

plan will not violate section 401(a)(2) merely because the contribution or payment is returned within six months after the date on which the plan administrator determines that the contribution or payment was the result of a mistake of fact or law. The contribution or payment is considered as returned within the required period if the employer establishes a right to a refund of the amount mistakenly contributed or paid by filing a claim with the plan administrator within six months after the date on which the plan administrator determines that a mistake did occur. For purposes of this section, plan administrator is defined in section 414(g) and the regulations thereunder.

(2) *Applicable conditions*—(i) *In general*. The employer making the contribution or withdrawal liability payment to a multiemployer plan must demonstrate that an excessive contribution or overpayment has been made due to a mistake of fact or law. A mistake of fact or law relating to plan qualification under section 401 or to trust exemption under section 501 is not considered to be a mistake of fact or law which entitles an employer to a refund under this section. For purposes of this section, a multiemployer plan is defined in section 414(f) and the regulations thereunder.

(ii) *Amount to be returned*—(A) *General rule*. The amount to be returned to the employer is the excess of the amount contributed or paid over the amount that would have been contributed or paid had no mistake been made. This amount is the excess contribution or overpayment. Except as provided in paragraph (b)(2)(ii)(B) of this section, interest or earnings attributable to an excess contribution shall not be returned to the employer, and any losses attributable to an excess contribution must reduce the amount returned to the employer. For purposes of the previous sentence, the application of plan-wide investment experience to the excess contribution would be an acceptable method of calculating losses. A refund of a mistaken contribution must in no event reduce a participant's account balance in a defined contribution plan to an amount less than that amount which would properly have been in that participant's account had no mistake occurred. Thus, to the extent that the refund of an excess contribution would reduce a participant's account balance in a defined contribution plan to an amount less than the amount which would properly be in the participant's account had no mistake occurred, the return of the excess contribution would be prohibited by this section.

(B) *Overpayment of withdrawal liability*. In the case of an overpayment of withdrawal liability established by the plan sponsor under section 4219(c)(2) of ERISA, the plan will not fail to satisfy section 401(a)(2) if, in accordance with Pension Benefit Guaranty Corporation regulations regarding the overpayments of withdrawal liability (29 CFR 4219.31(d)), the overpayment, with interest, is returned to the employer.

(c) *Amount refunded includible in employer's income*. In general, the amount of the excess contribution or overpayment must be included in gross income by the employer if the excess contribution or overpayment resulted in a tax benefit in a prior year. Any interest credited or paid on the refund of mistaken withdrawal liability payments must also be included in gross income by the employer.

(d) *Application of section 412*. An amount returned under paragraph (b)(2)(ii) of this section is charged to the funding standard account under section 412 in the year in which the amount is returned.

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

Approved: July 10, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4003

RIN 1212-AA97

Rules for Administrative Review of Agency Decisions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is amending its regulation on Administrative Review of Agency Decisions to expedite the appeals process by authorizing a single member of the PBGC's Appeals Board to decide routine appeals.

EFFECTIVE DATE: July 22, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Thomas H. Gabriel, Attorney, Office of the General Counsel, PBGC, 1200 K Street, NW, Washington, DC 20005-4026; 202-326-4024. (TTY/TDD users may call the Federal relay

service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: On March 27, 2002 (at 67 FR 14663), the PBGC published a proposed rule that would authorize a single member of PBGC's Appeals Board to decide routine appeals. The PBGC received no comments in response to the proposed rule and is issuing the final regulation without change.

Under the PBGC's regulation on Administrative Review of Agency Decisions (29 CFR part 4003), persons aggrieved by certain PBGC determinations may appeal to the PBGC Appeals Board, defined as "a board consisting of three PBGC officials."

The PBGC has been studying its administrative appeals process to see how it can accelerate appeals processing while continuing to protect the rights of appellants. Experience has shown that many appeals involve simple factual issues or call for application of well-settled legal principles. The PBGC believes that cases that do not raise a significant issue of law or a precedent-setting issue can be properly decided by a single Appeals Board member, thereby expediting the appeals process. Accordingly, this final rule authorizes any one member of the Appeals Board to act for the Board in routine cases as described in the rule. The PBGC will continue to use 3-member panels for cases that involve a significant issue of law or a precedent-setting issue. This would include, for example, a benefit determination appeal in which the decision is expected to affect the benefits of other persons.

Compliance With Rulemaking Requirements

As a rule of agency organization, procedure, or practice, this rule is exempt from notice and public comment requirements. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, 604.

The PBGC has determined that good cause exists to dispense with the delayed effective date provisions of the Administrative Procedure Act as unnecessary. These amendments affect only the PBGC's processing of appeals and do not require any person other than the PBGC to take any action. Accordingly, the PBGC has decided to make these amendments effective immediately.

This rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

List of Subjects in 29 CFR Part 4003

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

For the reasons set forth above, the PBGC is amending 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. Add new § 4003.61 to read as follows:

§ 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).

Issued in Washington, DC, this 16th day of July, 2002.

Elaine L. Chao,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors

authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 02-18373 Filed 7-19-02; 8:45 am]

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DEPARTMENT OF EDUCATION**34 CFR Part 263**

RIN 1810-AA93

Indian Education Discretionary Grant Programs

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations with request for comments.

SUMMARY: The Secretary amends the regulations that govern the competition of new Indian Education discretionary grant programs for fiscal year (FY) 2002. The programs governed by this part include grants for the Professional Development program and the Demonstration Grants for Indian Children program. These programs are authorized under Title VII of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind Act of 2001. These regulations identify eligible applicants for the program and the specific application and program requirements that must be met in order for applications to be considered for funding. These regulations also provide the requirements for the payback provisions that apply to the Professional Development program. These regulations will govern the grant application process for new FY 2002 awards under both programs, including the payback provisions for the Professional Development program.

EFFECTIVE DATE: These regulations are effective July 22, 2002.

We must receive your comments on or before August 21, 2002.

ADDRESSES: Address all comments concerning these regulations to Cathie Martin, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W111, Washington, DC 20202-6335. If you prefer to send your comments through the Internet, use the following address: cathie.martin@ed.gov.

If you want to comment on the information collection requirements, you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

You may also send a copy of these comments to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Cathie Martin. Telephone: (202) 260-1683 or via Internet: cathie.martin@ed.gov.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:**Invitation To Comment**

Although the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We will consider these comments in determining whether to revise the regulations.

To ensure that your comments have maximum effect, we urge you to identify clearly the specific section or sections of the regulations that each of your comments addresses and to arrange your comments in the same order as the regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these regulations in room 3W115 at 400 Maryland Ave., SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these regulations. If you want to schedule an appointment for this type