments under subpart E of 29 CFR part 4022. I do not dispute that PBGC has both the authority and the obligation to recoup overpayments; as the D.C. Circuit recognized in Bechtel v. PBGC, 781 F.2d 906, 907 (D.C. Cir. 1986), Congress did not intend administrative delay to create a windfall for some participants at the expense of the guaranty system and other beneficiaries. I support the rule's core participant-protective improvements, particularly the flat 5 percent rate, the $250 de minimis waiver, the elimination of recoupment from surviving beneficiaries, and the appeal- pendency protection for participants near the de minimis threshold. My comments below are directed at strengthening the due-process protections and repayment flexibility available to participants who are, and remain, subject to legitimate recoupment, without diminishing PBGC's ultimate ability to recover amounts properly owed.

## I. PBGC Should Adopt a Hardship-Based Waiver or Rate Adjustment, Analogous to the Social Security Administration's Overpayment Waiver Standard

The proposed flat 5 percent rate and $250 de minimis threshold apply uniformly regardless of a participant's income level or ability to absorb a benefit reduction. For a participant whose PBGC benefit is $400 per month and who has no other meaningful source of retirement income, a 5 percent reduction, though modest to a participant with a $3,000 monthly benefit, may represent a genuine hardship. The Social Security Administration's long-standing overpayment regulations provide a useful model: SSA may waive recovery of an overpayment where the overpaid individual was without fault and recovery "would defeat the purpose of title II" (that is, would deprive the individual of income needed for ordinary and necessary living expenses) or would be "against equity and good conscience." 20 CFR 404.506-.509. I recommend that PBGC adopt a comparable individualized hardship standard — available on request, not automatically — under which a participant without fault in causing the overpayment may seek a reduced recoupment rate or an extended repayment schedule upon a showing that the standard 5 percent reduction would leave the participant unable to meet ordinary living expenses. This preserves PBGC's ability to recover the overpayment in full over time while ensuring that the pace of recovery does not itself cause the participant financial harm.

## II. PBGC Should Offer Participants the Option of an Extended, Lower-Percentage Repayment Schedule

Rather than a single mandatory 5 percent rate, I recommend that PBGC offer participants the choice between the standard 5 percent reduction and an extended repayment schedule at a lower monthly percentage (for example, 2 or 3 percent), subject to a defined maximum extension of the repayment period (for example, no more than double the time the standard rate would require). This approach is consistent with installment-arrangement principles reflected in the Federal Claims Collection Standards, 31 CFR parts 900-904, which direct agencies collecting debts owed to the United States to consider a debtor's ability to pay in structuring repayment terms. Importantly, this option would not reduce PBGC's ultimate recovery, as the full overpayment would still be collected, only over a longer period, while giving participants meaningful control over the monthly impact on their benefit. This is a change that benefits both participants, by easing monthly cash-flow strain, and PBGC, by reducing the likelihood of hardship-driven appeals, complaints, or requests for waiver.

## III. PBGC Should Clarify That Recoupment Is Stayed During the Pendency of a Good-Faith Appeal for All Participants, Not Only Those Near the De Minimis Threshold

Proposed § 4022.84(e) protects a participant with a net overpayment at or below the de minimis threshold from having that overpayment treated as having grown during the pendency of an appeal to the PBGC Appeals Board. This is a valuable protection, but the proposed rule does not clearly state whether recoupment itself is paused for participants with overpayments above the de minimis threshold while a good-faith appeal of the underlying benefit determination is pending. Requiring a participant to have their benefit reduced during the same period they are actively disputing the basis for that reduction risks undermining the value of the appeal right, particularly for participants who may feel practical pressure to abandon a meritorious appeal rather than accept a reduced monthly benefit while it is pending. I recommend that PBGC clarify, for all participants regardless of overpayment size, that recoupment is stayed during the pendency of a timely appeal, and that if the appeal is resolved in PBGC's favor, the paused recoupment period is added to, rather than compressed into, the remaining repayment schedule so that PBGC's ultimate recovery is not reduced.

**IV. Recoupment Notices Should Explain Appeal Rights, Any Stay of Recoupment, and the Availability of Hardship or Alternative Repayment Arrangements**

Proposed § 4022.83(d) requires PBGC to notify a participant of the amount of the net overpayment and the amount of the reduced benefit before recoupment begins, but does not specify that the notice must also explain the participant's right to appeal to the PBGC Appeals Board, whether recoupment is stayed during a timely appeal, or the availability of hardship consideration or an alternative repayment schedule as recommended above. I recommend that PBGC's implementing notice requirements be revised to explicitly require this information, so that participants are aware of their options before a reduction in their monthly income takes effect rather than learning of them only after contacting PBGC or an attorney.

**V. The "Knew or Should Have Known" Standard for a Higher Rate or Lump-Sum Recovery Should Be Defined With Objective Factors**

Proposed §§ 4022.84(b)(2) and 4022.85(b)(3) allow PBGC to recoup at a rate higher than 5 percent, or to pursue recovery rather than gradual recoupment, where PBGC has reason to believe the recipient "knew or should have known" the payment was made in error and failed to notify PBGC. I recognize that this standard serves a legitimate purpose: participants who are on notice of a likely error and say nothing should be treated differently from those who reasonably relied on the amount PBGC told them they were entitled to receive. To ensure this distinction is applied consistently and fairly, however, I recommend that PBGC identify in the final rule the objective factors it will weigh in a constructive-knowledge determination — for example, the size and duration of the discrepancy relative to the amount stated in the participant's benefit determination, whether the participant received clear written notice of the correct amount, and the participant's opportunity to have discovered the error. Defining these factors protects participants from inconsistent or after-the-fact application of the standard while preserving PBGC's ability to pursue a faster or larger recovery from participants who are genuinely at fault.

**VI. Response to PBGC's Request for Comment: Section 206(h) of ERISA Should Limit Recoupment of Overpayments That Accrued Before a Plan's Termination Date**

PBGC requests comment on "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." 91 FR at 40959. I recommend that PBGC apply the three-year limitation in section 206(h) of ERISA, as added by section 301 of the SECURE 2.0

Act, to the portion of a net overpayment that accrued while the plan was still an ongoing plan administered by its own fiduciary, prior to the plan's termination date. Section 206(h) reflects Congress's considered judgment that overpayments to participants should generally not be pursued more than three years after notice, absent fraud or misrepresentation, precisely because of the hardship that extended look-back periods can impose on participants who reasonably relied on the amounts they were paid. PBGC generally succeeds to the powers and responsibilities of the plan administrator under section 4042(d) of ERISA upon becoming statutory trustee; a pre-termination overpayment that would have been subject to section 206(h)'s limitation in the hands of the original fiduciary should not lose that protection solely because the plan later terminates into PBGC's trusteeship. This limitation would not apply to overpayments that first arise after the termination date under PBGC's own title IV benefit determinations, where PBGC's distinct statutory role and processing timeline, as described in the preamble, provide a sound basis for different treatment.

## VII. PBGC Should Disclose and Consider Mitigating the Effect on Participants Who Would Move From a Below-5-Percent Actuarial Rate to the Flat 5 Percent Rate

The preamble's cost-benefit discussion quantifies participants who benefit from the proposed changes but does not disclose that some participants — those whose overpayment is small relative to a large benefit present value, such as PBGC's own example of a $4,000 overpayment against a $100,000 present value (a 4 percent rate under the current methodology) — would face a higher monthly reduction under the proposed flat 5 percent rate than under the current rule. See 91 FR at 40956-57. I recommend that PBGC disclose an estimate of how many future overpayment recipients are likely to be affected in this way, and consider applying the lesser of the current actuarial rate or the new flat 5 percent rate, so that the simplification benefits the great majority of participants, as intended, without increasing the monthly burden on this smaller group.

## Conclusion

The changes above are intended to strengthen the due-process protections and repayment flexibility available to participants without reducing PBGC's ability to recover overpayments in full over time. I ask that PBGC address these points, and in particular provide a substantive response to the section 206(h) question on which it specifically requested comment, before issuing a final rule.

Respectfully submitted,