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Improvements to Rules on Recoupment of Benefit Overpayments

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Improvements to Rules on Recoupment of Benefit Overpayments

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General Comment

PBGC's proposal to end recoupment from a participant's surviving beneficiary under new Sec. 4022.83(b)(1) is a well-targeted fix: a beneficiary who never received the overpayment, and often does not know one exists, should not bear its repayment, and the change tracks the beneficiary protection Congress added at ERISA section 206(h)(4)(E) through the SECURE 2.0 Act.

The proposal's core mechanism, however, trades a proportional withholding formula for one that is not uniformly gentler. Current Sec. 4022.82(a) sets the recoupment percentage at net overpayment divided by the present value of the participant's benefit, so a small overpayment yields a small monthly reduction. The proposed flat 5 percent applies the same rate regardless of overpayment size, so a participant whose overpayment barely exceeds the new $250 de minimis line could move from a withholding rate near zero to a full 5 percent of monthly income overnight. The preamble's cost figures address aggregate collection rates and per-participant averages but not this distributional shift at the low end, where recipients are more likely to be living close to subsistence. PBGC should model and disclose how the flat rate affects participants whose overpayments are small relative to their benefit, and consider whether a minimum-overpayment threshold or phase-in is warranted before the full 5 percent applies.

Beyond the $250 de minimis exception, nothing in the available text describes a hardship or ability-to-pay standard a participant could invoke to reduce or postpone a 5 percent reduction. If such a mechanism exists elsewhere in the rule, it deserves more visibility; if none exists, PBGC should say so and consider adding one for recipients who can show the reduction would leave them unable to meet basic needs.

The provision disregarding overpayment growth during a pending Appeals Board review, stated only for de minimis purposes, implies that benefit payments and any associated withholding continue while an appeal is pending. A participant who ultimately prevails may have already absorbed months of reduced

payments. PBGC should clarify whether recoupment is stayed during a pending appeal and, if not, whether a successful appellant receives prompt restoration of amounts withheld in the interim.

The exceptions allowing recoupment above 5 percent, and recoupment on a revised determination, both turn on whether PBGC "has reason to believe" a recipient "knew or should have known" a payment was made in error. Nothing in the visible text defines that standard, allocates the burden of proof, or describes an opportunity to contest the determination before the higher rate or recovery action begins. A recipient without counsel facing an agency's subjective judgment about their own state of knowledge is poorly positioned to rebut it after the fact. PBGC should specify the evidentiary basis required, who bears the burden, and whether the recipient may respond before the exception applies.

Recovery, unlike recoupment, would still reach "the person holding the net overpayment, including a financial institution, estate, or other person." Because recovery is available whenever there is no future payment stream to recoup from, an estate or a joint account a surviving spouse depends on could still be reached even though the rule's stated purpose is to spare beneficiaries who never received the overpayment. PBGC should confirm whether the beneficiary protection behind eliminating recoupment from survivors extends to recovery actions, or explain why it does not.

PBGC declines to adopt the three-year lookback limitation Congress set for ongoing plans at ERISA section 206(h)(4)(F), reasoning that its title IV determination process differs from an ongoing plan's fiduciary duties. Yet the preamble also states that PBGC's benefit determinations can take years to finalize, during which overpayments accumulate before recoupment ever begins. Without any time-based limit, a participant could face recoupment for errors made years earlier that were entirely PBGC's own. A fuller explanation of why the timing differences PBGC identifies justify no lookback limit at all, rather than a limit adapted to its longer determination process, would strengthen the final rule.

None of this amounts to opposing a simpler recoupment rule; a flat rate and a firm de minimis floor are reasonable simplifications on their own terms. The remaining gaps concern how the rule protects participants at its edges, and closing them would make the final rule more defensible on the administrative-efficiency grounds PBGC has already set for itself.