

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 892 is amended as follows:

#### PART 892—RADIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 892 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 892.1715 is added to subpart B to read as follows:

##### § 892.1715 Full-field digital mammography system.

(a) *Identification.* A full-field digital mammography system is a device intended to produce planar digital x-ray images of the entire breast. This generic type of device may include digital mammography acquisition software, full-field digital image receptor, acquisition workstation, automatic exposure control, image processing and reconstruction programs, patient and equipment supports, component parts, and accessories.

(b) *Classification.* Class II (special controls). The special control for the device is FDA's guidance document entitled "Class II Special Controls Guidance Document: Full-Field Digital Mammography System." See § 892.1(e) for the availability of this guidance document.

Dated: November 2, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Parts 4003 and 4903

#### Debt Collection

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Pension Benefit Guaranty Corporation's (PBGC) regulation on debt collection to conform to the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards and other legal requirements applicable to the collection of non-tax debts owed to PBGC. PBGC is adding salary offset and administrative wage garnishment to the collection methods allowed under the current regulation and making other changes to strengthen PBGC's debt collection program.

**DATES:** Effective December 6, 2010 (*See* Applicability in **SUPPLEMENTARY INFORMATION.**)

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** This final rule revises and replaces BGC's debt collection regulations found at 29 CFR Part 4903 to conform to the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, 1358 (April 26, 1996), the revised Federal Claims Collection Standards, 31 CFR Chapter IX (Parts 900 through 904), and other laws applicable to the collection of non-tax debt owed to the Government.

#### Background

In 1994, PBGC adopted a regulation on debt collection to provide procedures to implement administrative offset, as authorized by the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, *et seq.*), and in accordance with regulations issued by the Department of Justice and the General Accountability Office. In 1995, PBGC adopted a regulation on debt collection to provide procedures to implement tax refund offset, as required for participation in the Federal tax refund offset program authorized by 31 U.S.C. 3720A and in accordance with regulations issued by the Treasury Department. Together, these regulations comprise PBGC's current debt collection regulation (29 CFR part 4903) providing procedures for debt collection through administrative offset and tax refund offset. Administrative offset allows PBGC to request that debts owed to PBGC by a debtor (*e.g.*, in connection with government contractual obligations) be offset by amounts another Federal agency may owe to the debtor. Likewise, other Federal agencies may request the collection of debts owed to them be offset by amounts PBGC may owe the debtor. Tax refund offset allows PBGC to request that debts owed to PBGC by a debtor be offset by amounts the Government may owe to the debtor. The Debt Collection Improvement Act of 1996 (DCIA) fundamentally changed the manner in which the Federal government is required to manage the collection of its delinquent debts. Under DCIA, Congress

directed that the management of delinquent obligations is to be centralized at the Treasury Department in order to increase the efficiency of the Government's collection efforts.

Pursuant to 31 U.S.C. 3716, to utilize the administrative offset tools under DCIA, Federal agencies had to "adopt, without change, regulations on collecting by administrative offset promulgated by the Department of Justice, the Government Accountability Office, or the Department of the Treasury," or promulgate their own regulations consistent with the regulations issued by the Department of Justice, the General Accountability Office, or the Department of the Treasury. On November 20, 2000, the Department of Justice and the Department of the Treasury revised the FCCS. 65 FR 70390 (Nov. 20, 2000).

On July 22, 2010 (at 75 FR 42662), PBGC published a proposed rule to revise its regulation on debt collection to conform the Debt Collection Improvement Act of 1996, the Federal Claims Collections Standards, other legal requirements applicable to non-tax debts owed to PBGC, and to add salary offset and administrative wage garnishment to the collection methods allowed under the current regulation and make other changes to strengthen PBGC's debt collection program. PBGC received no public comments on the proposed rule and the final regulation is unchanged from the proposed regulation.

#### Overview of Final Rule

This final regulation revises the procedures for the collection of non-tax debts owed to PBGC through administrative offset and tax refund offset. It adopts the FCCS and supplements it by prescribing procedures consistent with the FCCS, as necessary and appropriate for PBGC operations. The final regulation also provides for the collection of debts via salary offset and the use of administrative wage garnishment. Salary offset is the collection of debt owed by a Federal employee by withholding up to 15 percent of the employee's disposable pay. The procedures for salary offset are governed by 5 U.S.C. 5514, and Office of Personnel Management (OPM) regulations (5 CFR part 550, subpart k). OPM regulations provide for salary offset through the Treasury Offset Program.<sup>1</sup> Administrative wage

<sup>1</sup> PBGC has an internal directive which provides procedures to recover debts owed to PBGC from the current pay account of an employee, and to process

garnishment is the collection of a debt owed by a former Federal employee by ordering a non-Federal employer to withhold funds from a debtor's wages. The procedures for administrative wage garnishment are governed by 31 U.S.C. 3720D and 31 CFR 285.11.

As with PBGC's current debt collection regulation, the final regulation applies to collection of debts to PBGC by employers (*e.g.*, unpaid premium, penalty and interest under part 4007, information penalties under part 4071, and employer liability under part 4062) and to the recovery of benefit overpayments to participants in cases where PBGC does not recoup the overpayment under part 4022 (*e.g.*, where a participant is not entitled to future annuity benefits as of the plan's termination date). The final regulation also applies to debts owed to the United States by current and former PBGC employees.

The final regulation does not apply to the collection of tax debts, which is governed by the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*) and regulations, policies, and procedures issued by the Internal Revenue Service.

Under the final regulation, benefits paid by PBGC generally are not offset, in accordance with the anti-alienation provisions under 29 U.S.C. 1056(d) and 26 U.S.C. 401(a)(13). However, benefits paid by PBGC could be offset under certain limited exceptions from those provisions (*e.g.*, in certain fiduciary breach situations).

Nothing in the final regulation precludes the use of collection procedures not contained in the regulation. For example, PBGC may collect unused travel advances through setoff of an employee's pay under 5 U.S.C. 5705. Moreover, certain PBGC efforts to obtain payment of debts arising out of activities under ERISA are authorized by and subject to requirements prescribed under other Federal statutes. PBGC's activities will be consistent with such requirements, as well as with any other applicable requirements (*see e.g.*, parts 4000, 4003, 4007, and 4062). PBGC may use multiple collection methods at the same time to collect a debt, as permitted by law. Nothing in the final regulation requires PBGC to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

PBGC maintains a system of records to collect debts owed to PBGC by various individuals, PBGC-13, Debt

Collection. *See* 75 FR 37842 (June 30, 2010).

#### *Subpart A—4903.1 to 4903.4*

Subpart A of the final regulation addresses the general provisions applicable to the collection of non-tax debts owed to PBGC. Section 4903.5 includes procedures for the collection of debts owed to PBGC, other than those subject to recoupment.

Under § 4903.2, PBGC is not required to duplicate notices or administrative proceedings provided by contract, this final regulation, or other laws or regulations. PBGC is not required to provide a debtor with two hearings on the same issue simply because PBGC used two different collection tools, each of which requires that the debtor be provided with a hearing. For example, if PBGC has provided a debtor with notice of unpaid premium under part 4007, it need not provide additional notice to the debtor before using this regulation to collect the debt owed to PBGC.

Section 4903.4 states that PBGC's rules under part 4000 regarding permissible methods of filing with PBGC, determining dates of filing and computation of time apply for purposes of this regulation.

#### *Subpart B—4903.5 to 4903.20*

Subpart B of the final regulation describes the procedures to be followed by PBGC when collecting debts owed to it. Among other things, subpart B outlines the due process procedures PBGC is required to follow when using offset (administrative, tax refund, and salary) to collect a debt owed to it, when garnishing a debtor's non-Federal wages, or before reporting a debt owed to it to a credit bureau. Specifically, PBGC is required to provide debtors with notice of the amount and type of the debt, the intended collection action to be taken, how a debtor may pay the debt or make alternate payment arrangements, how a debtor could review documents related to the debt, and the consequences to the debtor if the debt is not repaid. Subpart B also describes how a debtor may request a hearing to contest the noticed debt.

Subpart B also explains the circumstances under which PBGC could waive interest, penalties, and administrative costs. Such waivers are permitted only to the extent permitted by law. For example, part 4007 of this chapter does not permit waivers of interest charges on late premium payments. PBGC may provide additional guidance on how interest, penalties, and administrative costs are assessed on particular types of debts.

Subpart B updates PBGC procedures to reflect changes required by DCIA. For example, DCIA centralized the use of offset by requiring agencies to refer debts delinquent for more than 180 days to the Financial Management Service (FMS) of the Treasury Department for offset. *See* 31 U.S.C. 3716(c)(6). FMS is required to offset payments to persons who owe delinquent debts to the Government. The final regulation revises PBGC's regulations to comply with DCIA requirements for all types of offsets. This final regulation also incorporates procedures for several collection remedies authorized by DCIA, such as administrative wage garnishment.

#### *Subpart C—4903.21 to 4903.22*

Subpart C of the final regulation describes the procedures to be followed when a Federal agency, other than PBGC, wishes to use the offset process to collect a debt from a non-tax payment issued by PBGC as a payment agency. Subpart C governs the process for offsets that occur on a case-by-case basis to collect debts from payments made by PBGC to its employees, its vendors, and others whom PBGC is required or authorized to pay. While centralized offset through the Treasury Offset Program is the Government's primary offset collection tool, this final regulation provides the procedures to be used when centralized offset is not otherwise available or appropriate. An agency's use of the non-centralized administrative offset process does not provide grounds to invalidate any offset on the basis that centralized offset was not used.

### **Compliance With Rulemaking Guidelines**

#### *Executive Order 12866*

PBGC has determined that this rule is not a "significant regulatory action" under Executive Order 12866.

#### *Regulatory Flexibility Act*

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this final regulation will not have a significant economic impact on a substantial number of small entities. The final rule is limited to procedures required by the Debt Collection Improvement Act of 1996, the Federal Claims Collection Standards and other laws applicable to the collection of non-tax debts owed to the United States. Thus, a small entity can avoid the application of this rule by paying such debts when due. Further, insofar as the provisions of this rule do apply, their

requests received from another Federal agency from the current pay account of a PBGC employee to recover debts owed to the agency.

primary effect would be to provide procedural protections to persons whose debts are otherwise subject to collection by administrative offset, tax refund offset, salary offset or administrative wage garnishment. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

#### List of Subjects

##### 29 CFR Part 4003

Administrative practice and procedure, Organization and functions (Government agencies, Pension insurance, Pensions.

##### 29 CFR Part 4903

Claims.

■ For the reasons given above, PBGC is amending 29 CFR parts 4003 and 4903 as follows:

#### PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

■ 1. The authority citation for part 4003 continues to read as follows:

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

■ 2. Amend § 4003.32 by removing “§ 4903.33 of this chapter, by a date 60 days (or more) thereafter” and replacing it with “part 4903 of this chapter, by the date”.

■ 3. Amend § 4003.52 by removing “§ 4903.33 of this chapter, by a date 60 days (or more) thereafter” and replacing it with “part 4903 of this chapter, by the date”.

■ 4. Part 4903 is revised to read as follows:

#### PART 4903—DEBT COLLECTION

##### Subpart A—General Provisions

Sec.

4903.1 What definitions apply to this part?

4903.2 What do these regulations cover?

4903.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?

4903.4 What rules apply for purposes of filing with PBGC, determining dates of filings, and computation of time?

##### Subpart B—Procedures to Collect Debts Owed to PBGC

4903.5 What notice will PBGC send to a debtor when collecting a debt owed to PBGC?

4903.6 How will PBGC add interest, penalty charges, and administrative costs to a debt owed to PBGC?

4903.7 When will PBGC allow a debtor to pay a debt owed to PBGC in installments instead of a lump sum?

4903.8 When will PBGC compromise a debt owed to PBGC?

4903.9 When will PBGC suspend or terminate debt collection on a debt owed to PBGC?

4903.10 When will PBGC transfer a debt owed to PBGC to the Treasury Department's Financial Management Service for collection?

4903.11 How will PBGC use administrative offset (offset of non-tax Federal payments) to collect a debt owed to PBGC?

4903.12 How will PBGC use tax refund offset to collect a debt owed to PBGC?

4903.13 How will PBGC offset a Federal employee's salary to collect a debt owed to PBGC?

4903.14 How will PBGC use administrative wage garnishment to collect a debt owed to PBGC from a debtor's wages?

4903.15 How will PBGC report debts owed to credit bureaus to PBGC?

4903.16 How will PBGC refer debts owed to private collection agencies to PBGC?

4903.17 When will PBGC refer debts owed to the Department of Justice to PBGC?

4903.18 Will a debtor who owes a debt to PBGC or another Federal agency, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds?

4903.19 How does a debtor request a special review based on a change in circumstances such as a catastrophic illness, divorce, death, or disability?

4903.20 Will PBGC issue a refund if money is erroneously collected on a debt?

##### Subpart C—Procedures for Offset of PBGC Payments to Collect Debts Owed to Other Federal Agencies

4903.21 How do other Federal agencies use the offset process to collect debts from payments issued by PBGC?

4903.22 What does PBGC do upon receipt of a request to offset the salary of a PBGC employee to collect a debt owed by the employee to another Federal agency?

**Authority:** 5 U.S.C. 5514; 29 U.S.C. 1302(b); 31 U.S.C. 3701–3719, 3720A; 5 CFR part 550, subpart K; 31 CFR part 285; 31 CFR parts 900–904.

##### Subpart A—General Provisions

###### § 4903.1 What definitions apply to this part?

The following terms are defined in § 4001.2 of this chapter: Code, PBGC, and Person. In addition, for purposes of this part:

*Administrative offset or offset* means withholding funds payable by the United States (including funds payable by the United States on behalf of a state government) to, or held by the United States for, a person to satisfy a debt owed by the person. The term “administrative offset” can include, but is not limited to, the offset of Federal salary, vendor, retirement, and Social Security benefit payments. The terms “centralized administrative offset” and

“centralized offset” refer to the process by which the Treasury Department's Financial Management Service offsets Federal payments through the Treasury Offset Program.

*Administrative wage garnishment* means the process by which a Federal agency orders a non-Federal employer to withhold amounts from a debtor's wages to satisfy a debt, as authorized by 31 U.S.C. 3720D, 31 CFR 285.11, and this part.

*Agency or Federal agency* means an executive department or agency; a military department; the United States Postal Service; the Postal Regulatory Commission; any nonappropriated fund instrumentality described in 5 U.S.C. 2105(c); the United States Senate; the United States House of Representatives; any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government; or a Government corporation.

*Creditor agency* means any Federal agency that is owed a debt.

*Debt* means any amount of money, funds or property that has been determined by an appropriate official of the Federal Government to be owed to the United States government, including government-owned corporations, by a person. As used in this part, the term “debt” can include a debt owed to PBGC, but does not include debts arising under the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*).

*Debtor* means a person who owes a debt to the United States.

*Delinquent debt* means a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made.

*Disposable pay* has the same meaning as that term is defined in 5 CFR 550.1103.

*Employee or Federal employee* means a current employee of PBGC or other Federal agency, including a current member of the uniformed services, including the Army, Navy, Air Force, Marine Corps, Coast Guard, Commissioned Corps of the National Oceanic and Atmospheric Administration, Commissioned Corps of the Public Health Service, the National Guard, and the reserve forces of the uniformed services.

*FCCS* means the Federal Claims Collection Standards, 31 CFR parts 900–904.

*Financial Management Service (FMS)* means the Treasury Department bureau that is responsible for the centralized collection of delinquent debts through

the offset of Federal payments and other means.

*Payment agency or Federal payment agency* means any Federal agency that transmits payment requests in the form of certified payment vouchers, or other similar forms, to a disbursing official for disbursement. The payment agency may be the agency that employs the debtor. In some cases, PBGC may be both the creditor agency and payment agency.

*Salary offset* means a type of administrative offset to collect a debt under Section 5514 of Title 5 of the United States Code and 5 CFR part 550, subpart K by deduction(s) at one or more officially established pay intervals from the current pay account of an employee with or without his or her consent.

*Tax debt* means a debt arising under the Code.

*Tax refund offset* means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that taxpayer to a Federal agency pursuant to Treasury regulations.

#### **§ 4903.2 What do these regulations cover?**

(a) *Scope.* This part provides procedures for the collection of debts owed to PBGC, other than those subject to recoupment (29 CFR 4022, subpart E). This part also provides procedures for collection of other debts owed to the United States when a request for offset of a payment, for which PBGC is the payment agency, is received by PBGC from another agency (for example, when a PBGC employee owes a student loan debt to the United States Department of Education).

##### *(b) Applicability.*

(1) This part applies to PBGC when collecting a debt owed to PBGC; to persons who owe debts to PBGC; to persons controlled by or controlling persons who owe debts to a Federal agency, and to Federal agencies requesting offset of a payment issued by PBGC as a payment agency (including salary payments to PBGC employees).

(2) This part does not apply to debts owed to PBGC being collected through recoupment under subpart E of part 4022 of this chapter. Benefits paid by PBGC generally will not be offset, subject to limited exceptions (*e.g.*, in certain fiduciary breach situations).

(3) This part does not apply to tax debts, to any debt based in whole or in part on conduct in violation of the antitrust laws, nor to any debt for which there is an indication of fraud or misrepresentation, as described in § 900.3 of the FCCS, unless the debt is returned by the Department of Justice to PBGC for handling.

(4) Nothing in this part precludes the use of other statutory or regulatory authority to collect or dispose of any debt. *See*, for example, 5 U.S.C. 5705, Advancements and Deductions, which authorizes PBGC to recover travel advances by offset of up to 100 percent of a Federal employee's accrued pay. *See, also*, 5 U.S.C. 4108, governing the collection of training expenses.

(5) To the extent that provisions of laws, other regulations, and PBGC enforcement policies differ from the provisions of this part, those provisions of law, other regulations, and PBGC enforcement policies apply to the remission or mitigation of fines, penalties, and forfeitures, and to debts arising under ERISA, rather than the provisions of this part.

(c) *Additional policies and procedures.* PBGC may, but is not required to, promulgate additional policies and procedures consistent with this part, the FCCS, and other applicable law, policies, and procedures.

(1) PBGC does not intend this regulation to prohibit PBGC from demanding the return of specific property or the payment of its value.

(2) The failure of PBGC to comply with any provision in this regulation will not serve as a defense to the existence of the debt.

(d) *Duplication not required.* Nothing in this part requires PBGC to duplicate notices or administrative proceedings required by contract, this part, or other laws or regulations.

(e) *Use of multiple collection remedies allowed.* PBGC and other Federal agencies may simultaneously use multiple collection remedies to collect a debt, except as prohibited by law. This part is intended to promote aggressive debt collection, using for each debt all available and appropriate collection remedies. To provide PBGC with flexibility in determining which remedies will be most efficient in collecting the particular debt, these remedies are not listed in any prescribed order.

#### **§ 4903.3 Do these regulations adopt the Federal Claims Collection Standards (FCCS)?**

This part adopts and incorporates all provisions of FCCS. This part also supplements the FCCS by prescribing procedures consistent with FCCS, as necessary and appropriate for PBGC operations.

#### **§ 4903.4 What rules apply for purposes of filing with PBGC, determining dates of filings, and computation of time?**

(a) *How and where to file.* PBGC applies the rules in subpart A of part

4000 of this chapter to determine permissible methods of filing with PBGC under this part. *See* § 4000.4 of this chapter for information on where to file.

(b) *Date of filing.* PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that a submission under this part was filed with PBGC.

(c) *Computation of time.* PBGC applies the rules of subpart D of part 4000 of this chapter to compute any time period under this part.

### **Subpart B—Procedures To Collect Debts Owed to PBGC**

#### **§ 4903.5 What notice will PBGC send to a debtor when collecting a debt owed to PBGC?**

(a) *Notice requirements.* PBGC will collect debts owed to PBGC. PBGC will promptly send at least one written notice to a debtor informing the debtor of the consequences of failing to pay or otherwise resolve a debt owed to PBGC. The notice(s) will be sent to the debtor at the most current address of the debtor in PBGC's records. Generally, before starting the collection actions described in §§ 4903.6 and 4903.10 through 4903.18 of this part, PBGC will send no more than two written notices to the debtor. The notice will explain why the debt is owed to PBGC, the amount of the debt, how a debtor may pay the debt or make alternate repayment arrangements, how a debtor may review non-privileged documents related to the debt, how a debtor may dispute the debt, the collection remedies available to PBGC if the debtor refuses or otherwise fails to pay the debt, and other consequences to the debtor if the debt is not paid. Except as otherwise provided in paragraph (b) of this section, the written notice(s) will explain to the debtor:

(1) The nature and amount of the debt, and the facts giving rise to the debt;

(2) How interest, penalties, and administrative costs are added to the debt, the date by which payment must be made to avoid such charges, and that such assessments must be made unless excused in accordance with 31 CFR 901.9 (*see* § 4903.6 of this part);

(3) The date by which payment should be made to avoid the enforced collection actions described in paragraph (a)(6) of this section;

(4) PBGC's willingness to discuss alternative payment arrangements and how the debtor may enter into a written agreement to repay the debt under terms acceptable to PBGC (*see* § 4903.7 of this part);

(5) The name, address, and telephone number of a contact person or office within PBGC;

(6) PBGC's intention to enforce collection by taking one or more of the following actions if the debtor fails to pay or otherwise resolve the debt:

(i) *Offset*. Offset the debtor's receipt of Federal payments, including income tax refunds, salary, certain benefit payments (such as Social Security), Federal retirement (*i.e.*, CSRS or FERS), vendor, travel reimbursements and advances, and other Federal payments (*see* §§ 4903.11 through 4903.13 of this part);

(ii) *Private collection agency*. Refer the debt to a private collection agency (*see* § 4903.16 of this part);

(iii) *Credit bureau reporting*. Report the debt to a credit bureau (*see* § 4903.15 of this part);

(iv) *Administrative wage garnishment*. Garnish the debtor's wages through administrative wage garnishment (*see* § 4903.14 of this part);

(v) *Litigation*. Whether PBGC will initiate litigation under 29 U.S.C. 1302 to collect the debt or refer the debt to the Department of Justice to initiate litigation to collect the debt (*see* § 4903.17 of this part);

(vi) *Treasury Department's Financial Management Service*. Refer the debt to the Financial Management Service for collection (*see* § 4903.10 of this part);

(7) That debts over 180 days delinquent must be referred to the Financial Management Service for the collection actions described in paragraph (a)(6) of this section (*see* § 4903.10 of this part);

(8) How the debtor may inspect and copy non-privileged records related to the debt;

(9) How the debtor may request a review of PBGC's determination that the debtor owes a debt to PBGC and present evidence that the debt is not delinquent or legally enforceable (*see* §§ 4903.11(c) and 4903.12(c) of this part);

(10) How a debtor who is an individual may request a hearing if PBGC intends to garnish the debtor's private sector (*i.e.*, non-Federal) wages (*see* § 4903.14(a) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th business day following the date of the mailing of the notice, will stay the commencement of administrative wage garnishment, but not other collection procedures; and

(iii) The name and address of the office to which the request for a hearing should be sent.

(11) How a debtor who is an individual and a Federal employee subject to Federal salary offset may

request a hearing (*see* § 4903.13(e) of this part), including:

(i) The method and time period for requesting a hearing;

(ii) That a request for a hearing, timely filed on or before the 15th day following receipt of the notice, will stay the commencement of salary offset, but not other collection procedures;

(iii) The name and address of the office to which the request for a hearing should be sent;

(iv) That PBGC will refer the debt to the debtor's employing agency or to the Financial Management Service to implement salary offset, unless the employee files a timely request for a hearing;

(v) That a final decision on the hearing, if requested, will be issued at the earliest practicable date, but not later than 60 days after the filing of the request for a hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(vi) That any knowingly false or frivolous statements, representations, or evidence may subject the Federal employee to penalties under the False Claims Act (31 U.S.C. 3729–3731) or other applicable statutory authority, and criminal penalties under 18 U.S.C. 286, 287, 1001, and 1002, or other applicable statutory authority;

(vii) That unless prohibited by contract or statute, amounts paid on or deducted for the debt which are later waived or found not owed to the United States will be promptly refunded to the employee; and

(viii) That proceedings with respect to such debt are governed by 5 U.S.C. 5514 and 31 U.S.C. 3716.

(12) How the debtor may request a waiver of the debt, if applicable. *See*, for example, § 4903.6 and § 4903.13(f) of this part.

(13) How the debtor's spouse may claim his or her share of a joint income tax refund by filing Form 8379 with the Internal Revenue Service (*see* <http://www.irs.gov>);

(14) How the debtor may exercise other rights and remedies, if any, available to the debtor under statutory or regulatory authority under which the debt arose.

(15) That certain debtors and, if applicable, persons controlled by or controlling such debtors, may be ineligible for Federal Government loans, guaranties and insurance, grants, cooperative agreements or other Federal funds (*see* 28 U.S.C. 3201(e); 31 U.S.C. 3720B, 31 CFR 285.13, and § 4903.18(a) of this part); and

(16) That the debtor should advise PBGC of a bankruptcy proceeding of the

debtor or another person liable for the debt being collected.

(b) *Exceptions to notice requirements*. PBGC may omit from a notice to a debtor one or more of the provisions contained in paragraphs (a)(6) through (a)(16) of this section if PBGC, in consultation with its legal counsel, determines that any provision is not legally required given the collection remedies to be applied to a particular debt.

(c) *Respond to debtors; comply with FCCS*. PBGC should respond promptly to communications from debtors and comply with other FCCS provisions applicable to the administrative collection of debts. *See* 31 CFR part 901.

#### **§ 4903.6 How will PBGC add interest, penalty charges, and administrative costs to a debt owed to PBGC?**

(a) *Assessment and notice*. PBGC will assess interest, penalties and administrative costs on PBGC debts in accordance with the provisions of 31 U.S.C. 3717, 31 CFR 901.9 and other applicable requirements. Administrative costs, including the costs of processing and handling a delinquent debt, will be determined by PBGC. PBGC will explain in the notice to the debtor how interest, penalties, costs, and other charges are assessed, unless the requirements are included in a contract or other legally binding agreement.

(b) *Waiver of interest, penalties, and administrative costs*. Unless otherwise required by law, regulation, or contract, PBGC will not charge interest if the amount due on the debt is paid within 30 days of the date from which the interest accrues. *See* 31 U.S.C. 3717(d). To the extent permitted by law, PBGC may waive interest, penalties, and administrative costs, or any portion thereof, in appropriate circumstances consistent with the FCCS.

(c) *Accrual during suspension of debt collection*. In most cases, interest, penalties and administrative costs will continue to accrue during any period when collection has been suspended for any reason (for example, when the debtor has requested a hearing). PBGC may suspend accrual of any or all of these charges in appropriate circumstances consistent with the FCCS.

#### **§ 4903.7 When will PBGC allow a debtor to pay a debt owed to PBGC in installments instead of a lump sum?**

If a debtor is financially unable to pay the debt in a lump sum, PBGC may accept payment of a debt in regular installments, in accordance with the provisions of 31 CFR 901.8.

**§ 4903.8 When will PBGC compromise a debt owed to PBGC?**

If PBGC cannot collect the full amount of a debt owed to PBGC, PBGC may compromise the debt in accordance with the provisions of 31 CFR part 902.

**§ 4903.9 When will PBGC suspend or terminate debt collection on a debt owed to PBGC?**

If, after pursuing all appropriate means of collection, PBGC determines that a debt owed to PBGC is uncollectible, PBGC may suspend or terminate debt collection activity in accordance with the provisions of 31 CFR part 903. Termination of debt collection activity by PBGC does not discharge the indebtedness.

**§ 4903.10 When will PBGC transfer a debt owed to PBGC to the Treasury Department's Financial Management Service for collection?**

(a) PBGC will transfer a debt owed to PBGC that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing." See 31 U.S.C. 3711(g) and 31 CFR 285.12. PBGC may transfer debts owed to PBGC that are delinquent 180 days or less to the Financial Management Service in accordance with the procedures described in 31 CFR 285.12. The Financial Management Service takes appropriate action to collect or compromise the transferred PBGC debt, or to suspend or terminate collection action thereon, in accordance with the statutory and regulatory requirements and authorities applicable to the debt owed to PBGC and the collection action to be taken. See 31 CFR 285.12(b) and 285.12(c)(2). Appropriate action can include, but is not limited to, contact with the debtor, referral of the debt owed to PBGC to the Treasury Offset Program, private collection agencies, or the Department of Justice; reporting of the debt to credit bureaus, and/or administrative wage garnishment.

(b) At least 60 days prior to transferring a debt owed to PBGC to the Financial Management Service, PBGC will send notice to the debtor as required by § 4903.5 of this part. PBGC will certify to the Financial Management Service that the debt is valid, delinquent, legally enforceable, and that there are no legal bars to collection. In addition, PBGC will certify its compliance with all applicable due process and other requirements as described in this part and other Federal laws. See 31 CFR 285.12(i) regarding the certification requirement.

(c) As part of its debt collection process, the Financial Management

Service uses the Treasury Offset Program to collect debts owed to PBGC by administrative and tax refund offset. See 31 CFR 285.12(g). Under the Treasury Offset Program, before a Federal payment is disbursed, the Financial Management Service compares the name and taxpayer identification number (TIN) of the payee with the names and TINs of debtors that have been submitted by Federal agencies and states to the Treasury Offset Program database. If there is a match, the Financial Management Service (or, in some cases, another Federal disbursing agency) offsets all or a portion of the Federal payment, disburses any remaining payment to the payee, and pays the offset amount to the creditor agency. Federal payments eligible for offset include, but are not limited to, income tax refunds, salary, travel advances and reimbursements, retirement and vendor payments, and Social Security and other benefit payments.

**§ 4903.11 How will PBGC use administrative offset (offset of non-tax Federal payments) to collect a debt owed to PBGC?**

(a) *Centralized administrative offset through the Treasury Offset Program.*

(1) In most cases, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by the offset of Federal payments. See § 4903.10(c) of this part. If not already transferred to the Financial Management Service under § 4903.10 of this part, PBGC will refer debt over 180 days delinquent to the Treasury Offset Program for collection by centralized administrative offset. See 31 U.S.C. 3716(c)(6); 31 CFR part 285, subpart A; and 31 CFR 901.3(b). PBGC may refer to the Treasury Offset Program for offset any debt owed to PBGC that has been delinquent for 180 days or less.

(2) At least 60 days prior to referring a debt owed to PBGC to the Treasury Offset Program, in accordance with paragraph (a)(1) of this section, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC will certify to the Financial Management Service, that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection by offset. In addition, PBGC will certify its compliance with the requirements in this part.

(b) *Non-centralized administrative offset for debts owed to PBGC.*

(1) When centralized administrative offset through the Treasury Offset Program is not available or appropriate, PBGC may collect past-due, legally

enforceable debts owed to PBGC through non-centralized administrative offset. See 31 CFR 901.3(c). In these cases, PBGC may offset a payment internally or make an offset request directly to a Federal payment agency.

(2) At least 30 days prior to offsetting a payment internally or requesting a Federal payment agency to offset a payment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. When referring a debt owed to PBGC for offset under this paragraph (b), PBGC will certify that the debt is valid, delinquent, and legally enforceable, and that there are no legal bars to collection by offset. In addition, PBGC will certify its compliance with these regulations concerning administrative offset. See 31 CFR 901.3(c)(2)(ii).

(c) *Administrative review.* The notice described in § 4903.5 of this part will explain to the debtor how to request an administrative review of PBGC's determination that the debtor owes a debt to PBGC and how to present evidence that the debt is not delinquent or legally enforceable. In addition to challenging the existence and amount of the debt owed to PBGC, the debtor may seek a review of the terms of repayment. In most cases, PBGC will provide administrative review based upon the written record, including documentation provided by the debtor. PBGC may provide the debtor with a reasonable opportunity for an oral hearing when the debtor requests reconsideration of the debt owed to PBGC, and PBGC determines that the question of the indebtedness cannot be resolved by review of the documentary evidence. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing. PBGC will carefully document all significant matters discussed at the hearing. PBGC may suspend collection through administrative offset and/or other collection actions pending the resolution of a debtor's dispute.

(d) *Procedures for expedited offset.* Under the circumstances described in 31 CFR 901.3(b)(4)(iii), PBGC may offset against a payment to be made to the debtor prior to sending a notice to the debtor, as described in § 4903.5 of this part, or completing the procedures described in paragraph (b)(2) and (c) of this section. PBGC will give the debtor notice and an opportunity for review as soon as practicable and promptly refund any money ultimately found not to have been owed to the Government.

**§ 4903.12 How will PBGC use tax refund offset to collect a debt owed to PBGC?**

(a) *Tax refund offset.* In most cases, the Financial Management Service uses the Treasury Offset Program to collect debts owed to PBGC by the offset of tax refunds and other Federal payments. See § 4903.10(c) of this part. If not already transferred to the Financial Management Service under § 4903.10 of this part, PBGC will refer to the Treasury Offset Program any past-due, legally enforceable debt for collection by tax refund offset. See 26 U.S.C. 6402(d), 31 U.S.C. 3720A and 31 CFR 285.2.

(b) *Notice.* At least 60 days prior to referring a debt owed to the Treasury Offset Program, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC will certify to the Financial Management Service's Treasury Offset Program that the debt is past due and legally enforceable in the amount submitted, and that the PBGC has made reasonable efforts to obtain payment of the debt as described in 31 CFR 285.2(d). In addition, PBGC will certify its compliance with all applicable due process and other requirements described in this part and other Federal laws. See 31 U.S.C. 3720A(b) and 31 CFR 285.2.

(c) *Administrative review.* The notice described in § 4903.5 of this part will provide the debtor with at least 60 days prior to the initiation of tax refund offset to request an administrative review as described in § 4903.11(c) of this part. PBGC may suspend collection through tax refund offset and/or other collection actions pending the resolution of the debtor's dispute.

**§ 4903.13 How will PBGC offset a Federal employee's salary to collect a debt owed to PBGC?****(a) Federal salary offset.**

(1) Salary offset is used to collect debts owed to the United States or PBGC by Federal employees. If a Federal employee owes PBGC a debt, PBGC may offset the employee's Federal salary to collect the debt in the manner described in this section. For information on how a Federal agency other than PBGC may collect debt from the salary of a PBGC employee, see §§ 4903.21 and 4903.22, subpart C, of this part.

(2) Nothing in this part requires PBGC to collect a debt in accordance with the provisions of this section if Federal law allows other means to collect. See, for example, 5 U.S.C. 5705 (travel advances not used for allowable travel expenses are recoverable from the employee or his estate by setoff against accrued pay and other means) and 5 U.S.C. 4108 (recovery of training expenses).

(3) PBGC may use the administrative wage garnishment procedure described in § 4903.14 of this part to collect from an individual's non-Federal wages a debt owed to PBGC.

(b) *Centralized salary offset through the Treasury Offset Program.* As described in § 4903.10(a) of this part, PBGC will refer debts owed to PBGC to the Financial Management Service for collection by administrative offset, including salary offset, through the Treasury Offset Program. When possible, PBGC will attempt salary offset through the Treasury Offset Program before applying the procedures in paragraph (c) of this section. See 5 CFR 550.1108 and 550.1109.

(c) *Non-centralized salary offset for debts owed to PBGC.* When centralized salary offset through the Treasury Offset Program is not available or appropriate, PBGC may collect delinquent debts owed to PBGC through non-centralized salary offset. See 5 CFR 550.1109. In these cases, PBGC may offset a payment internally or make a request directly to a Federal payment agency to offset a salary payment to collect a delinquent debt owed to PBGC by a Federal employee. Thirty (30) days prior to offsetting internally or requesting a Federal agency to offset a salary payment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. When referring a debt owed to PBGC for offset, PBGC will certify to the payment agency that the debt is valid, delinquent and legally enforceable in the amount stated, and there are no legal bars to collection by salary offset. In addition, PBGC will certify that all due process and other prerequisites to salary offset have been met. See 5 U.S.C. 5514, 31 U.S.C. 3716(a), and this section for a description of the due process and other prerequisites for salary offset.

(d) *When prior notice not required.* PBGC is not required to provide prior notice to an employee when the following adjustments are made by PBGC to a PBGC employee's pay:

(1) Any adjustment to pay arising out of any employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay if the amount to be recovered was accumulated over 4 pay periods or less;

(2) A routine intra-agency adjustment of pay that is made to correct an overpayment of pay attributable to clerical or administrative errors or delays in processing pay documents, if the overpayment occurred within the 4 pay periods preceding the adjustment, and, at the time of such adjustment, or as soon thereafter as practicable, the

individual is provided written notice of the nature and the amount of the adjustment and the point of contact for contesting such adjustment; or

(3) Any adjustment to collect a debt amounting to \$50 or less, if, at the time of such adjustment, or as soon thereafter as practicable, the individual is provided written notice of the nature and the amount of the adjustment and a point of contact for contesting such adjustment.

**(e) Administrative review—**

(1) *Request for administrative review.* A Federal employee who has received a notice that his or her debt will be collected by means of salary offset may request administrative review concerning the existence or amount of the debt owed to PBGC. The Federal employee also may request administrative review concerning the amount proposed to be deducted from the employee's pay each pay period. The employee must send any request for administrative review in writing to the office designated in the notice described in § 4903.5. See § 4903.5(a)(11). The request must be received by the designated office on or before the 15th day following the employee's receipt of the notice. The employee must sign the request and specify whether an oral hearing is requested. If an oral hearing is requested, the employee must explain why the matter cannot be resolved by review of the documentary evidence alone. All travel expenses incurred by the Federal employee in connection with an in-person hearing will be borne by the employee. See 31 CFR 901.3(a)(7).

(2) *Failure to submit timely request for administrative review.* If the employee fails to submit a request for administrative review within the time period described in paragraph (e)(1) of this section, salary offset may be initiated. However, PBGC may accept a late request for administrative review if the employee can show that the late request was the result of circumstances beyond the employee's control or because of a failure to receive actual notice of the filing deadline.

(3) *Reviewing official.* PBGC must obtain the services of a reviewing official who is not under the supervision or control of the Director of the PBGC. PBGC may enter into interagency support agreements with other agencies to provide reviewing officials.

(4) *Notice of administrative review.* After the employee requests administrative review, the designated reviewing official will inform the employee of the form of the review to be provided. For oral hearings, the

notice will set forth the date, time and location of the hearing. For determinations based on review of written records, the notice will notify the employee of the date by which he or she should submit written arguments to the designated reviewing official. The reviewing official will give the employee reasonable time to submit documentation in support of the employee's position. The reviewing official will schedule a new hearing date if requested by both parties. The reviewing official will give both parties reasonable notice of the time and place of a rescheduled hearing.

(5) *Oral hearing.* The reviewing official will conduct an oral hearing if the official determines that the matter cannot be resolved by review of documentary evidence alone. The hearing need not take the form of an evidentiary hearing, but may be conducted in a manner determined by the reviewing official, including but not limited to:

(i) Informal conferences (in person or electronically) with the reviewing official, in which the employee and agency representative will be given a reasonable opportunity to present evidence, witnesses and argument;

(ii) Informal meetings with an interview of the employee by the reviewing official; or

(iii) Formal written submissions, with an opportunity for oral presentation.

(6) *Determination based on review of written record.* If the reviewing official determines that an oral hearing is not necessary, the official will make the determination based upon a review of the available written record, including any documentation submitted by the employee in support of his or her position. See 31 CFR 901.3(a)(7).

(7) *Failure to appear or submit documentary evidence.* In the absence of good cause shown (for example, excused illness), if the employee fails to appear at an oral hearing or fails to submit documentary evidence as required for administrative review, the employee will have waived the right to administrative review, and salary offset may be initiated. Further, the employee will have been deemed to admit the existence and amount of the debt owed to PBGC as described in the notice of intent to offset. If PBGC's representative fails to appear at an oral hearing, the reviewing official will proceed with the hearing as scheduled, and make his or her determination based upon the oral testimony presented and the documentary evidence submitted by both parties.

(8) *Burden of proof.* PBGC will have the initial burden to prove the existence

and amount of the debt owed to PBGC. Thereafter, if the employee disputes the existence or amount of the debt, the employee must prove by a preponderance of the evidence that no such debt exists or that the amount of the debt is incorrect. In addition, the employee may present evidence that the proposed terms of the repayment schedule are unlawful, would cause a financial hardship to the employee, or that collection of the debt may not be pursued due to operation of law.

(9) *Record.* The reviewing official will maintain a summary record of any hearing provided by this part. Witnesses will testify under oath or affirmation in oral hearings. See 31 CFR 901.3(a)(7).

(10) *Date of decision.* The reviewing official will issue a written opinion stating the official's decision, based upon documentary evidence and information developed during the administrative review, as soon as practicable after the review, but not later than 60 days after the date on which the request for review was received by PBGC. If the employee (or the parties jointly) requests a delay in the proceedings, the deadline for the decision may be postponed by the number of days by which the review was postponed. When a decision is not timely rendered, PBGC will waive interest and penalties applied to the debt owed to PBGC for the period beginning with the date the decision is due and ending on the date the decision is issued.

(11) *Content of decision.* The written decision will include:

(i) A statement of the facts presented to support the origin, nature, and amount of the debt owed to PBGC;

(ii) The reviewing official's findings, analysis, and conclusions; and

(iii) The terms of any repayment schedules, if applicable.

(12) *Final agency action.* The reviewing official's decision will be final.

(f) *Waiver not precluded.* Nothing in this part precludes an employee from requesting waiver of an overpayment under 5 U.S.C. 5584 or 8346(b), 32 U.S.C. 716, or other statutory authority. PBGC may grant such waivers when it would be against equity and good conscience or not in the United States' best interest to collect such debts, in accordance with those authorities, 5 CFR 550.1102(b)(2).

(g) *Salary offset process—*

(1) *Determination of disposable pay.* PBGC will implement salary offset when requested to do so by PBGC, as described in paragraph (c) of this section, or another agency, as described in § 4903.21 of this part. If the debtor is

not employed by PBGC, the agency employing the debtor will determine the amount of the employee's disposable pay and will implement salary offset upon request.

(2) *When salary offset begins.*

Deductions will begin within three official pay periods following receipt of the creditor agency's request for offset or after a decision has been issued following a request for a hearing.

(3) *Amount of salary offset.* The amount to be offset from each salary payment will be up to 15 percent of a debtor's disposable pay, subject to the requirements of 15 U.S.C. 1673, as follows:

(i) If the amount of the debt is equal to or less than 15 percent of the disposable pay, such debt generally will be collected in a lump sum payment;

(ii) Installment deductions will be made over a period of no greater than the anticipated period of employment. An installment deduction will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount, or the creditor agency has determined that smaller deductions are appropriate based on the employee's ability to pay.

(4) *Final salary payment.* After the employee has separated either voluntarily or involuntarily from the payment agency, the payment agency may make a lump sum deduction exceeding 15 percent of disposable pay from any final salary or other payments pursuant to 31 U.S.C. 3716 in order to satisfy a debt owed to PBGC.

(h) *Payment agency's responsibilities.*

(1) As required by 5 CFR 550.1109, if the employee separates from the payment agency from which PBGC has requested salary offset, the payment agency must certify the total amount of its collection and notify PBGC and the employee of the amounts collected. If the payment agency knows that the employee is entitled to payments from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar payments, it must provide written notification to the agency responsible for making such payments that the debtor owes a debt to PBGC, the amount of the debt, and that PBGC has complied with the provisions of this section. PBGC must submit a properly certified claim to the agency responsible for making such payments before the collection can be made.

(2) If the employee is already separated from employment and all payments due from his or her former payment agency have been made, PBGC

may request that money due and payable to the employee from the Civil Service Retirement Fund and Disability Fund, the Federal Employee Retirement System, or other similar funds, be administratively offset to collect the debt. Generally, PBGC will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) When an employee transfers to another agency, PBGC should resume collection with the employee's new payment agency in order to continue salary offset.

**§ 4903.14 How will PBGC use administrative wage garnishment to collect a debt owed to PBGC from a debtor's wages?**

(a) PBGC is authorized to collect debts owed to PBGC from an individual debtor's wages by means of administrative wage garnishment in accordance with the requirements of 31 U.S.C. 3720D and 31 CFR 285.11. This part adopts and incorporates all of the provisions of 31 CFR 285.11 concerning administrative wage garnishment, including the hearing procedures described in 31 CFR 285.11(f). PBGC may use administrative wage garnishment to collect a delinquent debt unless the debtor is making timely payments under an agreement to pay the debt in installments (*see* § 4903.7 of this part). Thirty (30) days prior to initiating an administrative wage garnishment, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part, including the requirements of § 4903.5(a)(10) of this part. For debts referred to the Financial Management Service under § 4903.10 of this part, PBGC may authorize the Financial Management Service to send a notice informing the debtor that administrative wage garnishment will be initiated and how the debtor may request a hearing as described in § 4903.5(a)(10) of this part. If a debtor makes a timely request for a hearing, administrative wage garnishment will not begin until a hearing is held and a decision is sent to the debtor. PBGC will determine whether the matter requires an oral hearing or if a determination based upon review of the written record is sufficient. PBGC will provide the debtor with a reasonable opportunity for an oral hearing when it determines that the issues in dispute cannot be resolved by a review of the documentary evidence. *See* 31 CFR 285.11(f)(1)–(4). Even if a debtor's hearing request is not timely, PBGC may suspend collection by administrative wage garnishment in accordance with the provisions of 31 CFR 285.11(f)(5). All travel expenses

incurred by the debtor in connection with an in-person hearing will be borne by the debtor.

(b) This section does not apply to Federal salary offset, the process by which PBGC collects debts owed to PBGC from the salaries of Federal employees (*see* § 4903.13 of this part).

**§ 4903.15 How will PBGC report debts owed to PBGC to credit bureaus?**

PBGC will report delinquent debts owed to PBGC to credit bureaus in accordance with the provisions of 31 U.S.C. 3711(e), 31 CFR 901.4, and the Office of Management and Budget Circular A–129, "Policies for Federal Credit Programs and Non-tax Receivables." At least 60 days prior to reporting a delinquent debt to a consumer reporting agency, PBGC will send notice to the debtor in accordance with the requirements of § 4903.5 of this part. PBGC may authorize the Financial Management Service to report to credit bureaus those delinquent debts owed to the PBGC that have been transferred to the Financial Management Service under § 4903.10 of this part.

**§ 4903.16 How will PBGC refer debts owed to PBGC to private collection agencies?**

PBGC will transfer delinquent debts owed to PBGC to the Financial Management Service to obtain debt collection services provided by private collection agencies. *See* § 4903.10 of this part.

**§ 4903.17 When will PBGC refer debts owed to PBGC to the Department of Justice?**

PBGC may initiate litigation pursuant to 29 U.S.C. 1302 with delinquent debts on which aggressive collection activity has been taken in accordance with this part and that should not be compromised, and on which collection activity should not be suspended or terminated. Alternatively, PBGC may refer debts owed to PBGC having a principal balance over \$100,000, or such higher amount as authorized by the Attorney General, to the Department of Justice for approval of any compromise of a debt or suspension or termination of collection activity. *See* §§ 4903.8 and 4903.9 of this part; 31 CFR 902.1, 903.1, and part 904. PBGC may authorize the Financial Management Service to refer to the Department of Justice for litigation those delinquent debts that have been transferred to the Financial Management Service under § 4903.10 of this part.

**§ 4903.18 Will a debtor who owes a debt to PBGC or another Federal agency, and persons controlled by or controlling such debtors, be ineligible for Federal loan assistance, grants, cooperative agreements, or other sources of Federal funds?**

(a) Delinquent debtors are ineligible for and barred from obtaining Federal loans or loan insurance or guaranties. As required by 31 U.S.C. 3720B and 31 CFR 901.6, PBGC will not extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a debt owed to a Federal agency. PBGC may issue standards under which it may determine that persons controlled by or controlling such delinquent debtors are similarly ineligible in accordance with 31 CFR 285.13(c)(2). This prohibition does not apply to disaster loans. PBGC may extend credit after the delinquency has been resolved. *See* 31 CFR 285.13.

(b) This section does not apply to loans provided to multi-employer pension plans pursuant to 29 U.S.C. 1431, 29 CFR 4261.1 and 4281.47.

(c) A debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive grants, loans or funds directly or indirectly from the United States until the judgment is paid in full or otherwise satisfied. This prohibition does not apply to funds to which the debtor is entitled as beneficiary. PBGC may promulgate regulations to allow for waivers of this ineligibility. *See* 28 U.S.C. 3201(e).

**§ 4903.19 How does a debtor request a special review based on a change in circumstances such as catastrophic illness, divorce, death, or disability?**

(a) *Material change in circumstances.* A debtor who owes a debt to PBGC may, at any time, request a special review by PBGC of the amount of any offset, administrative wage garnishment, or voluntary payment, based on materially changed circumstances beyond the control of the debtor such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b) *Inability to pay.* For purposes of this section, in determining whether an involuntary or voluntary payment would prevent the debtor from meeting essential subsistence expenses (*e.g.*, costs incurred for food, housing, clothing, transportation, and medical care), the debtor must submit a detailed statement and supporting documents for the debtor, his or her spouse, and dependents, indicating:

- (1) Income from all sources;
- (2) Assets;
- (3) Liabilities;
- (4) Number of dependents;

(5) Expenses for food, housing, clothing, and transportation;

(6) Medical expenses;

(7) Exceptional expenses, if any; and

(8) Any additional materials and information that PBGC may request relating to ability or inability to pay the amount(s) currently required.

(c) *Alternative payment arrangement.* If the debtor requests a special review under this section, the debtor must submit an alternative proposed payment schedule and a statement to PBGC, with supporting documents, showing why the current offset, garnishment or repayment schedule imposes an extreme financial hardship on the debtor. PBGC will evaluate the statement and documentation and determine whether the current offset, garnishment, or repayment schedule imposes extreme financial hardship on the debtor. PBGC will notify the debtor in writing of such determination, including, if appropriate, a revised offset, garnishment, or payment schedule. If the special review results in a revised offset, garnishment, or repayment schedule, PBGC will notify the appropriate Federal agency or other persons about the new terms.

**§ 4903.20 Will PBGC issue a refund if money is erroneously collected on a debt?**

PBGC will promptly refund to a debtor any amount collected on a debt owed to PBGC when the debt is waived or otherwise found not to be owed to the United States, or as otherwise required by law.

**Subpart C—Procedures for Offset of PBGC Payments To Collect Debts Owed to Other Federal Agencies**

**§ 4903.21 How do other Federal agencies use the offset process to collect debts from payments issued by PBGC?**

(a) *Offset of PBGC payments to collect debts owed to other Federal agencies.*

(1) In most cases, Federal agencies submit debts to the Treasury Offset Program to collect delinquent debts from payments issued by PBGC and other Federal agencies, a process known as “centralized offset.” When centralized offset is not available or appropriate, any Federal agency may ask PBGC (when acting as a “payment agency”) to collect a debt owed to such agency by offsetting funds payable to a debtor by PBGC, including salary payments issued to PBGC employees. This section and § 4903.21 of this subpart C apply when a Federal agency asks PBGC to offset a payment issued by PBGC to a person who owes a debt to the United States.

(2) This subpart C does not apply to debts owed to PBGC. See §§ 4903.11 through 4903.13 of this part for offset

procedures applicable to debts owed to PBGC.

(3) This subpart C does not apply to the collection of non-PBGC debts through tax refund offset. See 31 CFR 285.2 for tax refund offset procedures.

(4) Benefits paid by PBGC generally will not be offset, subject to limited exceptions (e.g., in certain fiduciary breach situations).

(b) *Administrative offset (including salary offset); certification.* PBGC will initiate a requested offset only upon receipt of written certification from the creditor agency that the debtor owes the past-due, legally enforceable debt in the amount stated, and that the creditor agency has fully complied with all applicable due process and other requirements contained in 31 U.S.C. 3716, 5 U.S.C. 5514, and the creditor agency’s regulations, as applicable. Offsets will continue until the debt is paid in full or otherwise resolved to the satisfaction of the creditor agency.

(c) *Where a creditor agency makes requests for offset.* Requests for offset under this section must be sent to PBGC, ATTN: Chief Financial Officer, 1200 K Street, NW., Washington, DC 20005.

(d) *Incomplete certification.* PBGC will return an incomplete debt certification to the creditor agency with notice that the creditor agency must comply with paragraph (b) of this section before action will be taken to collect a debt from a payment issued by PBGC.

(e) *Review.* PBGC is not authorized to review the merits of the creditor agency’s determination with respect to the amount or validity of the debt certified by the creditor agency.

(f) *When PBGC will not comply with offset request.* PBGC will comply with the offset request of another agency unless PBGC determines, in consultation with that agency, that the offset would not be in the best interests of the United States, or would otherwise be contrary to law.

(g) *Multiple debts.* When two or more creditor agencies are seeking offsets from payments made to the same person, or when two or more debts are owed to a single creditor agency, PBGC may determine the order in which the debts will be collected or whether one or more debts should be collected by offset simultaneously.

(h) *Priority of debts owed to PBGC.* For purposes of this section, debts owed to PBGC generally take precedence over debts owed to other agencies. PBGC may determine whether to pay debts owed to other agencies before paying a debt owed to PBGC. PBGC will determine the order in which the debts will be

collected based on the best interests of the United States.

**§ 4903.22 What does PBGC do upon receipt of a request to offset the salary of a PBGC employee to collect a debt owed by the employee to another Federal agency?**

(a) *Notice to a PBGC employee.* When PBGC receives proper certification of a debt owed by one of its employees, PBGC will send a written notice to the employee indicating that a certified debt claim has been received from the creditor agency, the amount of the debt claimed to be owed by the creditor agency, the date deductions from salary will begin, and the amount of such deductions. PBGC will begin deductions from the employee’s pay at the next officially established pay interval.

(b) *Amount of deductions from a PBGC employee’s salary.* The amount deducted under § 4903.21(b) of this part will be the lesser of the amount of the debt certified by the creditor agency or an amount up to 15 percent of the debtor’s disposable pay so long as that amount does not exceed limitations imposed by 15 U.S.C. 1673. Deductions will continue until PBGC knows that the debt is paid in full or until otherwise instructed by the creditor agency. Alternatively, the amount offset may be an amount agreed upon, in writing, by the debtor and the creditor agency. See § 4903.13(g) (salary offset process).

(c) *When the debtor is no longer employed by PBGC—(1) Offset of final and subsequent payments.* If a PBGC employee retires or resigns or if his or her employment ends before collection of the debt is complete, PBGC will continue to offset, under 31 U.S.C. 3716, up to 100 percent of an employee’s subsequent payments until the debt is paid or otherwise resolved. Such payments include a debtor’s final salary payment, lump-sum leave payment, and other payments payable to the debtor by PBGC. See 31 U.S.C. 3716 and 5 CFR 550.1104(l) and 550.1104(m).

(2) *Notice to the creditor agency.* If the employee is separated from PBGC before the debt is paid in full, PBGC will certify to the creditor agency the total amount of its collection. If PBGC knows that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, Federal Employee Retirement System, or other similar payments, PBGC will provide written notice to the agency making such payments that the debtor owes a debt (including the amount) and that the provisions of 5 CFR 550.1109 have been fully complied with. The creditor agency is responsible for submitting a certified claim to the agency responsible for making such payments before

collection may begin. Generally, creditor agencies will collect such monies through the Treasury Offset Program as described in § 4903.10(c) of this part.

(3) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices sent to the creditor agency under paragraph (c)(2) of this section.

(d) *When the debtor transfers to another Federal agency—(1) Notice to the creditor agency.* If the debtor transfers to another Federal agency before the debt is paid in full, PBGC will notify the creditor agency and will certify the total amount of its collection on the debt. PBGC will provide a copy of the certification to the creditor agency. The creditor agency is responsible for submitting a certified claim to the debtor's new employing agency before collection may begin.

(2) *Notice to the debtor.* PBGC will provide to the debtor a copy of any notices and certifications sent to the creditor agency under paragraph (d)(1) of this section.

(e) *Request for hearing official.* PBGC will provide a hearing official upon the creditor agency's request with respect to a PBGC employee. See 5 CFR 550.1107(a).

Issued in Washington, DC, this 1st day of November 2010.

**Joshua Gotbaum,**

*Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 2010-28020 Filed 11-4-10; 8:45 am]

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**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS OSCAR AUSTIN (DDG 79) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective November 5, 2010 and is applicable beginning October 13, 2010.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone number: 202-685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 Code of Federal Regulations (CFR) Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS OSCAR AUSTIN (DDG 79) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(c), pertaining to the placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The DAJAG (Admiralty and

Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

Marine safety, Navigation (water), and Vessels.

■ For the reasons set forth in the preamble, amend part 706 of title 32 of the CFR as follows:

**PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**

■ 1. The authority citation for part 706 continues to read as follows:

**Authority:** 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Four, Paragraph 15 by adding the following entry for USS OSCAR AUSTIN (DDG 79) in alphanumerical order by DDG number:

**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**

*	*	*	*	*
Table Four				
*	*	*	*	*
15. * * *				

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
USS OSCAR AUSTIN .....	DDG 79 .....	1.89 meters.