PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

RIN 1212-AA87

PBGC Recoupment and Reimbursement of Benefit Overpayments and Underpayments

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to amend its regulation governing recoupment of benefit overpayments in trusteed plans to stop the reduction of monthly benefits under its actuarial recoupment method once the amount of the benefit overpayment is repaid. The amendment also makes other related changes.

DATES: Comments must be received on or before January 20, 1998.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be sent by Internet e-mail to reg.comments@pbgc.gov. Comments will be available for inspection at the PBGC's Communications and Public Affairs Department in Suite 240 at the above address during normal business hours.


SUPPLEMENTARY INFORMATION: Some participants and beneficiaries in PBGC-trusteed plans receive benefit payments in excess of their entitlements under Title IV of ERISA after plan termination and before the PBGC determines their benefit entitlements. Under the PBGC’s current recoupment regulation, unless a participant or beneficiary elects to repay a benefit overpayment in a single payment, the overpayment is recouped through a permanent actuarial reduction in future benefit payments.

When overpayments are made, recipients are generally unaware that they are receiving amounts in excess of their entitlements. In effect, overpayments are unsolicited loans. Many participants and beneficiaries are unable to afford to repay the overpayment in a single payment and thus cannot avoid permanent actuarial reductions. Participant and beneficiary inquiries reflect their difficulty understanding why the PBGC would continue to reduce their monthly benefit beyond the time the PBGC has fully recouped the amount of the overpayment.

The PBGC proposes to revise the regulation to provide that recoupment will cease when the amount of the overpayment is repaid. This will help to minimize hardship to participants and beneficiaries as well as to cut down the number of participant and beneficiary inquiries about recoupment, thereby reducing burden both on them and the PBGC. The amendment also gives the PBGC flexibility to waive recoupment of de minimis amounts and to accept repayment ahead of the recoupment schedule, and modifies the rules governing calculation of net overpayments and underpayments.

E.O. 12866 and the Regulatory Flexibility Act

The PBGC has determined that this proposed rule is not a “significant regulatory action” under the criteria set forth in Executive Order 12866.

This rule affects only individuals. Therefore, the PBGC certifies that, if adopted, the amendment will not have a significant economic effect on a substantial number of small entities. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects in 29 CFR Part 4022

Pension insurance, Pensions.

For the reasons set forth above, the PBGC proposes to amend 29 CFR Part 4022, subpart E as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D) and 1344.

2. In § 4022.81, paragraph (a) is amended by removing the last two sentences, adding a new phrase, and paragraphs (a)(1) and (a)(2) in their place, and revising paragraphs (c) and (d)(2) to read as follows:

§ 4022.81 General rules.

(a) Recoupment of benefit overpayments. * * * * * Notwithstanding the previous sentence, the PBGC may, in its discretion—

(1) Decide not to recoup net overpayments that it determines to be de minimis; and

(2) Recover overpayments by methods other than recouping in accordance with the rules in this subpart. The PBGC will not normally do so unless net benefits paid after the termination date exceed those to which a participant or beneficiary is entitled under the terms of the plan before any reductions under subpart D.* * * * *

(c) Payments subject to recoupment or reimbursement. The PBGC shall recoup net overpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA, and shall reimburse net underpayments made on or after the termination date.

(d) Interest. * * * * *

(2) Receipt of both overpayments and underpayments. If both benefit overpayments and benefit underpayments are made with respect to a participant, the PBGC shall compare the net overpayment or underpayment calculated without interest to the net overpayment or underpayment calculated with interest. (The interest calculation shall be made by charging or crediting interest from the first day of the month after the date of payment to the first day of the month in which recoupment begins.) Of these two net amounts, the PBGC shall use the one more favorable to the participant or
This document proposes to amend the educational-assistance and educational-benefit regulations of the
Department of Veterans Affairs (VA). It proposes to establish effective dates of awards of educational assistance to
veterans who are eligible for the Montgomery GI Bill—Active Duty (MGIB). The effective dates are intended to correspond with a
statutory mandate for the effective dates.

The proposed rule also clarifies that these veterans may not receive educational assistance for training that occurs before they pay the Federal
government $1,200.

DATES: Comments must be received on
or before February 17, 1998.

Applicability Dates: It is proposed that the effective dates be made
retroactive from the effective dates of the statutory provisions. For more
information concerning the proposed effective dates, see the SUPPLEMENTARY
INFORMATION section.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for
Policy and Program Administration, Education Service, Veterans Benefits
Administration, 202±273±7187.

SUPPLEMENTARY INFORMATION: This
document clarifies 38 CFR part 21, subpart K, regarding the effective dates
for awards of educational assistance to
veterans who were voluntarily discharged.

Pub. L. 102±484 (sec. 4404, 38 U.S.C.
3018B) allows a veteran who was voluntarily
separated under either 10 U.S.C. 1174a or
1175 before Oct. 23, 1992, to elect to receive educational
assistance under the Montgomery GI Bill—Active Duty. The veteran was
given until Oct. 23, 1992, to do so. The law also requires such a veteran
to submit $1,200 to VA as a condition of
receiving such educational assistance.

However, the law does not specify a
time limit for submitting the $1,200 and the
proposed rule clarifies that there is
no such time limit.

The effective date of an award also is
affected by when VA received the
$1,200. VA is required by 38 U.S.C.
5113 to make the effective dates of the
award of educational assistance, to the
extent feasible, correspond to the
effective dates relating to awards of
disability compensation. The provisions
of 38 U.S.C. 5110 and 5111 contain the
rules for determining the effective date
of an award of disability compensation.
The general intent of 38 U.S.C. 5110 is
to allow the effective date of an award of
compensation to be the day following
the date of discharge if application is
filed within one year after discharge.
Otherwise, the earliest date of the award
shall be the date of receipt of
application. Further, 38 U.S.C. 5103
provides, as to benefit claims generally,
that information or evidence necessary
to complete the claim must be
submitted within one year of the date
requested by VA; otherwise, no benefits
are payable based on that claim.

Accordingly, when payment of the
$1,200 must be made as a condition of
receiving benefits, it is proposed to
establish effective dates for educational
assistance consistent with the

The Secretary of Veterans Affairs
hereby certifies that this proposed rule
will not have a significant economic
impact on a substantial number of small
entities as they are defined in the
Regulatory Flexibility Act, 5 U.S.C. 601±
612. The proposed rule will affect
individual, not small entities. Therefore,
pursuant to 5 U.S.C. 605(b), this
proposed rule is exempt from the initial
and final regulatory flexibility analyses
requirements of sections 603 and 604.

The Catalog of Federal Domestic
Assistance number for the program
affected by this proposed rule is 64.124.

List of Subjects in 38 CFR Part 21

Administrative practice and
procedure, Armed forces, Civil rights,
Claims, Colleges and universities,
Conflict of interests, Defense,
Department, Education, Educational
institutions, Employment, Grant
programs—education, Grant programs—
veterans, Health care, Loan programs—
education, Loan programs—veterans,
Manpower training programs, Reporting
and recordkeeping requirements, Travel
and transportation expenses, Veterans,
Vocational education, Vocational
rehabilitation.

Approved: December 5, 1997.

Hershel W. Gober,
Acting Secretary of Veterans Affairs.

For the reasons set out above, 38 CFR
part 21, subpart K, is proposed to be
amended as set forth below.

Subpart K—All Volunteer Force
Educational Assistance Program
(Montgomery GI Bill—Active Duty)

1. The authority citation for subpart K
continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30 and 36,
unless otherwise noted.

2. In §21.7131, paragraph (n) is added
to read as follows:

§21.7131 Commencing dates.

(n) Eligibility established under
§21.7045(c). The effective date of an