

Office of General Counsel, Central Office. A list of addresses for all the Bureau institutions and offices can be found at [www.bop.gov](http://www.bop.gov).

■ 3. Revise paragraphs (a) through (d) and (f) of § 543.32 to read as follows:

**§ 543.32 Processing the claim.**

(a) *Receipt of acknowledgment letters.* If you have presented a claim signed by you or a duly authorized agent or legal representative that provides all the necessary information (such as time, date, and place where the incident occurred, and a specific sum of money you are requesting as damages), you will receive an acknowledgment letter indicating the presentment date and a claim number. If your submission is unsigned, or signed by a person without legal authority to present the claim on your behalf, or you fail to provide all necessary information, your submission will be rejected and returned to you for resubmission. The presentment date is the date your submission containing all required signatures and necessary information is first received by either the Department of Justice or an office of the Bureau of Prisons. You should refer to your claim number in all further correspondence with the agency. Additionally, you must inform the agency of any changes in your address.

(b) *Transfer of claims.* If your claim is improperly submitted to the wrong office or agency, you will be notified by the responsible office that your claim was transferred to another regional office, the Central Office, or another agency.

(c) *Investigation.* The regional office ordinarily refers the claim to the appropriate institution or office for investigation. You may also be required to provide additional information during the investigation. Your failure to respond within a reasonable time may result in the denial of the claim.

(d) *Administrative claim decisionmaker.* The Regional Counsel or his or her designee reviews the investigation and the supporting evidence and renders a decision on all claims properly presented to the regional office and within regional settlement authority. The Regional Counsel has limited settlement authority (up to an amount established by the Director of the Bureau of Prisons). After considering the merits of the claim, the Regional Counsel may deny or propose a settlement of the claim. The Associate General Counsel, Litigation Branch, will investigate and propose settlement for all claims properly presented in the Central Office in accordance with delegated settlement authority. If the proposed settlement

exceeds the Bureau of Prisons' authority, the General Counsel will seek approval from the appropriate Department of Justice officers.

\* \* \* \* \*

(f) *Options if claim is denied or settlement offer is unsatisfactory.* If your claim is denied or you are dissatisfied with a settlement offer, you may request in writing that the Bureau of Prisons reconsider your claim in the administrative stage. You should include additional evidence of injury or loss to support your request for reconsideration. If you are dissatisfied with the final agency action, you may file suit in an appropriate United States District Court, as no further administrative action is available.

(g) *Acceptance of settlement.* If you accept a settlement, you give up your right to bring a lawsuit against the United States or against any employee of the government whose action or lack of action gave rise to your claim.

(h) *Response timeline.* Generally, you will receive a decision regarding your claim within six months of when you properly present the claim. If you have not received a letter either proposing a settlement or denying your claim within six months after the date your claim was presented, you may assume your claim is denied. You may then proceed to file a lawsuit in the appropriate United States District Court.

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**BILLING CODE 4410-05-P**

**FEDERAL MEDIATION AND CONCILIATION SERVICE**

**29 CFR Part 1406**

**RIN 3076-AA26**

**FMCS Terms of Service**

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final rule.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) is issuing this final rule for FMCS clients. This rulemaking sets forth terms for FMCS's provision of services. This rulemaking further expounds upon confidentiality rules associated with FMCS's services.

**DATES:** This final rule is effective December 7, 2023.

**FOR FURTHER INFORMATION CONTACT:** Alisa Zimmerman, Deputy General Counsel, Office of General Counsel, Federal Mediation and Conciliation Service, 250 E St SW, Washington, DC

20427; Office/Fax/Mobile 202-606-5488; [azimmerman@fmcs.gov](mailto:azimmerman@fmcs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Federal Mediation and Conciliation Service (FMCS) works to build better, more effective workplace relationships and mitigate the damage from inevitable conflict through preventive dialogue, honest communication, and responsive strategies. Through our mission, FMCS provides professional services to a wide range of Federal, state, and local government agencies to resolve disputes, design conflict management systems, build capacity for constructive conflict management, and strengthen inter-agency and public-private cooperation. In offering these services, FMCS recipients must agree to abide by the final rule to preserve the integrity of the provided services.

**II. Analysis of the Regulations**

*Section 1406.1 General Terms of Service*

Paragraphs (a) through (g) set forth general terms of service applicable to all FMCS services. More specifically:

Paragraph (a) explains that when FMCS services are chosen, recipients of the services agree to abide by the terms as well as any other terms of services provided by FMCS and will hold FMCS and any FMCS neutral harmless.

Paragraph (b) notes FMCS will determine the date, time, and manner of services in accordance with applicable statutes and regulations.

Paragraph (d) explains that any person shadowing an FMCS neutral agrees to be bound by the same confidentiality standards as the FMCS neutral, which will be honored by the parties.

Paragraph (e) notes that FMCS recognizes the importance of mediator confidentiality, and as such FMCS will not produce materials related to a mediation, with some exceptions.

Paragraph (f) states that this section does not negate or modify FMCS's Confidential Commercial Information (CCI) regulation.

Paragraph (g) discusses that FMCS will make the terms publicly available and make a copy available to all parties upon request.

*Section 1406.2 Terms of Service for Mediation, Facilitation, and Other Alternative Dispute Resolution Services*

Paragraphs (a) through (g) sets forth additional terms of service specific to mediation, facilitation, & other alternative dispute resolution services provided by FMCS.

### Section 1406.3 *Virtual Services—Additional Terms of Service*

Paragraphs (a) through (c) set forth additional terms of service specific to virtual services provided by FMCS.

### Section 1406.4 *Grievance Mediation and Federal Sector Inter-Agency Agreement Mediation—Additional Terms of Service*

Paragraphs (a) through (e) set forth additional terms of service specific to grievance mediations and Federal sector inter-agency agreement mediations provided by FMCS.

### Section 1406.5 *Training and Outreach*

This section sets forth additional terms of service specific to training and outreach presentations provided by FMCS.

## III. Matters of Regulatory Procedure

### *Administrative Procedure Act*

Under 5 U.S.C. 553(a)(2), rules relating to agency management or personnel are exempt from the notice and comment rulemaking requirements of the Administrative Procedure Act (APA). In addition, under 5 U.S.C. 553(b)(3)(A), notice and comment rulemaking requirements do not apply to rules concerning matters of agency organization, procedure, or practice. Given that the rule concerns matters of agency management or personnel, and organization, procedure, or practice, the notice and comment requirements of the APA do not apply here. Nor is a public hearing required under 45 U.S.C. 160a. However, in issuing a final rule on this matter, FMCS, previously issued a proposed rule with a notice and comment period and received no public comments.

### *Executive Order 12866*

This final rule is not a significant rule for purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

### *Regulatory Flexibility Act.*

FMCS has determined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6, that this final rule would not have a significant economic impact on a substantial number of small entities because it would primarily affect FMCS employees.

### *Paperwork Reduction Act.*

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to this final rule because it does not contain any information collection requirements that would require the approval of the Office of Management and Budget.

### *Congressional Review Act*

FMCS has determined that this final rule does not meet the definition of a rule, as defined by the Congressional Review Act, 5 U.S.C. chapter 8, and thus does not require review by Congress.

## IV. Public Comment Period

The public comment period on the proposed rule opened on September 1, 2023, the date of its publication in the **Federal Register**, and closed on October 31, 2023. During this period, FMCS did not receive any comments on our proposed rule.

### List of Subjects in 29 CFR Part 1406

Administrative practice and procedure, Labor management relations.

For the reasons discussed in the preamble, FMCS amends 29 CFR chapter XII by adding part 1406 to read as follows:

## PART 1406—FMCS TERMS OF SERVICE

Sec.

- 1406.1 General terms of service.
- 1406.2 Terms of service for mediation, facilitation, and other alternative dispute resolution services.
- 1406.3 Virtual services—additional terms of service.
- 1406.4 Grievance mediation and Federal sector inter-agency agreement mediation— additional terms of service.
- 1406.5 Training and outreach presentations.

**Authority:** 29 U.S.C. 172; 29 U.S.C. 173 *et seq.*; and 5 U.S.C. 574.

### § 1406.1 **General terms of service.**

When Federal Mediation and Conciliation Service (FMCS) services are used, the recipients of the services have agreed to abide by FMCS's general terms of service as well as any other terms of service provided by FMCS.

(a) The recipients of a service shall hold FMCS and any FMCS neutrals harmless of any claim arising from the delivery of that FMCS service.

(b) FMCS will determine the date, time, place, and manner (virtual, in-person, or hybrid) of services provided in accordance with any applicable statutes, regulations, and agreements.

(c) FMCS may convene the parties for a threatened or actual work stoppage whenever in its judgment such dispute threatens to cause a substantial interruption of commerce.

(d) Any person shadowing an FMCS neutral agrees to be bound by the same confidentiality standards as the FMCS neutral and such confidentiality standards will be honored by the parties.

(e) FMCS recognizes the importance of mediator confidentiality to further its

mission. Therefore, FMCS will not produce any materials related to a mediation other than the date, parties, location, and mediator, unless required by law. FMCS will not produce materials related to a mediation, materials exchanged in a mediation or facilitation, information related to non-plenary sessions of a facilitation, mediator or facilitator notes, and any internal communications with the mediator or facilitator, unless required by law.

(f) Nothing in this section shall be construed so as to negate or modify the FMCS's Confidential Commercial Information (CCI) regulation (29 CFR 1401.26).

(g) FMCS will make a copy of these terms available to all parties upon request.

### § 1406.2 **Terms of service for mediation, facilitation, and other alternative dispute resolution services.**

The following Terms of Service additionally apply when the FMCS service is a mediation, facilitation, training, and other alternative dispute resolution service.

(a) These services are voluntary processes that may be terminated at any time unless otherwise provided by statute or by agreement.

(b) The neutral has no authority to compel resolution.

(c) These services are confidential to the extent allowed by law. The obligations imposed by these terms and conditions are in addition to and do not supersede any obligations imposed by applicable state or Federal laws regarding mediation confidentiality.

(d) The parties agree that they will not record, transcribe, save, or otherwise capture any audio, video, files, documents, chat texts, or any other data that they would not have access to but for the service being provided, unless agreed to by all parties and with prior written approval of FMCS, or as otherwise required by law. They further agree to notify the neutral immediately if recordings, saves or other captures of data occur, to ensure that no further distribution or transfer occurs, and to immediately and permanently delete them.

(e) Non-parties may attend only with the agreement of the parties and the neutral unless otherwise required by law and are bound by these terms of service.

(f) If a party inadvertently gains access to any confidential discussions involving another party, the party with inadvertent access shall immediately disclose their presence and exit from the confidential discussions. Any

confidential information inadvertently disclosed may not be used by the party with inadvertent access, even within the confines of the alternative dispute resolution session.

(g) The parties agree not to subpoena or compel the neutral to testify or produce any documents provided by a party in any administrative or judicial proceeding. The neutral will not voluntarily testify or produce documents on behalf of a party in any administrative or judicial proceeding unless otherwise required by law.

**§ 1406.3 Virtual services—additional terms of service.**

The following Terms of Service additionally apply when the FMCS service is provided virtually.

(a) Parties may not provide meeting access information to non-parties without permission from the neutral unless the session is open to the public.

(b) The neutral and all parties must be provided notice of all attendees before or at the time of attendance unless the session is open to the public.

(c) Parties must ensure the integrity of technology used in virtual meetings. If an attendee is aware of any security breach, that attendee will inform the neutral immediately.

**§ 1406.4 Grievance mediation and Federal sector inter-agency agreement mediation—additional terms of service.**

The following Terms of Service additionally apply when the FMCS service is a grievance mediation or Federal sector inter-agency agreement mediation.

(a) The grievant or complainant is entitled to be present at the mediation.

(b) The parties agree not to disclose to any non-party oral or written communications made during the mediation process, including settlement terms, proposals, offers, or other statements, whether made privately to the neutral or when all parties are present.

(c) Evidence that is otherwise admissible or discoverable will not be rendered inadmissible or non-discoverable as a result of its use in the mediation proceedings.

(d) The neutral has no authority to compel agreement or other resolution of the dispute and will issue no written recommendations or conclusions. At the request of the parties, or on the initiative of the neutral, the neutral may provide an oral recommendation or opinion to resolve the dispute. In that circumstance, the parties may jointly decide to implement that recommendation or opinion but neither party is obligated to do so.

(e) (For Federal sector inter-agency agreement mediation, if applicable) Any communications between the Agency or Organizational Program/or Alternative Dispute Resolution Coordinator and the neutral(s) and/or the parties are considered dispute resolution communications with a neutral and will be kept confidential.

**§ 1406.5 Training and outreach presentations.**

The following Terms of Service additionally apply when the FMCS service is a training or outreach presentation.

(a) The parties agree that they will not record any FMCS training or outreach presentation (whether delivered in-person or virtually) without the knowledge and consent of the parties and prior written approval of FMCS.

(b) [Reserved]

Dated: November 1, 2023.

**Alisa Zimmerman,**

*Deputy General Counsel.*

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**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4000, 4003, 4006, 4010, 4022, 4041A, 4043, 4211, and 4262**

**RIN 1212–AB56**

**Technical Amendments: Special Financial Assistance Withdrawal Liability Condition; SECURE 2.0 Act; and Other Updates**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation (PBGC) is making miscellaneous technical updates, clarifications, and corrections to PBGC's regulations, including to clarify a special financial assistance withdrawal liability condition and to update the reference to the dollar limit for lump-sum distributions in the closeout of sufficient multiemployer plans to reflect changes implemented under the SECURE 2.0 Act of 2022.

**DATES:** This rule is effective on December 7, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Hilary Duke ([duke.hilary@pbgc.gov](mailto:duke.hilary@pbgc.gov); 202–229–3839), Assistant General Counsel for Regulatory Affairs, or Melissa Rifkin ([rifkin.melissa@pbgc.gov](mailto:rifkin.melissa@pbgc.gov); 202–229–6563), Attorney, Regulatory Affairs Division; Office of the General Counsel, Pension Benefit Guaranty

Corporation, 445 12th Street SW, Washington, DC 20024–2101. If you are deaf or hard of hearing or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Purpose and Authority*

This final rule makes technical corrections, updates, and clarifications to several Pension Benefit Guaranty Corporation (PBGC) regulations.

PBGC's legal authority for this rulemaking comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4262 of ERISA (Special Financial Assistance by the Corporation), which permits PBGC, in consultation with the Secretary of the Treasury, to impose reasonable conditions by regulation or other guidance on an eligible multiemployer plan that receives special financial assistance (SFA). It also comes from section 4003 of ERISA (Operation of Corporation); section 4006 of ERISA (Premium Rates); section 4010 of ERISA (Authority to Require Certain Information); section 4022 of ERISA (Single-Employer Plan Benefits Guaranteed); section 4041A of ERISA (Termination of Multiemployer Plans); section 4043 of ERISA (Reportable Events); and section 4211 of ERISA (Methods for Computing Withdrawal Liability).

*Major Provisions*

The major provisions of this regulatory action amend PBGC's regulations on: (1) Special Financial Assistance by PBGC (29 CFR part 4262) to clarify the calculation methodology for the condition requiring a phased recognition of SFA in a plan's determination of withdrawal liability for plans that receive SFA; and (2) Termination of Multiemployer Plans (29 CFR part 4041A) to update the reference to the dollar limit for lump-sum distributions in the closeout of sufficient multiemployer plans (reflecting updated dollar limits for pension plans under section 304 of the SECURE 2.0 Act of 2022 (SECURE 2.0)).<sup>1</sup> In addition, this regulatory action makes other clarifications, corrections, and updates.

<sup>1</sup> SECURE 2.0 Act of 2022, Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328 (Dec. 29, 2022).