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Daniel S. Liebman,

*Acting Assistant General Counsel for
Regulatory Affairs, Pension Benefit Guaranty
Corporation.*

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4071 and 4302

RIN 1212-AB45

Adjustment of Civil Penalties for Inflation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is required to amend its regulations annually to adjust for inflation the maximum civil penalty for failure to provide certain notices or other material information and for failure to provide certain multiemployer plan notices.

DATES: *Effective date:* This rule is effective on January 12, 2018.

Applicability date: The increases in the civil monetary penalties under sections 4071 and 4302 provided for in this rule apply to such penalties assessed after January 12, 2018.

FOR FURTHER INFORMATION CONTACT: Stephanie Cibinic, Deputy Assistant General Counsel for Regulatory Affairs (*cibinic.stephanie@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4026; 202-326-4400 extension 6352. (TTY and TDD users may call the Federal relay service toll-free at 800-877-8339 and ask to be connected to 202-326-4400 extension 6352.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This rule is needed to carry out the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance M-18-03. The rule adjusts, as required for 2018, the maximum civil penalties under 29 CFR part 4071 and 29 CFR part 4302 that PBGC may assess for failure to provide certain notices or other material information and certain multiemployer plan notices.

PBGC's legal authority for this action comes from the Federal Civil Penalties Inflation Adjustment Act of 1990 as

amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and from sections 4002(b)(3), 4071, and 4302 of the Employee Retirement Income Security Act of 1974 (ERISA).

Major Provisions of the Regulatory Action

This rule adjusts as required by law the maximum civil penalties that PBGC may assess under sections 4071 and 4302 of ERISA. The new maximum amounts are \$2,140 for section 4071 penalties and \$285 for section 4302 penalties.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Title IV has two provisions that authorize PBGC to assess civil monetary penalties.¹ Section 4302, added to ERISA by the Multiemployer Pension Plan Amendments Act of 1980, authorizes PBGC to assess a civil penalty of up to \$100 a day for failure to provide a notice under subtitle E of title IV of ERISA (dealing with multiemployer plans). Section 4071, added to ERISA by the Omnibus Budget Reconciliation Act of 1987, authorizes PBGC to assess a civil penalty of up to \$1,000 a day for failure to provide a notice or other material information under subtitles A, B, and C of title IV and sections 303(k)(4) and 306(g)(4) of title I of ERISA.

Adjustment of Civil Penalties

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,² which requires agencies to adjust civil monetary penalties for inflation and to publish the adjustments in the **Federal Register**. An initial adjustment was required to be made by interim final rule published by July 1, 2016, and effective by August 1, 2016. Subsequent adjustments must be promulgated in January each year after 2016. In an interim final rule published on May 13, 2016 (at 81 FR 29765), PBGC adjusted the maximum penalty under section 4071 to \$2,063 and adjusted the maximum penalty under section 4302 to

\$275.³ In a final rule published on January 31, 2017 (at 82 FR 8813), PBGC finalized its interim final rule and adjusted the maximum penalty under section 4071 to \$2,097 and the maximum penalty under section 4302 to \$279.⁴

On December 15, 2017, the Office of Management and Budget issued memorandum M-18-03 on implementation of the 2018 annual inflation adjustment pursuant to the 2015 act.⁵ The memorandum provides agencies with the cost-of-living adjustment multiplier for 2018, which is based on the Consumer Price Index (CPI-U) for the month of October 2017, not seasonally adjusted. The multiplier for 2018 is 1.02041. The adjusted maximum amounts are \$2,140 for section 4071 penalties and \$285 for section 4302 penalties.

Compliance With Regulatory Requirements

The Office of Management and Budget has determined that this rule is not a "significant regulatory action" under Executive Order 12866 and therefore not subject to their review. As this is not a significant regulatory action under E.O. 12866, it is not considered an E.O. 13771 regulatory action.

The Office of Management and Budget also has determined that notice and public comment on this final rule are unnecessary because the adjustment of civil penalties implemented in the rule is required by law. See 5 U.S.C. 553(b).

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

List of Subjects

29 CFR Part 4071

Penalties.

29 CFR Part 4302

Penalties.

In consideration of the foregoing, PBGC amends 29 CFR parts 4071 and 4302 as follows:

¹ Under the Federal Civil Penalties Inflation Adjustment Act of 1990, a penalty is a civil monetary penalty if (among other things) it is for a specific monetary amount or has a maximum amount specified by Federal law. Title IV also provides (in section 4007) for penalties for late payment of premiums, but those penalties are neither in a specified amount nor subject to a specified maximum amount.

² Sec. 701, Public Law 114-74, 129 Stat. 599-601 (Bipartisan Budget Act of 2015).

³ The Office of Management and Budget issued memorandum M-16-06 on implementation of the 2015 act, including multipliers to use in the initial adjustment.

⁴ The Office of Management and Budget issued memorandum M-17-11 on December 16, 2016, on implementation of the 2015 act, including the cost-of-living adjustment multiplier for 2017.

⁵ <https://www.whitehouse.gov/wp-content/uploads/2017/11/M-18-03.pdf>

PART 4071—PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION

■ 1. The authority citation for part 4071 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1371.

§ 4071.3 [Amended]

■ 2. In § 4071.3, the figures “\$2,097” are removed and the figures “\$2,140” are added in their place.

PART 4302—PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES

■ 3. The authority citation for part 4302 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114–74, 129 Stat. 599–601; 29 U.S.C. 1302(b)(3), 1452.

§ 4302.3 [Amended]

■ 4. In § 4302.3, the figures “\$279” are removed and the figures “\$285” are added in their place.

Issued in Washington, DC.

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 205

[Docket ID: DOD–2017–OS–0004]

RIN 0790–AJ05

End Use Certificates (EUCs)

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD’s regulation concerning the signing of EUCs required by foreign governments for foreign defense items purchased by the United States. DoD has determined that this part does not place a burden on the public as it deals with matters internal to DoD. DoD signs end use certificates (following internal coordination and approval) at the behest of a foreign country, when DoD is buying products from that country. Therefore, this part is unnecessary and can be removed from the CFR.

DATES: This rule is effective on January 12, 2018.

FOR FURTHER INFORMATION CONTACT: Karen Kay at 703–693–0909.

SUPPLEMENTARY INFORMATION: It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD internal policies and procedures that are publically available on the Department’s issuance website. Once signed, a copy of DoD’s internal guidance contained in DoD Directive 2040.03 will be made available at <http://www.esd.whs.mil/Directives/issuances/dodd/>.

This rule is being removed from the CFR because it does not place a burden on the public as it deals with matters internal to DoD. As a direct result of there being no burden on the public, there was never a cost to the public to execute this rule, therefore, removing it does not provide a cost savings to the public.

List of Subjects in 32 CFR Part 205

Government procurement.

PART 205—[REMOVED]

■ Accordingly, under the authority of 5 U.S.C. 301, 32 CFR part 205 is removed.

Dated: January 9, 2018.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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DEPARTMENT OF EDUCATION

34 CFR Parts 350, 356, 359, 364, 365, and 366

RIN 1820–AB75; 1820–AB76

National Institute on Disability and Rehabilitation Research (NIDRR) and Independent Living Programs, Outdated, Superseded Regulations

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary removes outdated, superseded regulations for five programs no longer administered by the Department: The Disability and Rehabilitation Research Projects and Centers Program, the Research Fellowships program, the Special Projects and Demonstrations for Spinal Cord Injuries program, the State Independent Living Services program,

and the Centers for Independent Living program. In 2014, the Workforce Innovation and Opportunity Act transferred these programs to the Department of Health and Human Services, which has adopted regulations for them.

DATES: These regulations are effective January 12, 2018.

FOR FURTHER INFORMATION CONTACT: Kate Friday, U.S. Department of Education, 400 Maryland Ave. SW, Room 5104 PCP, Washington, DC 20202–2500. Telephone: (202) 245–7605 or email: Kate.Friday@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On February 24, 2017, President Trump signed Executive Order 13777, “Enforcing the Regulatory Reform Agenda,” which established a Federal policy “to alleviate unnecessary regulatory burdens” on the American people. Section 3(a) of the Executive Order directed each Federal agency to establish a regulatory reform task force, the duty of which is to evaluate existing regulations and “make recommendations to the agency head regarding their repeal, replacement, or modification.” Accordingly, the Secretary removes 34 CFR parts 350, 356, 359, 364, 365, and 366 because they have been superseded.

In 2014, the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128) made significant changes to many programs administered by the Office of Special Education and Rehabilitative Services (OSERS). WIOA transferred the National Institute for Disability and Rehabilitation Research (NIDRR), its functions, and its programs from OSERS to the Administration for Community Living (ACL) within the Department of Health and Human Services (HHS). In the process, WIOA renamed NIDRR the National Institute for Disability, Independent Living, and Rehabilitation Research (NIDILRR). (See, WIOA sections 433, 435, 491(n).) The programs transferred were the Disability and Rehabilitation Research Projects and Centers program, the Research Fellowships program, and the Special Projects and Demonstrations for Spinal Cord Injuries program.

WIOA also created within ACL the Independent Living Administration and transferred to it two programs from the Rehabilitation Services Administration (RSA) within OSERS, namely the State Independent Living Services program and the Centers for Independent Living