

(b) These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

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

SOURCE: 61 FR 34012, July 1, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 4003.1 Purpose and scope.

(a) *Purpose.* This part sets forth the rules governing the issuance of all initial determinations by PBGC on cases pending before it involving the matters set forth in paragraphs (d) and (e) of this section and the procedures for requesting and obtaining administrative review by PBGC of those determinations. Subpart A contains general provisions. Subpart B sets forth rules governing the issuance of all initial determinations of PBGC on matters covered by this part. Subpart C establishes procedures governing the reconsideration by PBGC of initial determinations relating to the matters set forth in paragraph (d). Subpart D establishes procedures governing administrative appeals from initial determinations relating to the matters set forth in paragraph (e).

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

(c) *Matters not covered by this part.* Nothing in this part limits—

(1) The authority of PBGC to review, either upon request or on its own initiative, a determination to which this part does not apply when, in its discretion, PBGC determines that it would be appropriate to do so, or

(2) The procedure that PBGC may utilize in reviewing any determination to which this part does not apply.

(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

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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.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 77 FR 22489, Apr. 16, 2012; 82 FR 60818, Dec. 22, 2017; 85 FR 10283, 10284, Feb. 24, 2020]

§ 4003.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, controlled group, ERISA, multiemployer plan, PBGC, person, plan administrator, and single-employer plan.

In addition, for purposes of this part:

Aggrieved person means any participant, beneficiary, plan administrator, contributing sponsor of a single-em-

ployer plan or member of such a contributing sponsor's controlled group, plan sponsor of a multiemployer plan, or employer that is adversely affected by an initial determination of PBGC with respect to a pension plan in which such person has an interest. The term "beneficiary" includes an alternate payee (within the meaning of section 206(d)(3)(K) of ERISA) under a qualified domestic relations order (within the meaning of section 206(d)(3)(B) of ERISA).

Appeals Board means a board consisting of three PBGC officials. The Director will appoint a senior PBGC official to serve as Chairperson and three or more other PBGC officials to serve as regular Appeals Board members. The Chairperson will designate the three officials who will constitute the Appeals Board with respect to a case, provided that a person may not serve on the Appeals Board with respect to a case in which he or she made a decision regarding the merits of the determination being appealed. The Chairperson need not serve on the Appeals Board with respect to all cases.

Appellant means any person filing an appeal under subpart D of this part.

Director means the Director of any department of PBGC and includes the Director of PBGC, Deputy Directors, and the General Counsel.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 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

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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.

[85 FR 10283, Feb. 24, 2020]

§ 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.

[85 FR 10283, Feb. 24, 2020]

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§ 4003.5 Non-timely request for review.

PBGC will process a request for review of an initial determination that was not filed within the prescribed period of time for requesting review (see §§ 4003.32 and 4003.52) if—

(a) The person requesting review demonstrates in his or her request that he or she did not file a timely request for review because he or she neither knew nor, with due diligence, could have known of the initial determination; and

(b) The request for review is filed within 30 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the requested review is reconsideration, or within 45 days after the date the aggrieved person, exercising due diligence at all relevant times, first learned of the initial determination where the request for review is an appeal.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.6 Representation.

A person may file any document or make any appearance that is required or permitted by this part on his or her own behalf or he or she may designate a representative. When the representative is not an attorney-at-law, a notarized power of attorney, signed by the person making the designation, which authorizes the representation and specifies the scope of representation must be filed with PBGC in accordance with § 4003.9(b) of this part.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.7 Exhaustion of administrative remedies.

Except as provided in § 4003.22(b), a person aggrieved by an initial determination of PBGC covered by this part, other than an initial determination subject to reconsideration that is issued by a Department Director, has not exhausted his or her administrative remedies until he or she has filed a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, and a decision granting

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or denying the relief requested has been issued.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10283, 10284, Feb. 24, 2020]

§ 4003.8 Request for confidential treatment.

If any person filing a document with PBGC believes that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, he or she must specify the information with respect to which confidentiality is claimed and the grounds therefor.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.9 Method and date of filing.

(a) *Method of filing.* PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with PBGC under this part.

(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.

[68 FR 61352, Oct. 28, 2003, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.10 Computation of time.

PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[68 FR 61352, Oct. 28, 2003, as amended at 85 FR 10284, Feb. 24, 2020]

Subpart B—Initial Determinations

§ 4003.21 Form and contents of initial determinations.

All initial determinations to which this subpart applies will be in writing, will state the reason for the determination, and, except when effective on the date of issuance as provided in § 4003.22(b), will contain notice of the right to request review of the initial determination pursuant to subpart C or D of this part, as applicable, and a brief description of the procedures for requesting review.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10283, 10284, Feb. 24, 2020]

§ 4003.22 Effective date of determinations.

(a) *General rule.* Except as provided in paragraph (b) of this section, an initial determination covered by this subpart will not become effective until the prescribed period of time for filing a request for reconsideration under subpart C of this part or an appeal under subpart D of this part, whichever is applicable, has elapsed. The filing of a request for review under subpart C or D of this part will automatically stay the effectiveness of an initial determination until a decision on the request for review has been issued by PBGC.

(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.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

Subpart C—Reconsideration of Initial Determinations

§ 4003.31 Who may request reconsideration.

Any person aggrieved by an initial determination of PBGC to which this subpart applies may request reconsideration of the initial determination.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.32 When to request reconsideration.

Except as provided in §§ 4003.4 and 4003.5, a request for reconsideration must be filed within 30 days after the date of the initial determination of which reconsideration is sought or, when administrative review includes a procedure in part 4903 of this chapter,

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by the date that is specified in PBGC's notice of the right to request review.

[61 FR 34012, July 1, 1996, as amended at 75 FR 68205, Nov. 5, 2010; 85 FR 10284, Feb. 24, 2020]

§ 4003.33 Where to submit request for reconsideration.

A request for reconsideration must be submitted to the Director of the department within PBGC that issued the initial determination, except that a request for reconsideration of an initial determination described in § 4003.1(d)(2)(ii) must be submitted to the Director. See § 4000.4 of this chapter for information on where to file.

[61 FR 34012, July 1, 1996, as amended at 68 FR 61352, Oct. 28, 2003; 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 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.

[85 FR 10284, Feb. 24, 2020]

§ 4003.35 Decision on request for reconsideration.

(a) Except as provided in paragraph (a)(1) or (a)(2), decisions on requests for reconsideration will be issued by the same department of PBGC that issued the initial determination, by an official whose level of authority in that department is higher than that of the person who issued the initial determination.

(1) When an initial determination is issued by a Director of a department, the Director of a department (or an official designated by the Director of a department) will issue the decision on a request for reconsideration of an ini-

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tial determination other than one described in § 4003.1(d)(2)(ii).

(2) The Director (or an official designated by the Director) will issue the decision on a request for reconsideration of an initial determination described in § 4003.1(d)(2)(ii).

(b) The decision on a request for reconsideration shall be in writing, specify the relief granted, if any, state the reason(s) for the decision, and state that the person has exhausted his or her administrative remedies.

(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.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020; 88 FR 76664, Nov. 7, 2023]

Subpart D—Administrative Appeals

§ 4003.51 Who may appeal or participate in appeals.

Any person aggrieved by an initial determination to which this subpart applies may file an appeal. Any person who may be aggrieved by a decision under this subpart granting the relief requested in whole or in part may participate in the appeal in the manner provided in § 4003.57.

§ 4003.52 When to file.

Except as provided in §§ 4003.4 and 4003.5, an appeal under this subpart must be filed within 45 days after the date of the initial determination being appealed or, when administrative review includes a procedure in part 4903 of this chapter, by the date that is specified in PBGC's notice of the right to request review.

[61 FR 34012, July 1, 1996, as amended at 75 FR 68205, Nov. 5, 2010; 85 FR 10284, Feb. 24, 2020]

§ 4003.53 Where to file.

An appeal or a request for an extension of time to appeal must be submitted to the Appeals Board. See

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§ 4000.4 of this chapter for additional information on where to file.

[61 FR 34012, July 1, 1996, as amended at 68 FR 61352, Oct. 28, 2003; 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.54 Contents of appeal.

(a) An appeal must—

(1) Be in writing;

(2) Be clearly designated as an appeal;

(3) Specifically explain why PBGC's determination is wrong and the result the appellant is seeking;

(4) Describe the relevant information the appellant believes is known by PBGC, and summarize any other information the appellant believes is relevant. It is important to include copies of any documentation that support the appellant's claim or the appellant's assertions about this information;

(5) State whether the appellant desires to appear in person or through a representative before the Appeals Board; and

(6) State whether the appellant desires to present witnesses to testify before the Appeals Board, and if so, state why the presence of witnesses will further the decision-making process.

(b) In any case where the appellant believes that another person may be aggrieved if PBGC grants the relief sought, the appeal must also include the name(s) and address(es) (if known) of such other person(s).

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.55 Opportunity to appear and to present witnesses.

(a) At the discretion of the Appeals Board, any appearance permitted under this subpart may be before a hearing officer designated by the Appeals Board.

(b) An opportunity to appear before the Appeals Board (or a hearing officer) and an opportunity to present witnesses will be permitted at the discretion of the Appeals Board. In general, an opportunity to appear will be permitted if the Appeals Board determines that there is a dispute as to a material fact; an opportunity to present witnesses will be permitted when the Appeals Board determines that witnesses

will contribute to the resolution of a factual dispute.

(c) Appearances permitted under this section will take place at the main offices of PBGC, as listed on PBGC's website, www.pbgc.gov, unless the Appeals Board, in its discretion, designates a different location, either on its own initiative or at the request of the appellant or a third party participating in the appeal.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.56 Consolidation of appeals.

(a) *When consolidation may be required.* Whenever multiple appeals are filed that arise out of the same or similar facts and seek the same or similar relief, the Appeals Board may, in its discretion, order the consolidation of all or some of the appeals.

(b) *Representation of parties.* Whenever the Appeals Board orders the consolidation of appeals, the appellants may designate one (or more) of their number to represent all of them for all purposes relating to their appeals.

(c) *Decision by Appeals Board.* The decision of the Appeals Board in a consolidated appeal will be binding on all appellants whose appeals were subject to the consolidation.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.57 Appeals affecting third parties.

(a) Before the Appeals Board issues a decision granting, in whole or in part, the relief requested in an appeal, it will make a reasonable effort to notify third persons who will be aggrieved by the decision of the following:

(1) The pendency of the appeal;

(2) The grounds upon which the appeal is based;

(3) The grounds upon which the Appeals Board is considering reversing the initial determination;

(4) The right to submit written comments on the appeal;

(5) The right to request an opportunity to appear in person or through a representative before the Appeals Board and to present witnesses; and

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(6) That no further opportunity to present information to PBGC with respect to the initial determination under appeal will be provided.

(b) Written comments and a request to appear before the Appeals Board must be filed within 45 days after the date of the notice from the Appeals Board.

(c) If more than one third party is involved, their participation in the appeal may be consolidated pursuant to the provisions of § 4003.56.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.58 Powers of the Appeals Board.

(a) In addition to the powers specifically described in this part, the Appeals Board may request the submission of any information or the appearance of any person it considers necessary to resolve a matter before it and to enter any order it considers necessary for or appropriate to the disposition of any matter before it.

(b) The Appeals Board may refer certain appeals to another PBGC department or to Appeals Board staff to provide a response to the appellant. The response from another PBGC department or Board staff will be in writing and address the matters raised in the appeal. The response may be in the form of an explanation or corrected benefit determination. In either case, the appellant will have 45 calendar days from the date of the response to file a written request for review by the Appeals Board. If a written request for review is not filed with the Appeals Board within the 45-calendar-day period the initial determination will become effective pursuant to § 4003.22(a).

(1) Appeals that may be referred to another PBGC department or to the Board staff include those that—

(i) Request an explanation of the initial determination being appealed;

(ii) Dispute specific data used in the initial determination, such as date of hire, date of retirement, date of termination of employment, length of service, compensation, marital status and form of benefit elected; or

(iii) Request an explanation of the limits on benefits payable by PBGC under part 4022, subpart B, such as the

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maximum guaranteeable benefit and phase-in of the PBGC guarantee.

(2) An explanation or corrected benefit determination issued under this subsection is not considered a decision of the Appeals Board. If an appellant aggrieved by PBGC's initial determination is issued an explanation or corrected benefit determination under this section, the appellant has not exhausted his or her administrative remedies until the appellant has filed a timely request with the Appeals Board for review and the Appeals Board has issued a decision granting or denying the relief requested. See § 4003.7 of this part.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.59 Decision by the Appeals Board.

(a) In reaching its decision, the Appeals Board will consider those portions of the file relating to the initial determination, all material submitted by the appellant and any third parties in connection with the appeal, and any additional information submitted by PBGC staff.

(b) The decision of the Appeals Board constitutes the final agency action by PBGC with respect to the initial determination which was the subject of the appeal and is binding on all parties who participated in the appeal and who were notified pursuant to § 4003.57 of their right to participate in the appeal.

(c) The decision of the Appeals Board will be in writing, specify the relief granted, if any, state the bases for the decision, including a brief statement of the facts or legal conclusions supporting the decision, and state that the appellant has exhausted his or her administrative remedies.

[61 FR 34012, July 1, 1996, as amended at 85 FR 10284, Feb. 24, 2020]

§ 4003.60 Referral of appeal to the Director.

The Appeals Board may, in its discretion, refer any appeal to the Director of PBGC for decision. In such a case, the Director will have all the powers vested in the Appeals Board by this subpart and the decision of the Director will meet the requirements of and

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have the effect of a decision issued under § 4003.59 of this part.

[61 FR 34012, July 1, 1996, as amended at 73 FR 38120, July 3, 2008; 85 FR 10284, Feb. 24, 2020]

§ 4003.61 Action by a single Appeals Board member.

(a) *Authority to act.* Notwithstanding any other provision of this part, any member of the Appeals Board has the authority to take any action that the Appeals Board could take with respect to a routine appeal as defined in paragraph (b) of this section.

(b) *Routine appeal defined.* For purposes of this section, a routine appeal is any appeal that does not raise a significant issue of law or a precedent-setting issue. This would generally include any appeal that—

(1) Is outside the jurisdiction of the Appeals Board (for example, an appeal challenging the plan's termination date);

(2) Is filed by a person other than an aggrieved person or an aggrieved person's authorized representative;

(3) Is untimely and presents no grounds for waiver or extension of the time limit for filing the appeal, or only grounds that are clearly without merit;

(4) Presents grounds that clearly warrant or clearly do not warrant the relief requested;

(5) Presents only factual issues that are not reasonably expected to affect other appeals (for example, the participant's date of birth or date of hire); or

(6) Presents only issues that are controlled by settled principles of existing law, including Appeals Board precedent (for example, an issue of plan interpretation that has been resolved by the Appeals Board in a decision on an appeal by another participant in the same plan).

[67 FR 47695, July 22, 2002]