

final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Executive Order 13771

This regulation does not impose novel costs on the public and as such is considered an exempt regulatory action under E.O. 13771.

Paperwork Reduction Act

This final rule only extends the date for the medical listings cited above, but does not create any new or affect any existing collections, or otherwise change any content of the currently published rules. Accordingly, it does not impose any burdens under the Paperwork Reduction Act, and does not require further OMB approval.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Andrew Saul,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

(1950—)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising items 3, 8, and 11

of the introductory text to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

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Special Senses and Speech (2.00 and 102.00): June 3, 2022.
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8. Hematological Disorders (7.00 and 107.00): June 3, 2022.
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11. Congenital Disorders That Affect Multiple Body Systems (10.00 and 110.00): June 3, 2022.
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[FR Doc. 2020–03243 Filed 2–21–20; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212–AB35

Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends PBGC's regulation on Rules for Administrative Review of Agency Decisions. It clarifies and changes the review process for certain agency determinations and the procedures for requesting administrative review.

DATES:

Effective Date: This rule is effective March 25, 2020.

Applicability date: The amendments subjecting all coverage determinations to the appeals process under § 4003.1(e)(1) of this final rule apply to initial determinations that are subject to this part and issued on or after March 25, 2020.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose and Authority

This final rule amends PBGC's regulation on rules for administrative review of agency decisions to clarify, simplify, and make other editorial

changes to the language, and codify PBGC practices.

Legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA.

Major Provisions

This final rule:

- Subjects all coverage determinations to appeal.
- Subjects all determinations concerning the allocation of a trustee plan's assets upon plan termination to appeal, except for determinations concerning the distribution of residual assets, which remain subject to reconsideration.

- Clarifies that, consistent with PBGC's long-standing practice, when PBGC makes an initial determination effective on the date of issuance, a person aggrieved by the initial determination has no right to request reconsideration or appeal of the determination.

- Clarifies where to send requests for extensions on appeals and extensions for reconsideration.

- Clarifies that persons seeking administrative review may request information in PBGC's possession by using PBGC's procedures for requests under the Freedom of Information Act and the Privacy Act.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. This final rule applies only to plans covered by the single-employer plan termination insurance program.

PBGC is committed to the ongoing retrospective review of its regulations. This practice ensures that PBGC provides clear and helpful guidance, minimizes burdens and maximizes benefits, and addresses ineffective and outdated rules. In the course of PBGC's regulatory review, PBGC identified opportunities to improve its regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) by making it more transparent, simplifying language, and codifying policies.

On October 4, 2019 (at 84 FR 53084), PBGC published a proposed rule to amend PBGC's administrative review regulation. PBGC received no comments

on the proposed rule. The final rule is the same as the proposed rule.

Final Regulatory Changes

PBGC's administrative review regulation provides procedures so that persons who are aggrieved by PBGC determinations have an opportunity to present their positions to PBGC before a final decision is made by the agency. When PBGC first promulgated its rules on administrative review of agency decisions in 1979 (the "1979 rule"), it emphasized the competing interests of providing "fair and effective administrative review" and "keep[ing] to a minimum the time and cost entailed in obtaining PBGC review of its decisions."¹ To balance these interests, PBGC developed an administrative review system with two separate processes: Reconsideration and appeal.

Under reconsideration, aggrieved persons generally raise their concerns and make their cases directly to a higher-level official within the same department that issued the initial determination. Most requests for reconsideration are filed by the designated payor² under § 4003.1(b)(2) and relate to premiums, interest, and late payment penalties.

Under the appeals process, the decisionmaker reviewing the initial determination is not within the same department that issued the initial determination. Rather, the PBGC Appeals Board, which is located within the Office of the General Counsel, provides an independent review of the initial determination. Decisions by the Appeals Board may be made either by a three-member panel or by an individual member. Originally, a decision on appeal was always decided by a three-member panel. The appeals process changed in 2002 when the administrative review regulation was amended to expedite the appeals process, authorizing a single member of the PBGC Appeals Board to decide routine appeals instead of the three-member panel.³ All non-routine appeals are decided by a three-member panel. Most appeals are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts, although sponsors have filed appeals of termination liability assessments and non-coverage determinations.

Subpart A of the regulation provides a list of initial determinations made by

PBGC, with each determination subject to either the reconsideration procedures described in subpart C or the appeals procedures described in subpart D. The final rule reorganizes the list in § 4003.1(b) into two new paragraphs by moving and reorganizing the list of initial determinations subject to reconsideration to § 4003.1(d) and the list of initial determinations subject to appeal to § 4003.1(e). These changes simplify references to the types of determinations subject to each type of administrative review and improve the readability of this section.

Subpart B of the regulation provides rules for the form and contents of initial determinations and specifies that initial determinations will not become effective until the time for filing a request for reconsideration under subpart C or an appeal under subpart D has elapsed.

Under an exception in § 4003.22(b), PBGC may in its discretion order that an initial determination is effective on the date of issuance. As an example, when PBGC makes an initial determination under section 4042 of ERISA that the statutory criteria for termination are met, the initial determination states that it is effective on the date of issuance. When PBGC makes an order that an initial determination is effective on the date of issuance, any person aggrieved by the initial determination has exhausted all available administrative remedies and may seek judicial review of PBGC's determination in an appropriate court under section 4003(f)(2) of ERISA.

The final rule amends § 4003.22(b) to clarify that the exception under it does not apply to initial determinations related to a participant's or beneficiary's benefit entitlement and the amount of benefit payable under a covered plan, to whether a domestic relations order is or is not qualified, and to whether benefits are payable under section 4050 of ERISA and part 4050, as listed respectively in the new § 4003.1(e)(2), (3), and (6). The final rule further amends § 4003.22(b) to clarify that when PBGC issues an order making an initial determination effective on the date of issuance, a person aggrieved by the initial determination has no right to request review under subparts C and D, consistent with PBGC's long-standing practice, and has exhausted all administrative remedies.

Coverage Determinations

PBGC insures plans described in section 4021(a) of ERISA that do not fall within one of the exemptions from coverage listed in section 4021(b)(1)–(13) of ERISA. If a question arises about

whether a plan is covered under title IV, PBGC may make a coverage determination.

As discussed in the proposed rule, the administrative review regulation provides that coverage determinations under section 4021 of ERISA are subject to different review procedures. An initial determination that a plan is covered under section 4021 is subject to reconsideration by the PBGC department that issued the original determination. An initial determination that a plan is not covered is subject to appeal to the PBGC Appeals Board. Based on internal data gathered by PBGC from fiscal years 2013 through 2017, there were few requests for reconsideration of coverage determinations (a total of 18) and even fewer requests for appeal of coverage determinations (one in 2017). The data indicates that the total amount of time and agency resources used to close requests for reconsideration and appeals of coverage determinations are similar.

As originally designed, case resolution under the appeals process generally took longer and put a greater burden on PBGC's administrative resources than the reconsideration process. The movement to single member decisions for routine cases and other process improvements have largely mitigated these issues. In light of these improvements, for the sake of consistency, the final rule makes all coverage determinations subject to appeal to the PBGC Appeals Board. In cases in which the Appeals Board is considering granting a plan sponsor's appeal by finding that a plan is not covered, the Appeals Board will make reasonable efforts to notify plan participants of the decision under consideration and permit them an opportunity to present matters as a potential aggrieved party to the appeal under § 4003.57(a). The final rule removes § 4003.1(b)(1) and adds language in new § 4003.1(e)(1), to subject all coverage determinations to the appeals process.

Asset Allocation Determinations

Section 4044 of ERISA requires that when an underfunded pension plan terminates, PBGC must assign benefits payable to each participant to one or more of six priority categories and allocate the plan's assets to the benefits in each category in a prescribed sequential order (*i.e.*, priority categories 1 through 6). To accomplish the allocation process in a terminated plan, PBGC first values the benefits in each of a terminated plan's six priority categories and the terminated plan's assets as of the plan's termination date.

¹ See 44 FR 42181, 42181 (July 19, 1979).

² See section 4007 of ERISA (designated payor is defined as a contributing sponsor or plan administrator in the case of a single-employer plan).

³ See 67 FR 47694, 47694 (July 22, 2002).

After valuing the benefits and assets, PBGC allocates the assets available to pay benefits to the benefits assigned to each priority category, beginning with the highest priority category, *i.e.*, priority category 1, and continuing in sequential order until the assets satisfy all benefits in all priority categories or until the assets are insufficient to pay all benefits within a particular category.

In substantially all plans that terminate in a distress or involuntary (PBGC-initiated) termination, the plan's assets do not satisfy all benefits assigned to the six priority categories and the assets will be insufficient to satisfy all benefit liabilities, as defined under section 4001(a)(16) of ERISA. PBGC typically becomes the statutory trustee of these plans and pays guaranteed benefits to participants and beneficiaries up to statutory limits. Some participants may receive more than their statutorily guaranteed benefit depending upon the priority category to which their benefit is assigned and the extent to which (if any) assets are sufficient to pay all benefits in that category. PBGC-trusted plans rarely have residual assets.

In an employer-initiated standard termination of a sufficient plan, a plan's assets must satisfy and may exceed all benefit liabilities under the plan. Section 4044(d) of ERISA describes the circumstances under which any residual assets of a single-employer plan may be distributed to the employer or participants and beneficiaries.

As discussed in the proposed rule, the administrative review regulation provides that PBGC's asset allocation determinations are subject to the reconsideration process, describing them in § 4003.1(b)(4) as "determinations with respect to allocation of assets under section 4044 of ERISA, including distribution of excess assets under section 4044(d)." ⁴ This language could be read to imply that PBGC issues standalone determinations with respect to asset allocations. Although PBGC's processing of a trustee plan includes an allocation of the plan's assets available to pay benefits under section 4044 of ERISA, determinations on allocating assets to benefits in the six priority categories depend on the value of benefits in each priority category and the plan assets available to pay benefits in a particular priority category in the prescribed sequence. Such determinations are incorporated into other benefit-specific determinations that PBGC regularly issues that are subject to the appeals process, such as

those issued under § 4003.1(b)(7) (determinations under section 4022(a) or (c) of ERISA with respect to benefit entitlement of participants and beneficiaries under covered plans) and § 4003.1(b)(8) (determinations under section 4022(b) or (c) or section 4022B of ERISA of the amount of benefits payable to participants and beneficiaries under covered plans).

Participants and their beneficiaries may appeal the initial determinations of their benefit entitlements and amounts of benefits payable, as provided in their individual benefit determinations. Determinations of benefit entitlements and amounts of benefits payable depend on PBGC's assignment and valuation of benefits and the allocation of assets available to pay benefits to the priority categories to which those benefits are assigned and the extent to which assets are allocated to non-guaranteed benefits in certain priority categories pursuant to section 4044(a) of ERISA and PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044).

Consistent with PBGC's long-standing practice, the final rule clarifies in new § 4003.1(e)(2) that the right to appeal an individual benefit determination necessarily includes the right to appeal a participant's or beneficiary's benefit entitlement and the amount of benefit payable based on the value of the benefits assigned to specific priority categories and PBGC's allocation of assets available to pay benefits to those categories under the method prescribed by section 4044(a) of ERISA. The final rule removes § 4003.1(b)(4) and creates a new § 4003.1(d)(2)(iv), to continue to subject determinations involving the distribution of residual assets under section 4044(d) of ERISA to the reconsideration process. The final rule also revises the description of individual benefit determinations subject to appeal in § 4003.1(b)(7) and (8) and reorganizes these provisions in new § 4003.1(e)(2) and (3).

Assistance With Obtaining Information

As discussed in the proposed rule, § 4003.3 of the administrative review regulation provides that a person may request PBGC's assistance in obtaining relevant information in the possession of a third party. The regulation is silent about obtaining information in PBGC's possession. The preamble to the 1979 rule explains that this omission was intentional because "a party to an appeal who wishes to examine PBGC documents need only file a request

pursuant to [PBGC's FOIA regulation]." ⁵

It came to PBGC's attention through the Office of the PBGC Participant and Plan Sponsor Advocate that participants seeking administrative review are often unaware of their ability to request relevant information under the FOIA and the Privacy Act by using PBGC procedures at 29 CFR parts 4901 and 4902, respectively. While parts 4901 and 4902 provide straightforward processes for requesting and obtaining such materials from PBGC's Disclosure Division, some participants learn of them only after contacting another PBGC office and ultimately being referred to the Disclosure Division and instructed to follow such procedures. PBGC aims to avoid confusing participants in their efforts to identify the appropriate point of contact and steps to obtain relevant information.

To make the information gathering process more efficient and transparent for persons seeking administrative review, the final rule reorganizes § 4003.3 to clarify that persons may request information using PBGC's procedures for FOIA and Privacy Act requests. Paragraph (a) contains the section's scope, paragraph (b) provides a description concerning information not in the possession of PBGC, and paragraph (c) provides a description concerning information in the possession of PBGC including a cross-reference to PBGC's FOIA and Privacy Act regulations.

The final rule amends § 4003.3(b) to include additional language concerning a request for PBGC's assistance in obtaining materials not in the possession of PBGC to clarify that such a request must be submitted to the Appeals Board or the department responsible for reviewing the initial determination. The section refers persons requesting PBGC's assistance with a reconsideration to § 4003.33 and with an appeal to § 4003.54.

Extension of Time

The final rule deletes § 4003.4(b) concerning requests for extensions of time related to disaster relief and reorganizes the section to contain a single paragraph concerning a request for an extension of time when a document is required to be filed within a certain period. PBGC published a notice describing how it changed its announcement of relief from filing deadlines and penalties when a disaster occurs and explaining that PBGC's disaster relief will be available at the

⁴ Note, section 4044(d) of ERISA uses the word "residual" instead of "excess."

⁵ See 44 FR 42181, 42185 (July 19, 1979) and 29 CFR part 4901.

same time the Internal Revenue Service issues disaster relief to taxpayers.⁶

The final rule amends § 4003.4 to include language providing that requests for extension of time for the submission of appeals should be sent to the Appeals Board while requests for extension of the submission of requests for reconsideration should be sent to the department that issued the initial determination.

Form and Contents of Request for Reconsideration

The final rule amends § 4003.34 to clarify the form and content requirements that a request for reconsideration must include.

Decision on Request for Reconsideration

The final rule adds new § 4003.35(c) to clarify that a decision on a request for reconsideration constitutes a final PBGC action, which is binding on all persons who participated in the request. This language is consistent with the language in § 4003.59(b) that a decision of the Appeals Board constitutes final agency action by PBGC.

The final rule also makes clarifications and other editorial changes to part 4003.

Compliance With Rulemaking Guidelines

Executive Orders 12866, 13563, and 13771

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

Accordingly, this final rule is exempt from Executive Order 13771, and OMB has not reviewed the final rule under Executive Order 12866.

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

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic and policy implications of this final rule and has concluded that there will be no significant economic impact as a result of the final amendments to PBGC’s regulation. Most of the amendments merely clarify existing PBGC practices and neither the public nor PBGC is likely to assume any additional costs due to these amendments and revisions.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that “may be outmoded, ineffective, insufficient, or excessively burdensome.” These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified the amendments to the administrative review regulation and the clarifications and improvements to this regulation as consistent with the principles for review under Executive Order 13563. PBGC believes this provides clearer guidance to the public.

Regulatory Flexibility Act

The Regulatory Flexibility Act⁷ imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations, and governmental jurisdictions.

Small Entities

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations⁸ and is consistent with certain requirements in title I of ERISA⁹ and the Internal Revenue Code (Code),¹⁰ as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.¹¹

⁷ 5 U.S.C. 601 *et seq.*

⁸ *See, e.g.*, special rules for small plans under part 4007 (Payment of Premiums).

⁹ *See, e.g.*, ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover few than 100 participants.

¹⁰ *See, e.g.*, Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

¹¹ *See, e.g.*, DOL’s final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,644 (Oct. 27, 2011).

Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration¹² under the Small Business Act. PBGC therefore requested comments on the appropriateness of the size standard used in evaluating the impact of the amendments in the proposed rule on small entities. PBGC received no comments on this point.

On the basis of its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. The amendments clarify existing PBGC practices and will have a neutral cost impact. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

Paperwork Reduction Act

PBGC’s Form 723, Request for Additional time to file an Appeal of a PBGC Benefit Termination and Form 724, Appeal of a PBGC Benefit Determination, are used by aggrieved persons to assist them with filing an appeal. The collection of information with respect to administrative appeals is approved under control number 1212–0061 (expires July 31, 2022).

The final rule does not require changes to the forms used for appeals. The final rule eliminates the requirement for an appellant to provide the names and addresses of persons who the appellant believes may be aggrieved if PBGC provides the relief sought. As few, if any, appellants provide this information, PBGC does not expect that this final change impacts the hour burden and cost burden for the information collection with respect to appeals.

The administrative review regulation requires that a request for reconsideration include specified information. The collection of information with respect to filings for reconsideration is approved under control number 1212–0063 (expires August 31, 2022).

The final rule clarifies the information required to be submitted for a request for reconsideration, including copies of any documentation that supports the requestor’s claim or assertions concerning the request. PBGC expects

¹² *See*, 13 CFR 121.201.

⁶ *See* 83 FR 30991, 30991 (July 2, 2018).

that this clarification will make the process more efficient and will not impact the hour burden and cost burden for the information collection with respect to reconsideration.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

List of Subjects in 29 CFR Part 4003

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

For the reasons given above, PBGC amends 29 CFR part 4003 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 § 4003.1 by:
 - a. In paragraph (a):
 - i. Removing the phrase “paragraph (b)” and adding in its place “paragraphs (d) and (e)” in the first sentence;
 - ii. Removing the phrase “paragraphs (b)(1) through (b)(5)” and adding in its place “paragraph (d)” in the fourth sentence; and
 - iii. Removing the phrase “paragraphs (b)(6) through (b)(11)” and adding in its place “paragraph (e)” in the fifth sentence;
 - b. Revising paragraph (b); and
 - c. Adding paragraphs (d) and (e).

The revision and additions read as follows:

§ 4003.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies to the initial determinations made by PBGC that are listed in paragraphs (d) and (e) of this section.

* * * * *

(d) *Determinations subject to reconsideration.* Any person aggrieved by an initial determination of PBGC listed in this paragraph (d) may request reconsideration, subject to the terms of this part.

(1) Determinations with respect to premiums, interest and late payment penalties pursuant to section 4007 of ERISA;

(2) Determinations with respect to voluntary terminations under section 4041 of ERISA, including any of the following:

(i) A determination that a notice requirement or a certification requirement under section 4041 of ERISA has not been met;

(ii) A determination that the requirements for demonstrating distress under section 4041(c)(2)(B) of ERISA have not been met;

(iii) A determination with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits; and

(iv) A determination with respect to a plan terminating under section 4041(b) of ERISA or with respect to the distribution of residual assets under section 4044(d) of ERISA; and

(3) Determinations with respect to penalties under section 4071 of ERISA.

(e) *Determinations subject to appeal.* Any person aggrieved by an initial determination of PBGC listed in this paragraph (e) may file an appeal, subject to the terms of this part.

(1) Determinations that a plan is or is not covered under section 4021 of ERISA;

(2) Determinations of a participant's or beneficiary's benefit entitlement and the amount of benefit payable under a covered plan under sections 4022, 4022B, and 4044 of ERISA (other than a determination described in paragraph (d)(2)(iv) of this section);

(3) Determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA and section 414(p) of the Code;

(4) Determinations of the amount of money subject to recapture pursuant to section 4045 of ERISA;

(5) Determinations of the amount of liability under sections 4062(b)(1), 4063, or 4064 of ERISA; and

(6) Determinations with respect to benefits payable by PBGC under section 4050 of ERISA and part 4050 of this chapter.

- 3. Revise § 4003.3 to read as follows:

§ 4003.3 PBGC assistance in obtaining information.

(a) *General.* A person may request PBGC's assistance in obtaining information if the person lacks information necessary—

(1) To file a request for review pursuant to subpart C or D of this part, or to decide whether to seek review; or

(2) To participate in an appeal pursuant to § 4003.57, or to decide whether to participate in an appeal.

(b) *Information not in PBGC's possession.* A person may request PBGC's assistance in obtaining information in the possession of a party other than PBGC. The request must—

(1) Be in writing;

(2) State or describe the missing information, the reason why the person needs the information, and the reason why the person needs the assistance of PBGC in obtaining the information; and

(3) Be submitted to the Appeals Board or the department that is responsible for reviewing the initial determination under this part. If the determination is subject to reconsideration, see § 4003.33 for information on where to submit the request for assistance. If the determination is subject to review by appeal, see § 4003.53 for information on where to submit the request.

(c) *Information in the possession of PBGC.* A person may request information in the possession of PBGC pursuant to the Freedom of Information Act and part 4901 of this chapter or the Privacy Act and part 4902 of this chapter, as applicable. See parts 4901 and 4902 of this chapter for additional information. Nothing in this paragraph (c) limits or amends the requirements under part 4901 or 4902 of this chapter.

- 4. Revise § 4003.4 to read as follows:

§ 4003.4 Extension of time.

When a document is required under this part to be filed within a prescribed period of time, an extension of time to file will be granted only upon good cause shown and only when the request for an extension is made before the expiration of the time prescribed. The request for an extension must be in writing and state why additional time is needed and the amount of additional time requested. The filing of a request for an extension will stop the running of the prescribed period of time. Requests for extension of the time to submit an appeal should be sent to the Appeals Board; requests for extension of the time to submit a request for reconsideration should be sent to the department that issued the initial determination. When a request for an extension is granted, PBGC will notify the person requesting the extension, in writing, of the amount of additional time granted. When a request for an extension is denied, PBGC will notify the person requesting the extension in writing, and the prescribed period of time will resume running from the date of denial.

§ 4003.7 [Amended]

- 5. Amend § 4003.7 by removing “a determination” and adding in its place “an initial determination”.

§ 4003.21 [Amended]

- 6. Amend § 4003.21 by:
 - a. Removing “All determinations” and adding in its place “All initial determinations”;
 - b. Removing “of the determination” and adding in its place “of the initial determination”;

■ c. Removing “subpart C or subpart D” and adding in its place “subpart C or D”.

■ 7. Amend § 4003.22 by removing “a determination” and adding in its place “an initial determination” in the second sentence of paragraph (a) and revising paragraph (b) to read as follows:

§ 4003.22 Effective date of determinations.

* * * * *

(b) *Exception.* Except for initial determinations listed in § 4003.1(e)(2), (3), and (6), PBGC may, in its discretion, order that the initial determination in a case is effective on the date it is issued. When PBGC makes such an order, the initial determination will state that it constitutes the final agency action effective on the date of issuance, there is no right to request review under subparts C and D of this part, and any person aggrieved by the initial determination has exhausted all administrative remedies.

§ 4003.31 [Amended]

■ 8. Amend § 4003.31 by removing “the determination” and adding in its place “the initial determination”.

§ 4003.33 [Amended]

■ 9. Amend § 4003.33 by removing “reconsideration of a determination described in § 4003.1(b)(3)(ii)” and adding in its place “reconsideration of an initial determination described in § 4003.1(d)(2)(ii)”.

■ 10. Revise § 4003.34 to read as follows:

§ 4003.34 Contents of request for reconsideration.

A request for reconsideration must—

(a) Be in writing;

(b) Be clearly designated as a request for reconsideration;

(c) Specifically explain why PBGC’s determination is wrong and the result the requestor is seeking;

(d) Describe the relevant information the requestor believes is known by PBGC and summarize any other information that is relevant to the request for reconsideration; and

(e) Include copies of any documentation that supports the requestor’s claim or assertions.

■ 11. Amend § 4003.35 by:

■ a. Revising the section heading;

■ b. Removing “Department Director” wherever it appears and adding in its place “Director of a department”, removing “final” before “decision”, and removing “a determination other than one described in § 4003.1(b)(3)(ii)” and adding in its place “an initial determination other than one described in § 4003.1(d)(2)(ii)” in paragraph (a)(1);

■ c. Removing “final decision” and adding in its place “decision” and removing “a determination described in § 4003.1(b)(3)(ii)” and adding in its place “an initial determination described in § 4003.1(d)(2)(ii)” in paragraph (a)(2);

■ d. Removing “final decision” and adding in its place “decision” in paragraph (b); and

■ e. Adding paragraph (c).

The revision and addition read as follows:

§ 4003.35 Decision on request for reconsideration.

* * * * *

(c) The decision on a request for reconsideration constitutes the final agency action by PBGC with respect to the initial determination that was the subject of the request for reconsideration and is binding on all persons who participated in the request for reconsideration.

§ 4003.55 [Amended]

■ 12. Amend § 4003.55(c) by removing “1200 K Street NW, Washington, DC 20005–4026” and adding in its place “as listed on PBGC’s website, www.pbgc.gov”.

§ 4003.57 [Amended]

■ 13. Amend § 4003.57(a)(6) by adding “initial” before “determination”.

§ 4003.58 [Amended]

■ 14. Amend § 4003.58 by adding “initial” before “determination” in the last sentence of paragraph (b) introductory text and paragraph (b)(1)(ii).

§ 4003.59 [Amended]

■ 15. Amend § 4003.59(b) by adding “initial” before “determination”.

§§ 4003.1, 4003.2, 4003.5, 4003.6, 4003.7, 4003.8, 4003.9, 4003.10, 4003.22, 4003.31, 4003.33, 4003.35, 4003.54, 4003.55, 4003.57, 4003.59, and 4003.60 [Amended]

■ 16. Remove the words “the PBGC” and “The PBGC” and add in their places the word “PBGC” in the following sections:

■ a. Section 4003.1(a) and (c);

■ b. Section 4003.2;

■ c. Section 4003.5;

■ d. Section 4003.6;

■ e. Section 4003.7;

■ f. Section 4003.8;

■ g. Section 4003.9;

■ h. Section 4003.10;

■ i. Section 4003.22(a);

■ j. Section 4003.31;

■ k. Section 4003.33;

■ l. Section 4003.35(a);

■ m. Section 4003.54(b);

■ n. Section 4003.55(c);

■ o. Section 4003.57(a)(6);

■ p. Section 4003.59(b); and

■ q. Section 4003.60.

§§ 4003.32 and 4003.52 [Amended]

■ 17. Remove the words “the PBGC’s” and add in their place the word “PBGC’s” wherever they occur in §§ 4003.32 and 4003.52.

§§ 4003.2, 4003.21, 4003.22, 4003.56, 4003.57, 4003.58, 4003.59, and 4003.60 [Amended]

■ 18. Remove the word “shall” and add in its place the word “will” wherever it occurs in the following sections:

■ a. Section 4003.2;

■ b. Section 4003.21;

■ c. Section 4003.22(a);

■ d. Section 4003.56(c);

■ e. Section 4003.57(a);

■ f. Section 4003.58(b);

■ g. Section 4003.59(a) and (c); and

■ h. Section 4003.60.

§§ 4003.6, 4003.8, 4003.33, 4003.53, and 4003.54 [Amended]

■ 19. Remove the word “shall” and add in its place the word “must” wherever it occurs in the following sections:

■ a. Section 4003.6;

■ b. Section 4003.8;

■ c. Section 4003.33;

■ d. Section 4003.53; and

■ e. Section 4003.54(a) and (b).

Issued in Washington, DC.

Gordon Hartogenesis,

Director, Pension Benefit Guaranty Corporation.

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DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 903

[Docket ID: USAF–2019–HQ–0007]

RIN 0701–AA92

Air Force Academy Preparatory School

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes the regulation concerning how the Department of the Air Force accesses individuals into the Air Force Academy Preparatory School. This part is outdated, contains internal guidance, reiterates statutory law, and is otherwise subject to the military function exemption to rulemaking. Candidates to the preparatory school are individually