

**IV. Findings and Certifications**

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government or the private sector within the meaning of UMRA.

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule, consistent with recent statutory amendments, provides PHAs with the flexibility to enter into energy performance contracts with terms of not more than 20 years. These revisions impose no significant economic impact on a substantial number of small entities. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD’s view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

*Environmental Impact*

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or

new construction; or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance program number is 14.850.

**List of Subjects in 24 CFR Part 990**

Accounting, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

■ Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 990 as follows:

**PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM**

■ 1. The authority citation for part 990 continues to read as follows:

**Authority:** 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

■ 2. In § 990.185, revise paragraph (a) introductory text and paragraph (a)(3)(iv), to read as follows:

**§ 990.185 Utilities expense level: Incentives for energy conservation/rate reduction.**

(a) *General/consumption reduction.* If a PHA undertakes energy conservation measures that are financed by an entity other than HUD, the PHA may qualify for the incentives available under this section. For a PHA to qualify for these incentives, the PHA must enter into a contract to finance the energy conservation measures, and must obtain HUD approval. Such approval shall be based on a determination that payments under a contract can be funded from reasonably anticipated energy cost savings. The contract period shall not exceed 20 years. The energy conservation measures may include, but are not limited to: Physical improvements financed by a loan from a bank, utility, or governmental entity; management of costs under the performance contract; or a shared savings agreement with a private energy service company. All such contracts shall be known as energy performance contracts. PHAs may extend an executed energy performance contract with a term of less than 20 years to a term of not more than 20 years, to permit additional energy conservation improvements without the procurement of energy performance contractors. The PHA must obtain HUD

approval to extend the term of an executed energy performance contract.

\* \* \* \* \*

(3) \* \* \*

(iv) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 20-year limit) if HUD determines that the shortfall is the result of changed circumstances, rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may be extended only to accommodate payment to the contractor and associated direct costs.

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Dated: September 11, 2008.

**Paula O. Blunt,**

*General Deputy Assistant Secretary for Public and Indian Housing.*

[FR Doc. E8–24573 Filed 10–15–08; 8:45 am]

BILLING CODE 4210–67–P

**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4022 and 4044**

**Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation’s regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in November 2008. Interest assumptions are also published on the PBGC’s Web site (<http://www.pbgc.gov>).

**DATES:** Effective November 1, 2008.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC’s regulations prescribe actuarial assumptions—including interest

assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during November 2008, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during November 2008, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during November 2008.

For valuation of benefits for allocation purposes, the interest assumptions that

the PBGC will use (set forth in Appendix B to part 4044) will be 7.09 percent for the first 20 years following the valuation date and 6.16 percent thereafter. These interest assumptions represent an increase (from those in effect for October 2008) of 0.91 percent for the first 20 years following the valuation date and 0.91 percent for all years thereafter.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for October 2008) of 0.50 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during November 2008, the PBGC finds that good cause exists for making the assumptions set forth in

this amendment effective less than 30 days after publication.

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

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

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

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended 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 appendix B to part 4022, Rate Set 181, as set forth below, is added to the table.

**Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
* 181	* 11-1-08	* 12-1-08	* 3.75	* 4.00	* 4.00	* 4.00	* 7	* 8

■ 3. In appendix C to part 4022, Rate Set 181, as set forth below, is added to the table.

**Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments**

\* \* \* \* \*

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		$i_1$	$i_2$	$i_3$	$n_1$	$n_2$
* 181	* 11-1-08	* 12-1-08	* 3.75	* 4.00	* 4.00	* 4.00	* 7	* 8

**PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS**

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry for November 2008, as set forth below, is added to the table.

**Appendix B to Part 4044—Interest Rates Used To Value Benefits**

\* \* \* \* \*

For valuation dates occurring in the month—	The values of $i_t$ are:					
	$i_t$	for $t =$	$i_t$	for $t =$	$i_t$	for $t =$
November 2008 .....	.0709	1–20	.0616	>20	N/A	N/A

Issued in Washington, DC, on this 9th day of October 2008.

**Vincent K. Snowbarger,**

*Deputy Director for Operations, Pension Benefit Guaranty Corporation.*

[FR Doc. E8–24651 Filed 10–15–08; 8:45 am]

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**DEPARTMENT OF EDUCATION**

**34 CFR Part 5b**

**RIN 1880–AA85**

[Docket ID ED, ED–2008–OM–0004]

**Privacy Act Regulations**

**AGENCY:** Office of Management, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations implementing the Privacy Act of 1974, as amended (Privacy Act). These changes are intended to exempt from certain Privacy Act requirements investigative material in a new system of records maintained by the Department that will be known as the Office of Inspector General Data Analytics System (ODAS) (18–10–02). Specifically, the exemption applies to materials compiled by the Department’s Office of Inspector General (OIG) for law enforcement purposes to identify internal control weaknesses and system issues and to improve methods of data modeling and annual audit planning in order to detect and investigate fraud, waste, and mismanagement in Department programs and operations.

**DATES:** These regulations are effective November 17, 2008.

**FOR FURTHER INFORMATION CONTACT:** Shelley Shepherd, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., room 8166, Washington, DC 20202–5920. Telephone: (202) 245–7077.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** On May 8, 2008 the Secretary published a notice of proposed rulemaking (NPRM) for this part in the **Federal Register** (73 FR 26056). In the summary to the NPRM, on pages 26056 and 26507, the Secretary discussed how the proposed regulations would amend the Department’s Privacy Act regulations to exempt from certain Privacy Act requirements investigative material in a new system of records. The new system of records is the Office of Inspector General Data Analytics System (ODAS) and the exemption would apply to materials compiled by the Office of Inspector General (OIG) for law enforcement purposes.

There are no differences between the NPRM and these final regulations.

**Analysis of Comments and Changes**

In response to the Secretary’s invitation in the NPRM, the Department received no comments on the proposed regulations.

**Executive Order 12866**

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly

interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the NPRM at 73 FR 26058.

**Paperwork Reduction Act of 1995**

These regulations do not contain any information collection requirements.

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(Catalog of Federal Domestic Assistance Number does not apply.)

Dated: October 10, 2008.

**Christopher P. Marston,**  
*Assistant Secretary for Management.*

■ For the reasons discussed in the preamble, the Secretary amends Part 5b of title 34 of the Code of Federal Regulations as follows:

**PART 5b—PRIVACY ACT REGULATIONS**

■ 1. The authority citation for part 5b continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Section 5b.11 is amended by revising paragraph (c)(1) introductory text to read as follows: