

## **Comment on Improvements to Rules on Recoupment of Benefit Overpayments**

**Docket No. RIN 1212–AB47**

### **Support for the Proposed Rule**

I support the overall direction and intent of PBGC’s proposed rule on recoupment of benefit overpayments. PBGC has taken meaningful steps to simplify recoupment, improve fairness, and make the process more understandable for participants. The shift from an actuarial reduction to a flat five-percent recoupment rate is a clear improvement and straightforward. PBGC also notes that the current methodology is unclear, unpredictable, and relies on actuarial concepts unfamiliar to many participants. A flat rate directly advances PBGC’s goals of clarity, predictability, and administrative efficiency.

I also support PBGC’s decision to end recoupment from surviving spouses and other beneficiaries. PBGC’s estimate that thousands of beneficiaries will avoid nearly \$900,000 in reductions each year shows the practical value of this change and aligns with PBGC’s fairness goals.

The proposal to eliminate recoupment on most revised benefit determinations is another positive step. PBGC recognizes that revised determinations can cause confusion for participants who relied on the original determination. Limiting recoupment in these situations is consistent with PBGC’s aim of making the repayment process clearer and more predictable.

Codifying PBGC’s longstanding administrative correction and recovery practices adds needed transparency. PBGC emphasizes that the current structure is difficult for participants to understand, and bringing these practices into regulation helps participants know what to expect and strengthens confidence in the process.

Although I support the general thrust of the proposed rule, several adjustments would make it more balanced and more protective of participants while still advancing PBGC’s goals of clarity, fairness, predictability, and efficiency.

### **Time Limits on Recoupment**

PBGC explains that its benefit determinations often require years of processing, which is precisely why a time limit on recoupment is needed. Allowing indefinite recoupment creates an unfair asymmetry. Participants are expected to act promptly when asserting rights under ERISA, and PBGC applies timeliness standards when evaluating participant claims. Yet PBGC reserves for itself an unlimited window to correct historical errors, even when the delay is entirely attributable to PBGC. Although laches rarely applies against the federal government, PBGC has ample Title IV discretion to set equitable limits on its own collection actions. When agency delays span years, the resulting prejudice to blameless retirees supports a reliance-based mitigation approach similar to equitable estoppel.

A defined recoupment cap would align PBGC's practices with standard ERISA look-back periods. A reasonable adjustment would be to prohibit recoupment of overpayments first made more than seven or ten years before the benefit determination, unless fraud or misrepresentation is involved.

In addition to a look-back limit, PBGC should adopt a look-forward cap. Recoupment reductions should automatically terminate after five or seven years, or once the principal is recovered, whichever comes first. This prevents younger retirees or surviving beneficiaries from facing a lifelong 5% reduction due to a small error made years earlier, and aligns with PBGC's stated goals of fairness and predictability.

### **Overpayments Caused by PBGC Delay or Error**

PBGC acknowledges that participants rely heavily on the benefit determinations they receive and that subsequent revisions cause additional confusion. The same equitable and reliance concerns arise when PBGC's significant delay or calculations cause an overpayment.

Section 301 of SECURE 2.0 sharply limits recoupment for unintentional overpayments in private plans, creating a clear baseline of participant protection. Although PBGC operates under Title IV rather than the provisions amended by SECURE 2.0, ERISA's underlying intent is consistent: safeguarding retirement security. ERISA § 4002(a)(2) directs PBGC to ensure the timely and uninterrupted payment of benefits.

For a federal trustee to enforce a lower standard of participant protection than Congress mandates for private fiduciaries creates an unnecessary and unjustifiable regulatory asymmetry. Under the APA, PBGC must provide a reasoned explanation for its policy choices. Imposing a harsher standard on trustee participants without a statutory basis risks making the rule arbitrary and capricious.

To resolve this and provide an easily administrable framework, PBGC should implement a reliance-based mitigation rule grounded in its Title IV equitable authority. Specifically, if an overpayment is entirely attributable to PBGC's calculation error or a processing delay, PBGC should use its statutory discretion to apply a reduced recoupment rate (such as dropping the flat rate from 5% to 2%). This tiered rate structure provides relief that is legally grounded, predictable, and proportionate.

### **De Minimis Threshold**

The fixed de minimis threshold of \$250 is too low to meaningfully reduce burdens on participants or PBGC. PBGC notes that recoupment administration requires staff time, multiple notices, and follow-up inquiries. The administrative cost of pursuing a \$250 debt — including locating participants, issuing notices, adjusting automated systems, and handling appeals — likely exceeds the amount recovered.

Other federal systems recognize the inefficiency of low thresholds. The IRS, the Social Security Administration, and private plans operating under SECURE 2.0 routinely apply higher de

minimis limits or broader safe harbors for small administrative errors. Inflation has eroded the value of a fixed \$250 threshold, making it increasingly inefficient. Increasing the threshold to \$1,000 would reduce unnecessary recoupment actions, improve participant experience, and directly advance PBGC's goal of administrative efficiency.

To support transparent rulemaking under the Administrative Procedure Act, I request that PBGC include in its final economic analysis a comparison of the net agency and societal savings of a \$250 threshold versus a \$1,000 threshold.

### **Use of Recovery Instead of Recoupment and Hardship Considerations**

PBGC exercises broad discretion in recovery cases, but the proposed rule does not require the agency to evaluate hardship or reasonable reliance before pursuing recovery. Recoupment involves internal reductions to future monthly benefits. Recovery, by contrast, involves external collection actions—including demand letters, litigation, and referral to the Treasury Offset Program. Because external recovery actions are significantly more intrusive and can instantly jeopardize a participant's financial stability, PBGC must codify a formal hardship waiver mechanism before initiating external recovery.

Incorporating explicit hardship and reliance considerations would make PBGC's discretionary practices transparent, predictable, and fair. When a recipient reasonably believes a payment was correct, PBGC should have the explicit authority to waive or compromise the debt. This would prevent disproportionate outcomes and conserve agency resources by avoiding prolonged recovery actions against good-faith actors.

Congress has already established a standard for overpayment forgiveness in SECURE 2.0 Section 301, which limits recoupment for unintentional overpayments in private plans. PBGC can avoid creating a new framework by adopting an existing federal hardship standard, such as SSA's financial hardship criteria (20 CFR § 404.508) or the IRS Offer in Compromise guidelines. Using these established standards would help prevent recovery actions from jeopardizing basic financial stability.

### **Conclusion**

The proposed rule is a constructive and well-designed update to PBGC's recoupment practices, and I support its overall direction.

To strengthen the rule and fully protect participants, PBGC should add a time limit on older overpayments, adopt a reliance-based mitigation rule for PBGC-caused errors, raise the de minimis threshold with a comparative cost analysis, incorporate hardship and reliance into recovery actions, and establish a formal hardship review process using an existing federal standard.

PBGC should address these issues directly in the final rule's preamble to ensure a clear and complete administrative record.

I've included an addendum (below) with several technical suggestions on rule-text clarity.

Thank you for considering these comments.

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### **Addendum: Technical Suggestions for Rule Text Clarity**

- 1. Define "Administrative Error":** The draft rule text uses the term "administrative error" without providing a clear definition. This creates ambiguity in determining when recoupment or recovery is appropriate. PBGC should explicitly define this term to clarify whether it includes automated system errors, manual calculation mistakes, or third-party data lags, ensuring predictable application.
- 2. Differentiate "Recoupment" and "Recovery":** Several provisions appear to use these terms interchangeably, even though they involve materially different processes. PBGC should strictly maintain the administrative distinction throughout the rule text: "recoupment" must exclusively refer to internal adjustments to ongoing periodic benefits, while "recovery" (or affirmative collection) must refer to external debt collection activities targeting past debts via lump-sum demands, offset programs, or litigation. Clearer definitions and consistent usage would improve predictability for participants.
- 3. Absence of Any Time Limit:** The rule text contains no look back period and no duration cap on recoupment, despite PBGC's acknowledgment of long processing delays. This gap undermines the stated goals of fairness and predictability. PBGC should codify a hard temporal ceiling on historical errors to provide finality to retirees.
- 4. Establish Procedural Notice and Appeal Safeguards:** The draft rule does not specify notice timing, required notice content, or whether recoupment actions are stayed during an active appeal or hardship review. Codifying these procedures would reduce participant confusion. PBGC should codify due-process protections, including an automatic stay of all collection and recoupment actions while an appeal or hardship request is pending.