

SUBCHAPTER L—INTERNAL AND ADMINISTRATIVE RULES AND PROCEDURES

PART 4901—DISCLOSURE AND PUBLIC INSPECTION OF PENSION BENEFIT GUARANTY CORPORA- TION RECORDS

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Subpart A—General

§ 4901.1 Purpose and scope.

This part contains PBGC's general rules implementing the Freedom of Information Act. This part sets forth

generally the categories of records accessible to the public, types of records subject to prohibitions or restrictions on disclosure, and procedures whereby members of the public may access and inspect PBGC records.

[87 FR 43994, July 25, 2022]

§ 4901.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part—

Agency, person, rule, rulemaking, order, and adjudication have the meanings attributed to these terms by the definitions in 5 U.S.C. 551, except where the context demonstrates that a different meaning is intended, and except that for purposes of the Freedom of Information Act the term agency as defined in 5 U.S.C. 551 includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President) or any independent regulatory agency.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Record has the meaning attributed to it by section 552(f)(2) of FOIA.

Working day means any weekday excepting Federal holidays.

[61 FR 34123, July 1, 1996, as amended at 74 FR 27081, June 8, 2009; 87 FR 43994, July 25, 2022]

§ 4901.3 Electronic reading room.

PBGC will maintain an electronic reading room on its website, *www.pbgc.gov*, where persons may inspect in an electronic format all records made available for such purposes under this part.

[82 FR 26991, June 13, 2017; as amended at 87 FR 43994, July 25, 2022]

§ 4901.4 Information maintained in electronic reading room.

PBGC will make available for public inspection in an electronic format without formal request—

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(a) *Information published in the FEDERAL REGISTER.* FEDERAL REGISTER documents published by PBGC, and FEDERAL REGISTER indexes;

(b) *Information in PBGC publications.* Informational material, such as press releases, pamphlets, and other material ordinarily made available to the public without cost as part of a public information program;

(c) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by PBGC in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class thereof;

(d) *Other agency proceedings, policies, staff manuals and instructions, and records.* Except to the extent that deletion of identifying details is required to prevent a clearly unwarranted invasion of personal privacy (in which case PBGC will explain in writing the justification for the deletion)—

(1) *Adjudication proceedings.* Final opinions, orders, and (except to the extent that an exemption provided by FOIA must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of the functions of PBGC) other papers and documents made a part of the official record in adjudication proceedings conducted by PBGC;

(2) *Policy statements and interpretations.* Statements of policy and interpretations affecting a member of the public which have been adopted by PBGC and which have not been published in the FEDERAL REGISTER;

(3) *Staff manuals and instructions.* Administrative staff manuals and instructions to staff issued by PBGC that affect any member of the public;

(4) *Frequently requested records.* Records that have been released under section 552(a)(3) of FOIA and have been the subject of three or more disclosure requests; and

(5) *Other records.* Records that have been released under section 552(a)(3) of FOIA and that PBGC determines, because of the nature of the records' subject matter, have become or are likely

to become the subject of subsequent disclosure requests for substantially the same records; and

(e) *Indexes to certain records.* Current indexes (updated at least quarterly) identifying materials described in section 552(a)(2) of FOIA and paragraph (d) of this section.

[61 FR 34123, July 1, 1996, as amended at 82 FR 26991, June 13, 2017; 87 FR 43994, July 25, 2022]

§ 4901.5 Disclosure of other information.

(a) *In general.* Upon the request of any person submitted in accordance with subpart B of this part, the Disclosure Officer will make any document (or portion thereof) from the records of PBGC in the custody of any official of PBGC available for inspection unless PBGC reasonably foresees that disclosure would harm an interest protected by an exemption under the provisions of section 552(b) of FOIA and subpart C of this part or disclosure is otherwise prohibited by law. The procedures in subpart B of this part must be used for records that are not made available in PBGC's electronic reading room under § 4901.4 and may be used for records that are available in the electronic reading room. Records are not records of PBGC and are not required to be furnished under FOIA, if they could only be produced by manipulation of existing information (such as computer analyses of existing data), thus creating information not previously in existence.

(b) *Discretionary disclosure.* Unless prohibited from disclosure by § 4901.21(a), the Disclosure Officer may make any document (or portion thereof) from the records of PBGC available for inspection if the Disclosure Officer determines that disclosure furthers the public interest and does not impede the discharge of any of the functions of PBGC.

[87 FR 43995, July 25, 2022]

§ 4901.6 Filing rules; computation of time.

(a) *Place, method, and date of filing.* (1) For rules about where to file a submission under this part with PBGC, see § 4000.4 of this chapter.

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(2) For rules about permissible methods of filing with PBGC under this part, see § 4000.3 of this chapter.

(3) For rules about the date that a submission under this part was filed with PBGC, see subpart C of part 4000 of this chapter.

(b) *Computation of time.* For rules about any time period under this part, see subpart D of part 4000 of this chapter.

[87 FR 43995, July 25, 2022]

Subpart B—Procedure for Formal Requests

§ 4901.11 Submission of requests for access to records.

(a) *In general.* A request to inspect any record subject to this subpart must be submitted in writing to the Disclosure Officer, Pension Benefit Guaranty Corporation, by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, www.pbgc.gov. To facilitate processing, "FOIA request" should appear prominently on the request.

(b) *Assistance with requests.* A person who intends to submit or has submitted a request to inspect any record subject to this subpart may at any time seek assistance from a FOIA Public Liaison listed on PBGC's website, www.pbgc.gov. PBGC's FOIA Public Liaisons are responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

[87 FR 43995, July 25, 2022]

§ 4901.12 Description of information requested.

(a) *In general.* Each disclosure request should reasonably describe the record or records sought in sufficient detail to permit identification and location with a reasonable amount of effort. So far as practicable, the request should specify the subject matter of the record, the place where and date or approximate date when made, the person or office that made it, and any other pertinent identifying details.

(b) *Deficient descriptions.* (1) If the description is insufficient to enable a

professional employee familiar with the subject area of the disclosure request to locate the record with a reasonable amount of effort, the Disclosure Officer will notify the requester and, to the extent possible, indicate the additional information required. PBGC will make every reasonable effort to assist a requester in the identification and location of the record or records sought. PBGC will not withhold records merely because of difficulty in finding them.

(2) A requester who is attempting to modify or reformulate a disclosure request may discuss the request with a FOIA Public Liaison, who is available to assist the requester in reasonably describing the records sought. If the requester fails to reasonably describe the records sought, PBGC's response to the request may be delayed or denied.

(3) Any amended disclosure request must meet the requirements for a request under paragraph (a) of this section.

(c) *Requests for categories of records.* Disclosure requests calling for all records falling within a reasonably specific category will be regarded as reasonably described within the meaning of this section and section 552(a)(3) of FOIA if PBGC is reasonably able to determine which records come within the request and to search for and collect them without unduly interfering with PBGC operations. If PBGC operations would be unduly disrupted, the Disclosure Officer will promptly notify the requester and provide an opportunity to confer in an attempt to reduce the request to manageable proportions.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43995, July 25, 2022]

§ 4901.13 Receipt by agency of request.

The Disclosure Officer will note the date and time of receipt on each disclosure request for access to records. A disclosure request is deemed received and the period within which PBGC acts on the request, as set forth in § 4901.14, begins on the next working day following receipt, except that a disclosure request is deemed received only if and when PBGC receives all of the following:

(a) A sufficient description under § 4901.12;

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(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester's consent to pay substantial search, review, and/or duplication charges under subpart D of this part if PBGC determines that such charges may be substantial and so notifies the requester. Consent must be in the form of a statement that charges under subpart D of this part will be acceptable either in any amount or up to a specified amount. To avoid possible delay, a requester may include such a statement in an initial disclosure request.

[87 FR 43995, July 25, 2022]

§ 4901.14 Action on request.

(a) *Time for action.* Promptly and in any event within 20 working days after receipt of a disclosure request (subject to extension under § 4901.16), the Disclosure Officer will take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section. Following receipt, PBGC may ask the requester for information once and toll the 20-day period until PBGC receives such information.

(b) *Request granted.* If the Disclosure Officer determines that the disclosure request will be granted, PBGC will so advise the requester and will promptly make the records available to the requester. PBGC will accommodate any specification of the preferred form or format for the sought record as stated in the request, if the record is readily reproducible in the preferred form or format.

(c) *Request denied.* If the Disclosure Officer determines that the disclosure request will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial, including, if applicable, a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld.

(d) *Records not located.* If the Disclosure Officer determines that, despite a reasonably calculated search to uncover all relevant documents, the requested records could not be located, PBGC will issue a "no-records" response, and so advise the requester in writing.

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(e) *Information for requester.* Written responses issued under paragraph (c) or (d) of this section will include the name and title of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

[87 FR 43995, July 25, 2022]

§ 4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* A requester may appeal any adverse determination by the Disclosure Officer of a request under FOIA, including a denial of a request for access to records, expedited action, or fee waiver. The requester may file a written appeal within 90 days from the date of the denial or, in the case of a partial denial, 90 days from the date the requester receives the disclosed material. The appeal must include the grounds for appeal and any supporting statements or arguments. The requester must address the appeal to the General Counsel, Pension Benefit Guaranty Corporation, and must submit the appeal by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, www.pbgc.gov. To facilitate processing, the words "FOIA appeal" should appear prominently on the appeal.

(b) *Receipt and consideration of appeal.* The General Counsel will note the date and time of receipt on each appeal and notify the requester thereof. Within 20 working days after receipt of an appeal (subject to extension under § 4901.16), the General Counsel will issue a decision on the appeal.

(1) The General Counsel will determine de novo whether the denial of disclosure was in accordance with FOIA and this part.

(2) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat the pending action as the filing of an appeal.

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(c) *Decision on appeal.* As to each item (or portion of an item) whose non-disclosure is appealed, the General Counsel will either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted will promptly be made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in section 552(a)(4) of FOIA. The General Counsel's decision will be the final action of PBGC with respect to the request.

(d) *Records of appeals.* Copies of both grants and denials of appeals will be collected in one file available in PBGC's electronic reading room under § 4901.4(d)(1) and indexed under § 4901.4(e).

[61 FR 34123, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003; 82 FR 26992, June 13, 2017; 87 FR 43996, July 25, 2022]

§ 4901.16 Extensions of time.

In unusual circumstances (as described in section 552(a)(6)(B) of FOIA), the time to respond to a disclosure request under § 4901.14(a) or an appeal under § 4901.15(b) may be extended as reasonably necessary to process the request or appeal. The Disclosure Officer will notify the requester in writing within the original time period of the unusual circumstances and the date when a response is expected to be sent. When the extension for a disclosure request exceeds 10 working days, the notice will provide the requester with an opportunity to modify the disclosure request or arrange an alternative time period for processing the original or modified request. This notice will also alert the requester of the availability of a PBGC FOIA Public Liaison for assistance and the Office of Government Information Services for dispute resolution services. The maximum extension for responding to an appeal is 10 working days minus the amount of any

extension on the request to which the appeal relates.

[87 FR 43996, July 25, 2022]

§ 4901.17 Expedited action on requests and appeals.

(a) *In general.* Upon a request submitted in accordance with paragraph (b) of this section, PBGC will expedite a disclosure request under § 4901.11 or an appeal under § 4901.15 if PBGC determines that the requester has demonstrated one of the following:

(1) The disclosure request or appeal involves circumstances in which the lack of expedited action could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or the loss of an individual's substantial due process rights.

(2) The requester is primarily engaged in disseminating information and the disclosure request or appeal is urgently needed to inform the public about an actual or alleged Federal Government activity.

(b) *Timing and method of request.* A request for PBGC to expedite a disclosure request or an appeal may be made at any time and must be made by mail, in-person delivery, or electronic telecommunication in accordance with the FOIA instructions on PBGC's website, www.pbgc.gov.

(c) *Action on request.* (1) PBGC will notify the requester within 10 calendar days of receipt of a request for expedited action whether PBGC will expedite a disclosure request or an appeal.

(2) *Request granted.* If PBGC determines that the request for expedited action will be granted, PBGC will take action on the disclosure request or the appeal as soon as practicable.

(3) *Request denied.* If PBGC determines that the request for expedited action will be denied, PBGC will so advise the requester in writing with a brief statement of the reasons for the denial. The writing will also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a

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PBGC FOIA Public Liaison or the Office of Government Information Services. PBGC will act on any appeal of that decision expeditiously.

[87 FR 43996, July 25, 2022]

§ 4901.18 Exhaustion of administrative remedies.

If the Disclosure Officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies will be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow PBGC additional time to act as provided in FOIA, processing of the disclosure request or appeal will continue and PBGC will so advise the requester.

[87 FR 43997, July 25, 2022]

Subpart C—Restrictions on Disclosure

§ 4901.21 Restrictions in general.

(a) *Records not disclosable.* PBGC will not disclose records to the extent prohibited by section 552(b)(1) or (3) of FOIA, sections 4010 and 4043 of ERISA, or other statutes.

(b) *Records disclosure of which may be refused.* Unless prohibited from disclosure by paragraph (a) of this section, PBGC need not but may, as provided in § 4901.5(b), disclose records exempted from FOIA, which include as of August 24, 2022 records under:

(1) Section 552(b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Section 552(b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

(3) Section 552(b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Section 552(b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Section 552(b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

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(6) Section 552(b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Section 552(b)(9) of FOIA, dealing in general with information about wells.

[87 FR 43997, July 25, 2022]

§ 4901.22 Partial disclosure.

If an otherwise disclosable record contains some material that is protected from disclosure, the record will not for that reason be withheld from disclosure if deletion of the protected material is feasible. This principle will be applied in particular to identifying details the disclosure of which would constitute an unwarranted invasion of personal privacy.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43997, July 25, 2022]

§ 4901.23 Record of concern to agency other than PBGC.

When reviewing a record in response to a disclosure request, PBGC will determine whether another agency is better able to determine whether the record is exempt from disclosure under FOIA. As to any such record, PBGC will proceed in one of the following ways:

(a) *Consultation with another agency.* When the record contains information of interest to another agency, PBGC will make a release determination only if its interest in the record is the primary interest and only after PBGC consults with that agency.

(b) *Referral to another agency.* (1) When an agency other than PBGC has primary interest in the record, then PBGC will refer the responsibility for responding to the disclosure request regarding that record to that agency.

(2) Whenever PBGC refers any part of the responsibility for responding to a disclosure request to another agency, PBGC will document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA office.

[87 FR 43997, July 25, 2022]

§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to PBGC.

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that PBGC has reason to believe contains such information, unless one of the following applies:

(1) Access to the information is denied.

(2) The information has been published or officially made available to the public.

(3) Disclosure of the information is required by law other than FOIA.

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

(b) *Designation by submitter.* To designate information as being subject to this section, the submitter must, at the time of submission or by a reasonable time thereafter, assert that information being submitted is confidential business information and designate, with appropriate markings, the portion(s) of the submission to which the assertion applies. Any designation under this paragraph (b) will expire 10 years after the date of submission unless a longer designation period is requested and reasonable justification is provided.

(c) *Notification to submitter of disclosure request.* When disclosure of information subject to this section may be made, the Disclosure Officer or (where disclosure may be made in response to an appeal) the General Counsel will promptly notify the submitter, describing (or providing a copy of) the information that may be disclosed, and afford the submitter a reasonable period of time to object in writing to the requested disclosure. (The notification to the submitter may be oral or written; if oral, it will be confirmed in writing.) When a submitter is notified under this

paragraph (c), the requester will be notified that the submitter is being afforded an opportunity to object to disclosure.

(d) *Objection of submitter.* A submitter's statement objecting to disclosure must specify all grounds relied upon for opposing disclosure of any portion(s) of the information under section 552(b) of FOIA and, with respect to the exemption in section 552(b)(4), demonstrate why the information is a trade secret or is commercial or financial information that is privileged or confidential. Facts asserted must be certified or otherwise supported. (Information provided pursuant to this paragraph may itself be subject to disclosure under FOIA.) Any timely objection of a submitter under this paragraph (d) will be carefully considered in determining whether to grant a disclosure request or appeal.

(e) *Notification to submitter of decision to disclose.* If the Disclosure Officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the Disclosure Officer (or General Counsel) will give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification will, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy will be provided to the requester.

(f) *Notification to submitter of action to compel disclosure.* The Disclosure Officer or the General Counsel will promptly notify the submitter if a requester brings suit seeking to compel disclosure.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43997, July 25, 2022]

Subpart D—Fees

§ 4901.31 Charges for services.

(a) *In general.* Pursuant to the provisions of section 552 of FOIA, as amended, PBGC will assess charges to cover

the direct costs of searching for, reviewing, and/or duplicating records requested under FOIA, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in § 4901.32. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself. Except as provided in paragraph (e) of this section, no charge for searching (or in the case of a requester described under section 552(a)(4)(A)(ii)(II) of FOIA, for duplication) will be assessed if PBGC has failed to comply with any time limit under section 552(a)(6) of FOIA.

(1) *Direct costs* means those expenditures which PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a disclosure request under FOIA and this part. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* means all time spent looking for material that is responsive to a disclosure request under FOIA and this part, including page-by-page or line-by-line identification of materials within a document, if required. Searches may be done manually or by computer using existing programming. Search is distinguishable from “review” which is defined in paragraph (a)(3) of this section.

(3) *Review* means the process of examining documents located in response to a disclosure request under FOIA and this part to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, *e.g.*, doing all that is necessary to redact them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Duplication* means the process of making a copy of a document necessary to respond to a disclosure request under FOIA and this part, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, audio-visual materials, or electronic records, among others.

(b) *Categories of requesters.* For purposes of assessing fees, requesters who seek access to records under FOIA and this part are divided into three categories: commercial use requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters. PBGC will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* (i) When records are requested for commercial use, PBGC will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under section 552(b) of FOIA and this part.

(ii) A “commercial use” request is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. PBGC’s decision to place a requester in the commercial use category will be made on a case-by-case basis dependent upon on the requester’s intended use of the information. PBGC will notify requesters of their placement in this category.

(2) *Non-commercial scientific or educational institutions, or news media requesters.* (i) When records are requested by a non-commercial scientific or educational institution or a news media requester, PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(ii) A non-commercial scientific institution is an institution that is not operated for a “commercial use” as that term is defined in paragraph (b)(1)(ii) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) An educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with his or her role at the educational institution.

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PBGC may seek verification from the requester that the request is in furtherance of scholarly research and PBGC will advise requesters of their placement in this category.

(iv)(A) A representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. These examples are not intended to be all-inclusive. A “freelance” journalist who demonstrates a solid basis for expecting publication through a news media entity will be considered as a representative of the news media.

(B) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media will not be considered to be a request that is for a commercial use.

(3) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraph (b)(1) or (2) of this section, PBGC will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first 2 hours of search time. Notwithstanding the preceding sentence, there will be no charge for search time in the event of requests under the Privacy Act of 1974 from subjects of records filed in PBGC’s systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record sought is not found.

(c) *Aggregation of requests.* If PBGC reasonably believes that a requester or

group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, PBGC will aggregate any such requests and charge accordingly. In no case will PBGC aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which any fee listed in §4901.32 may be waived or reduced are set forth in §4901.34.

(e) *Unusual or exceptional circumstances.* Notwithstanding paragraph (a) of this section, if PBGC fails to comply with a time limit under section 552(a)(6) of FOIA, PBGC may nevertheless assess a charge for search and review services (or in the case of a requester described under section 552(a)(4)(A)(ii)(II), for duplication) if one of the following circumstances applies:

(1) PBGC has determined that unusual circumstances (as defined in section 552(a)(6)(B) of FOIA) apply, PBGC needs more than 10 additional days to process the disclosure request, and more than 5,000 pages are necessary to respond to the request, provided that:

(i) PBGC has provided timely written notice of this determination to the requester; and

(ii) PBGC has discussed with the requester, or made three or more good-faith attempts to do so, via written mail, electronic mail, or telephone how the requester could effectively limit the scope of the request.

(2) PBGC has determined that unusual circumstances (as defined in section 552(a)(6)(B) of FOIA) apply, PBGC has provided timely written notice to the requester of the unusual circumstances extending the time limit by 10 additional days, and PBGC processes the disclosure request within that time.

(3) A court has determined that exceptional circumstances exist (as defined in section 552(a)(6)(C) of FOIA) and has issued an order excusing PBGC’s failure to comply with the time limit.

[61 FR 34123, July 1, 1996, as amended at 82 FR 26992, June 13, 2017; 87 FR 43997, July 25, 2022]

§ 4901.32

§ 4901.32 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search time and review time.* For ordinary search services and review services, PBGC charges \$54.00 per hour. PBGC charges fees in quarter hour increments.

(2) *Retrieving records stored by NARA.* For disclosure requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), PBGC charges additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

(1) *Standard copying fee.* \$0.15 for each page of record copies furnished.

(2) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of \$50, the person desiring reproduction may request a special rate quotation from PBGC.

(3) *Indexes.* Pursuant to section 552(a)(2) of FOIA copies of indexes or supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication.

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified, or special delivery mail or messenger, and of special handling or packaging, if

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required, will be charged in addition to the scheduled fees.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43999, July 25, 2022]

§ 4901.33 Payment of fees.

(a) *Medium of payment.* Payment of the applicable fees as provided in this section must be made by check, money order, or other PBGC permitted method, and in accordance with the FOIA instructions on PBGC's website, www.pbgc.gov.

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a disclosure request may be required as follows:

(1) Where PBGC estimates or determines that charges allowable under the rules in this subpart, are likely to exceed \$250, PBGC may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this part, PBGC will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to FOIA and this part, PBGC may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), PBGC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

(c) *Late payment interest charges.* PBGC may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is sent to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is sent.

[61 FR 34123, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003; 87 FR 43999, July 25, 2022]

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§ 4902.2

§ 4901.34 Waiver or reduction of charges.

(a) The Disclosure Officer may waive or reduce fees otherwise applicable under this subpart when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester. A fee waiver or reduction request must set forth full and complete information upon which the request is based.

(b) If the Disclosure Officer determines that the request for fee waiver or reduction will be denied, the requester will be so advised in writing with a brief statement of the reasons for the denial. The writing will include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and notify the requester of the right to seek dispute resolution services from a PBGC FOIA Public Liaison or the Office of Government Information Services.

[61 FR 34123, July 1, 1996, as amended at 87 FR 43999, July 25, 2022]

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

Sec.

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AUTHORITY: 5 U.S.C. 552a, 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34128, July 1, 1996, unless otherwise noted.

§ 4902.1 Purpose and Scope.

(a) *Procedures.* Sections 4902.3 through 4902.7 establish procedures under which—

(1) An individual may—

(i) Determine whether PBGC maintains any system of records that contains a record pertaining to the individual;

(ii) Obtain access to the individual's record upon request;

(iii) Make a request to amend the individual's record; and

(iv) Appeal a denial of a request to amend the individual's record; and

(2) PBGC will make an initial determination of a request to amend an individual's record.

(b) *Fees.* Section 4902.8 prescribes the fees for making copies of an individual's record.

(c) *Privacy Act provisions.* Section 4902.9 summarizes the Privacy Act (5 U.S.C. 552a) provisions for which PBGC claims an exemption for certain systems of records.

(d) *Exemptions.* Sections 4902.10 through 4902.13 set forth those systems of records that are exempted from certain disclosure and other provisions of the Privacy Act, and the reasons for the exemptions.

[74 FR 27081, June 8, 2009, as amended at 84 FR 32619, July 9, 2019; 89 FR 96532, Dec. 5, 2024]

§ 4902.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part:

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

System of records means a group of any records under the control of any