

complaint and there shall be no judicial review of that person's final decision.

(6) An officer or employee of the agency who has failed to comply with the Act may be required to undergo retraining or additional training. All disciplinary actions authorized by the agency or the Department of Justice may be taken, as appropriate, including suspension or termination from employment, for officers or employees of the agency who are determined to have willfully or wantonly failed to comply with the Act.

(7) The provisions of paragraph (b) of this section do not authorize the agency to exercise authority over, take disciplinary action against, or involve in its complaint or disciplinary processes, an officer or employee of another agency.

§ 95.10 Data collection.

(a) *Publication of statistics.* Not later than August 3, 2025, and annually thereafter, the National Institute of Justice shall publish statistics on the number of cold case murders. The Attorney General may delegate this function to the Bureau of Justice Statistics or another component of the Department of Justice.

(b) *Content of published statistics.* The statistics published pursuant to paragraph (a) of this section shall, at a minimum, be disaggregated by the circumstances of the cold case murder, including the classification of the offense, and by agency.

(c) *Annual publications.* The statistics published in each year shall provide the required information for—

(i) Cold case murders in which the murder occurred after the enactment of the Act and no likely perpetrator was identified by the end of the preceding year; and

(ii) Cold case murders in which an application for review under § 95.3(a) was filed before the end of the preceding year and no likely perpetrator was identified by the end of that year.

§ 95.11 Annual report.

(a) *In general.* The Act provides that each agency shall submit an annual report to the Committees on the Judiciary of the House of Representatives and of the Senate describing actions taken and results achieved under this Act during the previous year. This requirement applies to any agency that may be the principal investigative agency in a murder investigation. An individual agency need not submit a separate report if the required information with respect to the agency is included in a report submitted

to the Committees by another organizational unit of the government.

(b) *Contents of report.* The Act provides that the report described in paragraph (a) of this section shall include—

(1) The number of written applications filed with the agency pursuant to section 2(a) of the Act and § 95.3(a);

(2) The number of extensions granted, and an explanation of reasons provided under section 2(h) of the Act and § 95.4(d);

(3) The number of full reinvestigations initiated and closed pursuant to section 4 of the Act and § 95.5; and

(4) Statistics and individualized information on topics that include identified suspects, arrests, charges, and convictions for reviews under section 2 of the Act and § 95.3 and reinvestigations under section 4 of the Act and § 95.5.

§ 95.12 Withholding information.

Nothing in the Act or this part requires an agency to provide information that would endanger the safety of any person, unreasonably impede an ongoing investigation, violate a court order, or violate legal obligations regarding privacy.

Dated: January 13, 2025.

Merrick B. Garland,
Attorney General.

[FR Doc. 2025–01159 Filed 1–16–25; 8:45 am]

BILLING CODE 4410–18–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4006, 4007, 4010, 4041, 4041A, 4043, 4065, 4203, 4204, 4207, 4211, 4219, 4220, 4233, 4262, 4281, and 4909

RIN 1212–AB51

Miscellaneous Corrections, Clarifications, and Improvements

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) proposes miscellaneous technical corrections, clarifications, and improvements to its regulations, including its regulations on premium rates, premium due dates, and termination of single-employer plans. These changes are a result of PBGC's ongoing retrospective review of the effectiveness and clarity of its rules and of statutory changes.

DATES: Comments must be submitted on or before March 24, 2025 to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Email:* reg.comments@pbgc.gov. Refer to 1212–AB51 in the subject line.

- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit comments electronically. Commenters who submit comments on paper by mail should allow sufficient time for mailed comments to be received before the close of the comment period. All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and the Regulation Identifier Number (RIN) for this rulemaking (RIN 1212–AB51). Comments received will be posted without change to PBGC's website, www.pbgc.gov, including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information.

Copies of comments may also be obtained by writing to Disclosure Division (disclosure@pbgc.gov), Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–326–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

FOR FURTHER INFORMATION CONTACT: Monica O'Donnell (odonnell.monica@pbgc.gov), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101; 202–229–8706. 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

The purpose of this regulatory action is to make miscellaneous technical corrections, clarifications, updates, and improvements to several of the Pension Benefit Guaranty Corporation's (PBGC's) regulations. These changes are based on PBGC's ongoing retrospective review of the effectiveness and clarity of its rules

and on statutory changes to the Employee Retirement Income Security Act of 1974 (ERISA).

Legal authority for this action comes from section 4002(b)(3) of ERISA which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA. It also comes from section 4006 of ERISA (Premium Rates), section 4007 of ERISA (Payment of Premiums), section 4010 of ERISA (Authority to Require Certain Information), section 4041 of ERISA (Termination of Single-Employer Plans), section 4041A of ERISA (Termination of Multiemployer Plans), section 4043 of ERISA (Reportable Events), section 4065 of ERISA (Annual Report of Plan Administrator), section 4203 of ERISA (Complete Withdrawal), section 4204 of ERISA (Sale of Assets), section 4207 of ERISA (Reduction or Waiver of Complete Withdrawal Liability), section 4211 of ERISA (Methods for Computing Withdrawal Liability), section 4219 of ERISA (Notice, Collection, Etc., of Withdrawal Liability), section 4220 of ERISA (Approval of Amendments), section 4233 of ERISA (Partitions of Eligible Multiemployer Plans), section 4262 of ERISA (Special Financial Assistance by the Corporation), and section 4281 of ERISA (Benefits Under Certain Terminated Plans).

Major Provisions

The major provisions of this proposed rulemaking would amend PBGC's regulations on:

- Premium Rates, by codifying the changes of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) (Pub. L. 116–94, Division O) applicable to cooperative and small employer charity (CSEC) plans¹ and certain community newspaper plans;²
- Payment of Premiums, by revising the due date for the final premium for terminating plans to be the earlier of the normal premium due date or 45 days after the date the post-distribution certification is filed; and
- Termination of Single-Employer Plans, by setting due dates for the standard termination notice and notice of intent to terminate where the plan administrator has not provided a proposed termination date, and by adding additional criteria majority

¹ A CSEC plan is a plan maintained by multiple employers, most of which are rural cooperatives, charities, or agricultural cooperatives or maintained by a rural telephone cooperative association. See section 104 of the Pension Protection Act, Public Law 109–280.

² A community newspaper plan means a plan as defined in section 303(m)(5) of ERISA and section 430(m)(5) of the Code.

owners must meet to waive their benefits if they are owners through constructive ownership.

Background

PBGC administers two insurance programs for private-sector defined benefit pension plans under title IV of 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. The amendments proposed in this rulemaking apply primarily to the single-employer plan termination insurance program.

Proposed Amendments

The proposed technical and clarifying amendments and improvements to PBGC's regulations are discussed below. PBGC invites comment on these proposals.

Premium Rates—29 CFR Part 4006

Sponsors of plans covered under PBGC's single-employer program are subject to rules requiring the calculation and payment of annual premiums to PBGC under section 4006 of ERISA and PBGC's regulation on Premium Rates (29 CFR part 4006), "premium rates regulation." The SECURE Act modified the calculation of premiums under section 4006 of ERISA for a CSEC plan and the funding requirements for a community newspaper plan under section 303(m) of ERISA and section 430(m) of the Internal Revenue Code (the Code). The SECURE Act also modified section 401 of the Code to allow an employer to adopt a new pension plan and elect to treat the plan as if it had been adopted during the prior taxable year. PBGC proposes to amend its premium rates regulation to account for these SECURE Act modifications.

CSEC Plans—Variable Rate Premiums

The SECURE Act modified flat and variable rate premiums and changed the way the variable rate premium is calculated for CSEC plans first effective for 2019.³ Under section 4006(a)(3)(A) of ERISA, as amended by the SECURE Act, CSEC plans calculate the variable rate premiums that they owe to PBGC based on alternative minimum funding standards. CSEC plans now apply an alternate definition of unfunded vested benefits (UVBs). This definition refers to the funding liability of the CSEC plan as

³ The SECURE Act's reduced premium rates applicable to CSEC plans are reflected in § 4006.3(a) and (b) of PBGC's premium rates regulation.

determined under section 306(j)(5)(C) of ERISA and section 433(j)(5)(C) of the Code. PBGC issued guidance⁴ on these changes and incorporated the special premium rules for CSEC plans into the premium filing instructions starting with the 2021 filing instructions.

Although the rules have been in place for several years, PBGC is now proposing to amend its premium rates regulation to codify the SECURE Act changes regarding how CSEC plans determine UVBs for the purpose of calculating variable rate premiums. First, proposed new § 4006.5(h) would provide the rules to calculate a CSEC plan's "premium funding target" using the alternate definition of UVBs as provided in section 306(j)(5)(C) of ERISA and section 433(j)(5)(C) of the Code. In addition, PBGC would make conforming amendments to §§ 4006.2, 4006.4(b)(1) and 4006.4(f)(2) to further conform to changes under the SECURE Act for CSEC plans.

Community Newspaper Plans

The SECURE Act amended section 430 of the Code and section 303 of ERISA, providing that community newspaper plans may elect to use alternative minimum funding standards.⁵ However, section 4006 of ERISA was not similarly amended, so community newspaper plans are not permitted to use these alternative standards to calculate the premiums that they owe to PBGC. PBGC proposes to add a reference to community newspaper plans in § 4006.4(f) to denote them as plans subject to special funding rules, which are disregarded for purposes of determining UVBs.

Definition of New Plan

Under PBGC's premium rates regulation and its regulation on Payment of Premiums (29 CFR part 4007) "payment of premiums regulation," plans that are newly adopted are subject to special rules concerning calculations and payment of premiums. Before the SECURE Act, a "new plan" meant a plan that did not exist before the premium payment year. Following the SECURE Act, which allows employers to elect to treat newly adopted plans as having been adopted during the prior tax year, this definition must be changed. The current definition does not account for newly adopted plans that employers have elected to treat as having a retroactive effective

⁴ PBGC Technical Update 20–1 (2020).

⁵ Section 9707 of the American Rescue Plan Act of 2021, Public Law 117–2, further modified the definition of the term "eligible newspaper plan sponsor," but that modification does not require additional changes to part 4006.

date. Accordingly, PBGC proposes to change the definition of “New plan” in § 4006.2 to mean a plan with an effective date during the premium payment year.

Payment of Premiums—29 CFR Part 4007

The final step in a plan’s standard termination is the filing of the post-distribution certification under § 4041.29 of PBGC’s regulation on Termination of Single-Employer Plans (29 CFR part 4041). The plan administrator of the terminating plan must file the certification (on PBGC Form 501) within 30 days of the final benefits distribution date, or within 60 days of the final benefits distribution date if it certifies to PBGC within 30 days after the final benefits distribution date that the plan assets have been distributed as required. Before 2014, the final premium filing for a terminating plan was due on the same date it would have been due if the plan had not terminated (*i.e.*, the 15th day of the 10th month after the plan year began). However, there were instances in which plan administrators of terminating plans neglected to file the final premium filing by the time it was due because the due date was several months after the Form 501 was filed. PBGC found that in some of these cases, especially when the plan sponsor was no longer in business by the final premium due date, it was difficult for the plan administrator to go back or even reconstruct records to calculate and pay premiums, as well as pay the late payment interest and penalties that PBGC assessed.

In 2014, PBGC amended its payment of premiums regulation by revising the premium due date rules for terminating plans.⁶ This was intended to facilitate the timely payment of these final year premiums for terminating plans and to relieve them of the burden of calculating premiums long after the final distributions were made. This rule set the due date for the final premium filing for a terminating plan as the earlier of (1) the normal premium due date found in § 4007.11(a), or (2) the date when the post-distribution certification is filed. Therefore, a plan that closes out in the first eight-and-a-half months of its final plan year faces an accelerated premium filing due date.⁷

⁶ See 79 FR 13547, 13562 (Mar. 11, 2014).

⁷ Because of a provision in the Bipartisan Budget Act of 2015 that supersedes § 4007.11 of PBGC’s Payment of Premiums regulation, premium filings for plan years beginning in 2025 are due on the 15th day of the 9th calendar month in the plan year, including plans that, in any other year, would be subject to the special rule for plans closing out in the first eight-and-a-half months of its final plan

Practitioners have informed PBGC that in some cases, it is challenging to prepare and submit both the post-distribution certification (*i.e.*, PBGC Form 501) and the final premium filing on the same day. As a result of these challenges, some plan administrators have missed filing due dates and been assessed late premium payment charges.

For the reasons described in the 2014 rule and above, PBGC still believes it is important to have an accelerated premium due date for plans that complete a standard termination long before the “normal” premium due date. However, to reduce the administrative difficulties and related possibility of late or missed filings, PBGC proposes to amend § 4007.11(d)(2) to revise the due date for the final premium filing to be the earlier of (1) the normal premium due date, or (2) 45 days after the date the post-distribution certification is filed.

Termination of Single-Employer Plans—29 CFR Part 4041

Under section 4041 of ERISA, a single-employer plan can terminate in either a standard termination or a distress termination. A plan administrator of a single-employer plan covered by PBGC’s termination insurance program that has sufficient assets to provide all plan benefits may voluntarily terminate the plan in a standard termination. The rules governing standard terminations are in section 4041 of ERISA and subpart B of PBGC’s regulation on Termination of Single-Employer Plans (29 CFR part 4041), “termination regulation.” Within specified timeframes, a plan administrator must notify participants of the proposed termination; provide participants detailed information on their plan benefits; file certain information with PBGC; and, absent the issuance of a notice of noncompliance by PBGC, distribute plan assets to satisfy all plan benefits under the plan.

A single-employer plan insured by PBGC that does not have sufficient assets to pay all plan benefits owed to participants and beneficiaries but does have sufficient assets to pay benefits guaranteed by PBGC, may terminate voluntarily in a distress termination only if the employer and the members of the employer’s “controlled group” of affiliated companies meet certain statutory requirements.

year. See Bipartisan Budget Act of 2015, Public Law 114–74, Title V, Sect. 502 (2015). See also PBGC Technical Update 25–1 (2025).

Majority Owner

Under PBGC’s termination regulation, in the event that a plan lacks sufficient funds to pay required plan benefits, a majority owner may forgo receipt of their plan benefits (1) to enable the plan to satisfy all other plan benefits in a standard termination,⁸ or (2) in connection with a distress termination.⁹ In a standard termination, the election to waive payment of benefits is permitted only to facilitate the standard termination. This alternative treatment of a majority owner’s plan benefit is only valid if the election is in writing; requisite spousal consent criteria is met, if applicable; and the majority owner’s election and the spouse’s consent does not violate a qualified domestic relations order.¹⁰ A majority owner electing to forgo receipt of their plan benefits in a distress termination must meet these same criteria as a majority owner in a standard termination, but in addition, must receive PBGC approval if such election is made after the termination date and would result in PBGC determining that the plan is sufficient for guaranteed benefits under paragraph (c) of § 4041.47.¹¹

The term “majority owner” is defined under § 4041.2 of the termination regulation as a person who owns, directly or indirectly, 50 percent or more, taking into account the constructive ownership rules of sections 414(b) and (c) of the Code, of an unincorporated trade or business; the capital interest or profits interest in a partnership; or either the voting stock of a corporation or the value of all of the stock of a corporation. One way in which a person can become a majority owner is through an option agreement to acquire stock. If a person has an option to acquire stock, that stock is considered as owned by the person who holds the option.¹²

PBGC is concerned that the rules in the current regulation do not effectively eliminate the risk of participants being coerced to waive their benefits as “majority owners” when they are given ownership options by the plan sponsor in anticipation of plan termination. To avoid such potential coercion, PBGC proposes to amend the criteria individuals must meet to waive their benefits by modifying its application of the constructive ownership rules. Under the proposal, if the majority owner has an option to acquire any outstanding interest in an organization, such interest

⁸ 29 CFR 4041.21(b)(2).

⁹ 29 CFR 4041.47(d).

¹⁰ 29 CFR 4041.21(b)(2)(i)–(iv).

¹¹ 29 CFR 4041.47(d).

¹² 26 U.S.C. 1563(e)(1).

will be considered as owned by such person by an option agreement under 26 CFR 1.414(c)–4(b)(1) if the person directly owns 5 percent or more of the unincorporated business or trade, capital interest or the profits interest in a partnership, or either 5 percent or more of the voting stock of a corporation or the value of all the stock of a corporation.¹³ Alternatively, if the person does not have a 5 percent or more direct ownership interest, the person would be able to qualify as a majority owner under an option agreement if the person has been a member of the board of directors, a fiduciary, or participated in the management of the plan sponsor for each of the 3 years immediately preceding the date of plan termination. These exceptions to the ownership rules are intended to minimize the potential misuse of option agreements and protect the benefits of participants who are not direct owners or who have not participated in the management of the plan sponsor.

Clarifying Due Dates

To complete a standard termination, the plan administrator must: (1) issue notices of intent to terminate and notices of plan benefits to participants, beneficiaries, and other affected parties; (2) file a standard termination notice and post-distribution certification with PBGC; and (3) distribute the plan's assets in satisfaction of the plan's benefit liabilities. Under § 4041.25(a), the standard termination notice is due on or before the 180th day after the proposed termination date. Under § 4041.25(b), a plan's date of termination is the later of the date specified in the standard termination notice or the date specified in the notice of intent to terminate (but not later than 90 days after the earliest date a notice of intent to terminate was provided to any party). However, if the plan administrator fails to specify such date in the notice of intent to terminate and/or fails to file a standard termination notice (thus failing to declare a proposed termination date), then the due date for the standard termination notice is unclear. PBGC proposes, in such cases, to clarify this ambiguity by clearly establishing a due date for the standard termination notice that does not depend on the declaration of a proposed termination date. Under the proposed rule, § 4041.25(a) would be modified such that the due date for a standard termination notice is the earlier of: (1) 180 days after the plan's proposed termination date as specified

in the standard termination notice; or (2) 60 days before making any distribution governed by section 4041(b) of ERISA. Thus, the due date for a standard termination notice, where the notice is not filed with PBGC, will be 60 days before distributions begin, and PBGC may assess penalties for the missed filing from that point going forward.

PBGC is also proposing a corresponding change to § 4041.29(b), which provides to plan administrators who timely filed a standard termination notice a 90-day grace period for the assessment of penalties for an untimely post-distribution certification. This section would be modified such that the grace period continues to be available but only if the plan administrator filed a standard termination notice within 180 days of the proposed termination date.

Other Clarifications, Corrections, and Updates

Filing, Issuance, Computation of Time, and Record Retention—29 CFR Part 4000

PBGC proposes to amend its regulation on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000) to require electronic filing by plans of standard termination filings, missing participant filings, and coverage determination forms. These filings are made by plans and practitioners representing plans, and not by individual participants. Filing this information electronically (by email or through an e-filing portal) is currently optional. However, because electronic filing is more efficient for both PBGC and filers and has become the standard method of filing for PBGC's regulated community, PBGC proposes to amend § 4000.3(b) to require electronic filing by plans for standard termination filings under subpart B of 29 CFR part 4041, missing participant filings under 29 CFR part 4050, and coverage determination forms under section 4021 of ERISA, in accordance with instructions on PBGC's website at www.pbgc.gov.

The proposed rule also makes other clarifying and editorial changes to part 4000.

Annual Financial and Actuarial Information Reporting—29 CFR Part 4010

Under PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010), certain underfunded plans¹⁴ must annually report identifying, financial, and

actuarial information to PBGC. Section 4010.8(a)(12) provides that the actuarial information must be certified, in writing, by an enrolled actuary. PBGC proposes to amend this paragraph so that the filing instructions, not the regulation, provide the rules about the certification (*i.e.*, what information must be contained in the certification and how to complete the certification). This proposed amendment is intended to give PBGC greater flexibility to consider methods other than written certifications, such as e-certifications, in the future.

Reportable Events and Certain Other Notification Requirements—29 CFR Part 4043

Plan administrators and contributing sponsors are responsible for notifying PBGC in the event of a reportable event under section 4043 of ERISA or a failure to make certain required contributions under section 303(k)(4) of ERISA or section 430(k)(4) of the Code. PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043), the "reportable events regulation," prescribes the requirements for notifying PBGC of one of these circumstances. Filers must submit these notices using PBGC's e-filing portal. The e-filing portal, available for submitting notices for reportable events since 2016, offers a secure application for submitting reportable events information. Currently, under § 4043.3(a)(3), the language states that if notices are required for two or more events, the notices can be combined into one filing. This provision was originally intended to make filing paper notices easier by allowing filers to combine paper notices into one filing. However, this provision is obsolete as under the e-filing portal, the filer is prompted to enter information for only one reportable event per filing. This method is not burdensome for filers as information about the filer is saved in the e-filing portal and does not need to be re-entered for each filing. Therefore, PBGC is proposing to remove the obsolete language in § 4043.3(a)(3).

PBGC is also proposing changes to § 4043.62 of the reportable events regulation. In 2020, § 4043.29 was amended to clarify that PBGC does not need notice of a change in the contributing sponsor to a plan if the change does not result in a contributing sponsor ceasing to be a member of the plan's controlled group.¹⁵ Therefore, the heading of § 4043.29 was revised to remove "contributing sponsor," and the

¹³ 26 CFR 1.414(c)–3(d)(2).

¹⁴ A filer is described in § 4010.4.

¹⁵ See 85 FR 6046, 6049 (Feb. 4, 2020).

description of reportable event was revised to provide that a reportable event occurs for a plan when there is a transaction that results, or will result, in one or more persons (including any person who is or was a contributing sponsor) ceasing to be a member of the plan's controlled group (other than by merger involving members of the same controlled group). The advance notice requirement in § 4043.62 refers to the description of the event that must be reported under § 4043.29. To conform with changes made to § 4043.29 in 2020, PBGC proposes to amend the heading of § 4043.62 by removing "contributing sponsor or," and proposes to amend paragraph (a) of § 4043.62 to remove "contributing sponsor or." These amendments would clarify and minimize confusion as to the advance notice requirement for a change in controlled group.

Allocating Unfunded Vested Benefits To Withdrawing Employers—29 CFR Part 4211

Under PBGC's regulation on Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR part 4211), a plan is responsible for determining the amount of unfunded vested benefits to be allocated to the withdrawing employer and using one of four methods to do so. Under § 4211.23, PBGC can approve an alternative allocation method or modification to an allocation method if such change or modification would not significantly increase the risk of loss to plan participants and beneficiaries or to PBGC.

PBGC proposes to amend paragraph (c) of § 4211.23 by removing language that implies that reconsideration of PBGC's decision on an alternative allocation method or modification to an allocation method is a right of a plan sponsor. Per PBGC's regulations on Rules for Administrative Review of Agency Decision (29 CFR part 4003), decisions made by PBGC under 29 CFR part 4211 are not subject to either appeal or reconsideration. Instead, PBGC has the authority to review, upon request or its own initiative, determinations when it is deemed to be appropriate. This proposed change will clarify that a plan sponsor may request review of PBGC's decision regarding an alternative allocation method.

Partitions of Eligible Multiemployer Plans—29 CFR Part 4233

A multiemployer plan that is seeking partition must comply with the requirements set forth under PBGC's regulation on Partitions of Eligible Multiemployer Plans (29 CFR part

4233). The specific application filing requirements are outlined in § 4233.3, including a specific statement under penalties of perjury that the plan sponsor must use with the signed and dated application for partition.

PBGC proposes to amend paragraph (b) of § 4233.3 to better comply with the affidavit requirements prescribed by the Department of Justice for perjury cases under 28 U.S.C. 1746. The new language for the affidavit must include language specifically referring to the penalty of perjury "under the laws of the United States of America" to adhere to the sample form outlined in paragraph (1) of 28 U.S.C. 1746.

Special Financial Assistance by PBGC—29 CFR Part 4262

Under the Special Financial Assistance by PBGC regulation (29 CFR part 4262), PBGC is amending paragraph (h)(3)(iv)(B) of § 4262.16 by changing the reference from "section 4291(b)(1)(A) of ERISA" to "section 4219(b)(1)(A) of ERISA."

OMB Control Numbers for PBGC Information Collection Requirements—29 CFR Part 4909

PBGC proposes to add a chart in currently reserved part 4909 which would display, per the requirements of 5 CFR 1320.5(b)(2)(ii)(C), the Office of Management and Budget control numbers of PBGC information collections for which there is no corresponding paper or electronic form. This change is intended for better organization and clarity. In addition, PBGC proposes to remove outdated or duplicative OMB control numbers from the following sections: 4007.12, 4010.15, 4041A.11, 4065.3, 4203.6, 4204.11, 4204.21, 4207.10, 4211.22, 4219.20, 4220.3, and 4281.4.

Compliance With Rulemaking Guidelines

Executive Orders 12866 and 13563

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

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Although this is not a significant regulatory action under Executive Order

12866, PBGC has examined the economic and policy implications of this proposed rule. Most of the proposed amendments, including those to parts 4006, 4007, 4010, and 4041, clarify regulations or conform regulations to statutory changes, or are otherwise cost-neutral in their impact.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that "may be outmoded, ineffective, insufficient, or excessively burdensome." These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified technical corrections, clarifications, and improvements to some of its regulations and has included those amendments in this proposed rulemaking. PBGC expects to propose periodic rulemakings of this nature.

Regulatory Flexibility Act

The Regulatory Flexibility Act¹⁶ (RFA) imposes certain requirements respecting rules that are subject to the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act, or any other law,¹⁷ and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency certifies that a proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seek public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.¹⁸

For purposes of the RFA requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants.¹⁹ This is substantially the same criterion PBGC uses in other regulations²⁰ and is consistent with certain requirements in

¹⁶ 5 U.S.C. 601 *et seq.*

¹⁷ The applicable definition of "rule" is found in section 601 of the RFA. *See* 5 U.S.C. 601(2).

¹⁸ The applicable definitions of "small business," "small organization," and "small governmental jurisdiction" are found in section 601 of the RFA. *See* 5 U.S.C. 601.

¹⁹ PBGC consulted with the Small Business Administration's Office of Advocacy before making this determination. Memorandum received from the U.S. Small Business Administration, Office of Advocacy on March 9, 2021.

²⁰ *See, e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

title I of ERISA²¹ and the Code,²² as well as the definition of a small entity that PBGC and the Department of Labor (DOL) have used for purposes of the RFA.²³

Further, while some large employers operate small plans along with larger ones, in general, most small plans are maintained by small employers. PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact on small entities of this proposed rule.

Based on its proposed definition of small entity, PBGC certifies under section 605(b) of the RFA that the amendments in this proposed rule would not have a significant economic impact on a substantial number of small entities. As explained above under “Executive Orders 12866 and 13563,” most of the proposed amendments offer clarifications or conform the regulation to statutory changes and thus are neutral in their impact. For instance, the clarification of deadlines of standard termination filings under part 4041 does not impose any new requirements, but rather clarifies existing ones. While it is possible that individual small plans may be impacted by this change, the overall effect on small plans will not be significant. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

Paperwork Reduction Act

This proposed rule contains collections of information that PBGC has submitted to OMB for review and approval under the Paperwork Reduction Act (PRA). OMB’s decision regarding these information collection requests will be available at <http://www.reginfo.gov>. An agency may not

²¹ See, e.g., section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

²² See, e.g., section 430(g)(2)(B) of the Code, which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

²³ See, e.g., PBGC’s proposed rule on Reportable Events and Certain Other Notification Requirements, 78 FR 20039, 20057 (Apr. 3, 2013) and DOL’s final rule on Procedures Governing the Filing and Processing of Prohibited Transaction Exemption Applications, 89 FR 4662, 4690 (Jan. 24, 2024).

conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Most of the changes PBGC expects to make are revisions to filing instructions, where necessary or helpful, to incorporate the clarifications in the proposed rule. Therefore, PBGC estimates that the proposed rule will have no impact on the hour and cost burden of reporting as described below.

Termination of Single-Employer Plans Regulation

The collection of information under part 4041 is approved under OMB control number 1212–0036 (expires March 31, 2026). The current information collection requirements have an estimated annual hour burden of 41,730 hours and a cost burden of \$8,509,747.

PBGC’s Standard Termination Filing Instructions would be updated to reflect the changes in this proposed rule to make clear that the forms under OMB control number 1212–0036 must be submitted electronically (by email or through the e-filing portal) and eliminate the option of filing paper forms. In addition, PBGC is making other editorial and clarifying changes to both the standard termination and distress termination instructions. The clarifications incorporated into the instructions would replace or augment existing language but would not create additional filing burden.

Annual Financial and Actuarial Information Reporting Regulation

The collection of information under part 4010 is approved under OMB control number 1212–0049 (expires February 28, 2026). The current information collection requirements have an estimated annual hour burden of 800 hours and a cost burden of \$11,080,000.

PBGC’s ERISA 4010 Filing Instructions would be updated to reflect the change in this proposed rule to include the rules about the certification of actuarial information submitted by certain underfunded plans. The change incorporated into the instructions would replace or augment existing language but would not create additional filing burden.

Missing Participants Regulation

The collection of information under part 4050 is approved under OMB control number 1212–0069 (expires November 30, 2026). The current information collection requirements have an estimated annual hour burden

of 70 hours and a cost burden of \$497,835.

PBGC’s Missing Participants Instructions would be updated to reflect the changes in this proposed rule to make clear that the forms under OMB control number 1212–0069 must be submitted electronically (by email or through an e-filing portal) and eliminate the option of filing paper forms. The clarifications incorporated into the instructions would replace or augment existing language but would not create additional filing burden.

Premium Filing Regulation

The collection of information under part 4007 is approved under OMB control number 1212–0009 (expires December 31, 2026). The current information collection requirements have an estimated annual hour burden of 13,565 hours and a cost burden of \$21,661,676.

PBGC’s Comprehensive Premium Instructions would be updated to reflect the changes in this proposed rule to change the options for the final premium filing due date. The clarifications incorporated into the instructions would replace or augment existing language but would not create additional filing burden.

PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the collection of information, including the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

List of Subjects

29 CFR Part 4000

Administrative practice and procedure, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4006

Employee benefit plans, Pension insurance.

29 CFR Part 4007

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4010

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4041

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4041A

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4043

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4065

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4203

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4204

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4207

Employee benefit plans; Pension insurance.

29 CFR Part 4211

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4219

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4220

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4233

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4262

Employee benefits plans; Pension insurance; Pensions; Reporting and recordkeeping requirements.

29 CFR Part 4281

Employee benefit plans; Pension insurance; Reporting and recordkeeping requirements.

29 CFR Part 4909

Employee benefit plans, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, PBGC proposes to amend 29 CFR chapter XL as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3).

§ 4000.3 [Amended]

■ 2. Amend § 4000.3 by:

■ a. Removing the words “the PBGC” and “the PBGC’s” and adding in their places the words “PBGC” and “PBGC’s”, respectively, wherever they appear;

■ b. Removing the words “Web site” and adding in their place the word “website” wherever they appear in paragraph (b);

■ c. Adding paragraphs (b)(5), (6), and (7); and

■ d. Removing “, including permitted filing methods, fax numbers, and mail and email addresses,” in paragraph (c) introductory text.

The additions read as follows:

§ 4000.3 What methods of filing may I use?

* * * * *

(b) * * *

(5) You must submit the information required under subpart B of part 4041 of this chapter electronically in accordance with the instructions on PBGC’s website, except as otherwise provided by PBGC.

(6) You must submit the information required under part 4050 of this chapter electronically in accordance with the instructions on PBGC’s website, except as otherwise provided by PBGC.

(7) You must submit the information necessary to request a coverage determination under section 4021 of ERISA electronically in accordance with the instructions on PBGC’s website, except as otherwise provided by PBGC.

* * * * *

PART 4006—PREMIUM RATES

■ 3. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 4. Amend § 4006.2 as follows:

■ a. Add a definition of “CSEC plan” in alphabetical order;

■ b. In the first sentence of the definition of “New plan,” remove “that did not exist before” and add in its place “with an effective date during”; and

■ c. In the definition of “UVB valuation date,” remove “in accordance with ERISA section 303(g)(2)” and add in its place “for a plan other than a CSEC plan in accordance with ERISA section 303(g)(2) and for a CSEC plan in accordance with ERISA section 306(c)(8)(B)(i) without regard to section 306(c)(8)(B)(ii)”.

The addition reads as follows:

§ 4006.2 Definitions.

* * * * *

CSEC plan means a plan as defined in section 210(f)(1) of ERISA.

* * * * *

■ 5. Amend § 4006.4 by revising paragraphs (b)(1) and (f)(2) to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

* * * * *

(b) * * *

(1) *In general.* A plan’s premium funding target is its standard premium funding target under paragraph (b)(2) of this section, except that—

(i) If the plan is not a CSEC plan and an election to use the alternative premium funding target under § 4006.5(g) is in effect, its premium funding target is its alternative premium funding target under § 4006.5(g), and;

(ii) If the plan is a CSEC plan, its premium funding target is determined under § 4006.5(h).

* * * * *

(f) * * *

(2) Section 303(m) of ERISA and section 430(m) of the Code, dealing with defined benefit pension plans maintained by certain community newspapers.

■ 6. Amend § 4006.5 by adding paragraph (h) to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(h) *CSEC plan premium funding target.* The premium funding target of a CSEC plan is its funding liability as determined under section 306(j)(5)(C) of ERISA for the UVB valuation year taking only vested benefits into account.

PART 4007—PAYMENT OF PREMIUMS

■ 7. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

- 8. Amend § 4007.11 by revising paragraph (d)(2) to read as follows:

§ 4007.11 Due Dates

* * * * *

(d) * * *

(2) Forty-five (45) days after the date the post-distribution certification under § 4041.29 of this chapter is filed.

* * * * *

§ 4007.12 [Amended]

- 9. Amend § 4007.12 by removing “(Approved by the Office of Management and Budget under control number 1212–0009)”.

PART 4010—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

- 10. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

- 11. Amend § 4010.8 by revising paragraph (a)(12) to read as follows:

§ 4010.8 Plan actuarial information.

(a) * * *
(12) Certification of the actuarial information by an enrolled actuary, as described in the related filing instructions and permitted under 26 CFR 301.6059–1(d).

* * * * *

§ 4010.15 [Removed]

- 12. Remove § 4010.15.

PART 4041—TERMINATION OF SINGLE-EMPLOYER PLANS

- 13. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

- 14. Amend § 4041.21 by adding paragraph (b)(2)(v) to read as follows:

§ 4041.21 Requirements for a standard termination.

* * * * *

(b) * * *

(2) * * *

(v) In any case in which the majority owner has an option to acquire any outstanding interest in an organization, such interest will be considered as owned by such person only if the following requirements are met:
(A) The person has a 5 percent or more direct ownership interest, or
(B) Such person has been a member of the board of directors, a fiduciary, or participated in the management of the plan sponsor for each of the 3 years immediately preceding the date of the plan termination.

- 15. Amend § 4041.25 by revising paragraph (a) to read as follows:

§ 4041.25 Standard termination notice.

(a) *Notice requirement.* The plan administrator must file with PBGC a standard termination notice, consisting of PBGC Form 500, completed in accordance with the instructions thereto, on or before the earlier of—

- (1) One hundred-eighty (180) days after the proposed termination date; or
- (2) Sixty (60) days before making any distribution governed by section 4041(b) of ERISA and this part.

* * * * *

- 16. Amend § 4041.29 by revising paragraph (b) to read as follows:

§ 4041.29 Post-distribution certification.

* * * * *

(b) *Penalty considerations.* If a standard termination notice is filed in accordance with § 4041.25(a)(1), PBGC may assess a penalty for a late filing under paragraph (a) of this section only if the required information is filed more than 90 days after the distribution deadline (including extensions) under § 4041.28(a).

§ 4041.47 [Amended]

- 17. Amend § 4041.47 by removing “§ 4041.21(b)(2)(i) through (iv)” and adding in its place “§ 4041.21(b)(2)(i) through (v)” in paragraph (d)(1).

PART 4041A—TERMINATION OF MULTIEMPLOYER PLANS

- 18. The authority citation for part 4041A continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1431, 1441.

§ 4041A.11 [Amended]

- 19. Amend § 4041A.11 by removing “(Approved by the Office of Management and Budget under control number 1212–0020)”.

PART 4043—REPORTABLE EVENTS AND CERTAIN OTHER NOTIFICATION REQUIREMENTS

- 20. The authority citation for part 4043 continues to read as follows:

Authority: 29 U.S.C. 1083(k), 1302(b)(3), 1343.

§ 4043.3 [Amended]

- 21. Amend § 4043.3 by removing the last sentence of paragraph (a)(3).
- 22. Amend § 4043.62 by revising the section heading and paragraph (a) to read as follows:

§ 4043.62 Change in controlled group.

(a) *Reportable event.* Advance notice is required for a change in a plan’s controlled group, as described in § 4043.29(a).

* * * * *

PART 4065—ANNUAL REPORT

- 23. The authority citation for part 4065 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1365.

§ 4065.3 [Amended]

- 24. Amend § 4065.3 by removing “(Approved by the Office of Management and Budget under control number 1212–0026)”.

PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

- 25. The authority citation for part 4203 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§ 4203.6 [Removed]

- 26. Remove § 4203.6.

PART 4204—VARIANCES FOR SALE OF ASSETS

- 27. The authority citation for part 4204 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

§ 4204.11 [Amended]

- 28. Amend § 4204.11 by removing “(Approved by the Office of Management and Budget under control number 1212–0021)”.

§ 4204.21 [Amended]

- 29. Amend § 4204.21 by removing “(Approved by the Office of Management and Budget under control number 1212–0021)”.

PART 4207—REDUCTION OR WAIVER OF COMPLETE WITHDRAWAL LIABILITY

- 30. The authority citation for part 4207 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1387.

§ 4207.10 [Amended]

- 31. Amend § 4207.10 by removing “(Approved by the Office of Management and Budget under control number 1212–0044)”.

PART 4211—ALLOCATING UNFUNDED VESTED BENEFITS TO WITHDRAWING EMPLOYERS

- 32. The authority citation for part 4211 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

§ 4211.22 [Amended]

- 33. Amend § 4211.22 by removing “(Approved by the Office of Management and Budget under control number 1212–0035)”.

§ 4211.23 [Amended]

■ 34. Amend § 4211.23 by removing “of the sponsor’s right to request a reconsideration of the decision pursuant to part 4003 of this chapter” and adding in its place “that the plan sponsor may request review of the decision” in paragraph (c).

PART 4219—NOTICE, COLLECTION, AND REDETERMINATION OF WITHDRAWAL LIABILITY

■ 35. The authority citation for part 4219 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3) and 1399(c)(6).

§ 4219.20 [Removed]

■ 36. Remove § 4219.20.

PART 4220—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

■ 37. The authority citation for part 4220 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1400.

§ 4220.3 [Amended]

■ 38. Amend § 4220.3 by removing “(Approved by the Office of Management and Budget under control number 1212–0031)”.

PART 4233—PARTITIONS OF ELIGIBLE MULTIEMPLOYER PLANS

■ 39. The authority citation for part 4233 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1413.

■ 40. Amend § 4233.3 by revising the second sentence in paragraph (b) to read as follows:

§ 4233.3 Application filing requirements.

* * * * * (b) * * * The application must be signed and dated by an authorized trustee who is a current member of the board of trustees, and must include the following statement under penalties of perjury: “Under penalty of perjury under the laws of the United States of America, I declare that I have examined this application, including accompanying documents, and, to the best of my knowledge and belief, the application contains all the relevant facts relating to the application; all statements of fact contained in the application are true, correct, and not misleading because of omission of any material fact; and all accompanying documents are what they purport to be.” * * *

PART 4262—SPECIAL FINANCIAL ASSISTANCE BY PBGC

■ 41. The authority citation for part 4262 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1432.

§ 4262.16 [Amended]

■ 42. Amend § 4262.16 by removing the citation to “section 4291(b)(1)(A) of

ERISA” and adding in its place “section 4219(b)(1)(A) of ERISA” in paragraph (h)(3)(iv)(B).

PART 4281—DUTIES OF PLAN SPONSOR FOLLOWING MASS WITHDRAWAL

■ 43. The authority citation for part 4281 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341(a), 1399(c)(1)(D), 1431, and 1441.

§ 4281.4 [Removed]

■ 44. Remove § 4281.4.

■ 45. Add part 4909, consisting of § ??, to read as follows:

PART 4909—OMB CONTROL NUMBERS FOR PBGC INFORMATION COLLECTION REQUIREMENTS

Authority: 29 U.S.C. 1302(b)(3), 5 CFR part 1320.

§ 4909.1 Information collection control numbers.

PBGC regulations that contain information collections requirements without corresponding written or electronic forms, questionnaires, or instructions are displayed in table 1 to this section. They are displayed along with their respective control numbers as assigned by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

TABLE 1 TO § 4909.1

Table with 2 columns: Regulation(s) and Information Collection Title, OMB control No. Rows include Part 4062, Part 4204, Part 4231, Part 4203, Part 4220, Part 4219, Part 4211, Part 4208, Part 4207, Part 4003, Parts 4041 and 4042, Part 4233.

Issued in Washington, DC, by Ann Y. Orr, Acting Director, Pension Benefit Guaranty Corporation.

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