

deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying authority has not denied, expressly waived, or granted certification by one year after the date the certifying authority received a written request for certification. If a certifying authority denies certification, the applicant must file a copy of the denial within 30 days after the applicant receives it.

(5) *Endangered Species Act (ESA)*. The application must include:

(i) A no-effect determination that includes documentation that no listed species or critical habitat are present in the action area;

(ii) Documentation of concurrence from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (Service(s)), as necessary, that the action is not likely to adversely affect ESA-listed species or critical habitat; or

(iii) A draft Biological Assessment that includes documentation of consultation with the Service(s).

(6) *Section 106 of the National Historic Preservation Act*.

Documentation that section 106 consultation has been initiated with the state historic preservation officer(s) and any Indian Tribes identified as having an interest in the project.

(7) *Dam owner documentation*. For projects to be located at existing nonpowered dams:

(i) Documentation of consultation with any nonfederal owner of the nonpowered dam if the applicant is not the owner and confirmation that the owner is not opposed to a hydropower development at the location; or

(ii) Documentation from the federal entity that non-federal hydropower development is not precluded at the proposed location and confirmation that the federal entity is not opposed to a hydropower development at the location.

(8) *Public parks, recreation areas, and wildlife refuges*. If the project would use any public park, recreation area, or wildlife refuge established under state or local law, documentation from the managing entity indicating it is not opposed to the site's use for hydropower development.

(c) Before it files any application for an original license for a qualifying non-federal hydropower project at an existing nonpowered dam or for a closed-loop pumped storage project pursuant to sections 34 and 35 of the Federal Power Act, a potential applicant must consult with the relevant Federal, State, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and

Wildlife Service, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any federal lands or facilities utilized or occupied by the project, the appropriate State fish and wildlife agencies, the appropriate State water resource management agencies, the certifying authority under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1), the agency that administers the Coastal Zone Management Act, 16 U.S.C. 1451–1465, any Indian Tribe that may be affected by the proposed project, and members of the public.

(d) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, and Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

■ 10. Revise § 7.7(a) to read as follows:

#### § 7.7 Amendment of application.

(a) Any proposed amendments to the pending license application after issuance of the notice of acceptance and ready for environmental analysis under this section must include updates to all material submitted under § 7.2(c).

\* \* \* \* \*

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4902

RIN 1212–AB59

### Privacy Act Regulation; Exemption for Legal Case Management Records

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Pension Benefit Guaranty Corporation's Privacy Act regulation to exempt a system of records that supports law enforcement investigations through legal case management.

**DATES:** This rule is effective January 6, 2025.

**FOR FURTHER INFORMATION CONTACT:**

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6321. 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

This final rule amends the Pension Benefit Guaranty Corporation's (PBGC's) regulation on Disclosure and Amendment of Records Pertaining to Individuals under the Privacy Act (29 CFR part 4902) to exempt from disclosure information contained in a system of records for PBGC's Office of Negotiations and Restructuring/Office of General Counsel Case Management System. The exemption is needed because records in this system include investigatory material compiled for administrative, civil, and criminal law enforcement purposes.

PBGC's legal authority for this rulemaking is provided by section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA) and 5 U.S.C. 552a(k)(2).

##### Background

PBGC administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. In addition, PBGC administers a special financial assistance program for certain financially distressed multiemployer plans.

As a Federal agency, PBGC is subject to the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act), in its collection, maintenance, use, and dissemination of any personally identifiable information that it maintains in a “system of records.” A system of records is defined under the Privacy Act as “a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.”<sup>1</sup>

PBGC previously established a system of records, “PBGC–19, Office of Negotiations and Restructuring/Office of General Counsel Case Management System.” This system of records was last published in the “Notice” section of the **Federal Register** on September 9, 2024, at 89 FR 73196.

This system collects and maintains personally identifiable information obtained by the Office of General Counsel in matters involving

<sup>1</sup> See 5 U.S.C. 552a(a)(5).

administrative, civil, or criminal law enforcement investigations. Records from this system are used on a need-to-know basis to manage various legal matters; to facilitate administrative, civil, or criminal law enforcement investigations and activities; to receive referrals for investigation from internal and external partners; to meet other Office of General Counsel program requirements; and to investigate/manage cases involving violations of administrative, civil, or criminal laws.

On October 22, 2024 (89 FR 84314), PBGC published a proposed rule to amend its Privacy Act regulation (29 CFR part 4902) to exempt certain records that will be maintained in PBGC-19 from certain provisions of the Privacy Act, and to make other minor changes. PBGC received no comments on the proposed rule. The final regulation is unchanged from the proposed regulation except for editorial changes to conform some system names.

#### Exemption

Under section 552a(k) of the Privacy Act, PBGC may promulgate regulations exempting information contained in certain systems of records from specified sections of the Privacy Act including the section mandating disclosure of information to an individual who has requested it. Among other systems, PBGC may exempt a system that is “investigatory material compiled for law enforcement purposes.”<sup>2</sup> Under this provision, PBGC has exempted, in §§ 4902.10, 4902.11, and 4902.12 of its Privacy Act regulation, records of the investigations conducted by its Personnel Security Department contained in “PBGC-12, Personnel Security Investigation Records,” records of the investigations conducted by the Office of Inspector General contained in “PBGC-17, Office of Inspector General Investigative File System,” and records of insider threat investigations conducted by PBGC contained in “PBGC-26, PBGC Insider Threat and Data Loss Prevention.”

The PBGC-19, Office of Negotiations and Restructuring/Office of General Counsel Case Management System contains: (1) records derived from the Office of Inspector General, Personnel Security, or insider threat investigations, (2) summaries or reports containing information about administrative, civil, and criminal legal investigations, (3) information related to investigative or analytical efforts by PBGC legal, security, or law enforcement personnel, (4) reports about potential administrative, civil, or

criminal law enforcement activities obtained through the management and operation of the Office of General Counsel, and (5) reports about potential civil or criminal legal investigations obtained from other Federal Government sources involving PBGC. The records contained in this system include investigative material of actual, potential, or alleged criminal, civil, or administrative violations and law enforcement actions. These records are within the material permitted to be exempted under section 552a(k)(2) of the Privacy Act.

This final rule amends PBGC’s Privacy Act regulation to redesignate § 4902.13 (Filing rules; computation of time) as § 4902.14 and to add a new § 4902.13 as an exemption for PBGC-19, Office of Negotiations and Restructuring/Office of General Counsel Case Management System, from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f). Exemption from these sections of the Privacy Act means that, with respect to records in the system, PBGC is not required to: (1) disclose records to an individual upon request, (2) keep an accounting of individuals who request records, (3) maintain only records as necessary to accomplish an agency purpose, or (4) publish notice of certain revisions of the system of records. In addition, this final rule makes changes to some of the system names previously used in part 4902 to conform them to the systems of records published in the **Federal Register** on September 9, 2024, at 89 FR 73196.

#### Compliance With Rulemaking Guidelines

The Office of Management and Budget (OMB) has determined that this rulemaking is not a “significant regulatory action” under Executive Order 12866. Accordingly, OMB has not reviewed the final rule under Executive Order 12866.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act that this final rule will not have a significant economic impact on a substantial number of small entities. The rule will only affect the maintenance and disclosure of information about individuals by PBGC under the Privacy Act and therefore will have no economic impact on entities of any size. Accordingly, sections 603 and 604 of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 603, 604.

#### List of Subjects in 29 CFR Part 4902

Privacy.

In consideration of the foregoing, PBGC is amending 29 CFR part 4902 as follows:

#### PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

■ 1. The authority citation for part 4902 continues to read as follows:

**Authority:** 5 U.S.C. 552a, 29 U.S.C. 1302(b)(3).

##### § 4902.1 [Amended]

■ 2. In § 4902.1, amend paragraph (d) by removing “4902.12” and adding in its place “4902.13”.

##### § 4902.10 [Amended]

■ 3. In 4902.10, amend paragraph (a) by removing “—PBGC”.

##### § 4902.11 [Amended]

■ 4. In 4902.11, amend paragraphs (a)(1), (b)(1), and (c)(1) by removing “—PBGC”.

##### § 4902.12 [Amended]

■ 5. In 4902.12, amend paragraph (a) by removing “—PBGC”.

##### § 4902.13 [Redesignated as § 4902.14]

■ 6. Redesignate § 4902.13 as § 4902.14.  
 ■ 7. Add new § 4902.13 to read as follows:

##### § 4902.13 Specific exemptions: Legal Case Management.

(a) *Exemption.* Under the authority granted by 5 U.S.C. 552a(k)(2), PBGC hereby exempts the system of records entitled “PBGC-19, Office of Negotiations and Restructuring/Office of General Counsel Case Management System” from the provisions of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(b) *Reasons for exemption.* The reasons for asserting this exemption are because the disclosure and other requirements of the Privacy Act could substantially compromise the efficacy and integrity of PBGC’s ability to investigate administrative, civil, or criminal legal matters. Disclosure could invade the privacy of individuals and disclose their identity when they were expressly promised confidentiality. Disclosure could interfere with the integrity of information which would otherwise be subject to legal privileges, see, e.g., 5 U.S.C. 552(b)(5), and which could interfere with other important law enforcement concerns, see, e.g., 5 U.S.C. 552(b)(7).

Issued in Washington, DC.

**Ann Y. Orr,**

*Acting Director, Pension Benefit Guaranty Corporation.*

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<sup>2</sup> See 5 U.S.C. 552a(k)(2).