



PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4002

Bylaws of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its bylaws regulation to conform to changes in the bylaws adopted by the Board of Directors.

DATES: Effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Judith R. Starr (starr.judith@pbgc.gov), General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4400, ext. 3083; Hilary Duke (duke.hilary@pbgc.gov), Attorney, Regulatory Affairs Division, Office of the General Counsel, 202-326-4400, extension 3839. (TTY and TDD users may call the Federal relay service toll-free at 800-877-8339 and ask to be connected to 202-326-4400, extension 3083 or to 202-326-4400, extension 3839.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4002(b)(3) of ERISA gives PBGC power to adopt, amend, and repeal, by the board of directors, bylaws. Section 4002(f) of ERISA provides that the board of directors may alter, supplement, or repeal any existing bylaw, and may adopt additional bylaws from time to time as may be necessary. PBGC's bylaws are set forth in 29 CFR part 4002.

PBGC's Board of Directors (the Secretaries of Labor, the Treasury, and Commerce) voted to amend the bylaws at a meeting of the Board of Directors on September 7, 2017. This rule replaces the old bylaws with the new bylaws in PBGC's regulations.

Compliance With Rulemaking Guidelines

This is a rule of "agency organization, procedure, or practice" and is limited to "agency organization, management, or personnel matters." Accordingly, this rule is exempt from notice and public comment requirements under 5 U.S.C. 553(b) and the requirements of Executive Order 12866 and Executive Order 13771. 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.

PBGC finds good cause exists for making the bylaws set forth in this rule effective less than 30 days after publication because the amendments were adopted by the Board of Directors on September 7, 2017.

List of Subjects in Part 4002

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

Accordingly, 29 CFR part 4002 is revised to read as follows:

PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

Sec.

- 4002.1 Board of Directors, Chair, and Representatives of Board Members.
- 4002.2 Quorum.
- 4002.3 Meetings.
- 4002.4 Place of meetings; use of conference call communications equipment.
- 4002.5 Voting without a meeting.
- 4002.6 Conflict of interest.
- 4002.7 Director of the Corporation and senior officers.
- 4002.8 Emergency procedures.

4002.9 Seal.

4002.10 Authority and amendments.

Authority: 29 U.S.C. 1302(b)(3), 1302(f)

§ 4002.1 Board of Directors, Chair, and Representatives of Board Members.

(a) *Composition and responsibilities of the Board of Directors*—(1) *Board.* Section 4002(d)(1) of ERISA establishes the Board membership as the Secretaries of Labor (Chair), the Treasury, and Commerce. A person who, at the time of a meeting of the Board of Directors, is serving in an acting capacity as, or performing the duties of, a Member of the Board of Directors will serve as a Member of the Board of Directors with the same authority and effect as the designated Secretary.

(2) *Chair of the Board.* As Chair of the Board, the Secretary of Labor will preside over all Board meetings. As a direct report to the Board under section 4002(d)(4) of ERISA, the Inspector General of the Corporation reports to the Board through the Chair. The Participant and Plan Sponsor Advocate also reports to the Board through the Chair.

(3) *Board responsibilities.* Except as provided in paragraph (b) of this section, the Board may not delegate any of the following responsibilities—

(i) Voting on an amendment to these bylaws.

(ii) Approval of the Annual Report, which includes the Annual Management Report (AMR) (and its components the financial statements, management's discussion and analysis, annual performance report and independent auditor's report), the Chair's message, and other documentation in conformance with guidance issued by the Office of Management and Budget (OMB).

(iii) Approval of the Corporation's Investment Policy Statement.

(iv) Approval of all reports or recommendations to the Congress required by Title IV of ERISA.

(v) Approval of any policy matter (other than administrative policies) that would have a significant impact on the pension insurance program.

(vi) Review of reports from the Corporation's Inspector General that the Inspector General deems appropriate to deliver to the Board.

(4) *Investment Policy Statement review.* The Board must review the Corporation's Investment Policy Statement at least every two years and approve the Investment Policy Statement at least every four years.

(b) *Designation of and responsibilities of Board Representatives and Alternate Representatives—(1) Board Representatives.* A Board Representative, as designated under section 4002(d)(3) of ERISA, may act for all purposes under these bylaws, except that an action of a Board Representative on a Board Member's behalf with respect to the powers described in paragraphs (a)(3)(i) through (iii) of this section, will be valid only upon ratification in writing by the Board Member. Any Board Representative may refer for Board action any matter under consideration by the Board Representatives.

(2) *Alternate Representatives.* A Board Member may designate in writing an official, not below the level of Assistant Secretary, to serve as the Board Member's Alternate Representative at a meeting. An Alternate Representative may act for all purposes at that meeting, except that the Alternate Representative's actions will be valid only upon ratification in writing by either the Board Member or the Board Representative. Any action of the Alternate Representative involving the powers described in paragraphs (a)(3)(i) through (iii) of this section

or any matter that has been referred to the Board under paragraph (b)(1) of this section must be ratified in writing by the Board Member.

(3) *Ratification.* For purposes of this section, ratification of a Board Representative or Alternative Representative action includes approval of the minutes of the meeting of the Board of Directors by voice vote or otherwise.

(c) *Review and approval of regulations.* Regulations may be issued by the Director of the Corporation, subject to the following conditions—

(1) Regulations must first be reviewed for comment by each Board Representative except for routine updates of PBGC valuation factors and actuarial assumptions.

(2) A Board Representative may, within 21 days of receiving a regulation for review, request that it be referred to the Board Representatives for approval.

(3) Nonsignificant regulations and significant proposed regulations within the meaning of Executive Order 12866 and subject to review under paragraph (c)(1) of this section may be issued by the Director upon either the expiration of the time specified in paragraph (c)(2) of this section, or, if the approval option is exercised, upon Board Representative approval.

(4) Significant final regulations must be approved by the Board Representatives or the Board.

(5) The Director may submit regulations subject to approval by the Board Representatives or the Board to OMB for concurrent review after they have been pending without comment before the Board Representatives or the Board for more than 60 days.

§ 4002.2 Quorum.

Section 4002(d)(2) of ERISA establishes that a majority of the Board Members will constitute a quorum for the transaction of business. Any act of a majority of the Members present at any meeting at which there is a quorum will be the act of the Board.

§ 4002.3 Meetings.

(a) *General.* Meetings of the Board of Directors are called by the Chair in accordance with section 4002(e)(1) of ERISA and on the request of any Board Member. The Chair must provide reasonable notice of any meetings to each Board Member.

(b) *Minutes.* The General Counsel of the Corporation serves as Secretary to the Board of Directors pursuant to section 4002(d)(5) of ERISA. The General Counsel must keep Board minutes. As soon as practicable after each meeting, the General Counsel must distribute a draft of the minutes of such meeting to each Member of the Board for approval. The Board of Directors may approve minutes by resolution or by voice vote at a subsequent meeting. Subject to appropriate redactions authorized by section 4002(e)(2)(C) of ERISA, approved minutes will be posted on PBGC's website.

§ 4002.4 Place of meetings; use of conference call communications equipment.

(a) *Place of meetings.* Meetings of the Board of Directors will be held at the principal office of the Corporation or the Department of Labor unless otherwise determined by the Board of Directors or the Chair.

(b) *Teleconference.* Any Member may participate in a meeting of the Board of Directors through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can speak to and hear each other. Any Board Member so participating in a meeting will be deemed present for all purposes. Actions taken by

the Board of Directors at meetings conducted through the use of such equipment, including the votes of each Member, must be recorded in the minutes of the meetings of the Board of Directors.

§ 4002.5 Voting without a meeting.

A resolution of the Board of Directors signed by all of the Board Members or all of the Board Representatives will have the same effect as if agreed to at a meeting and must be kept in the Corporate Minutes Book. A resolution for an action taken on any matter for which a Board Member has been disqualified under § 4002.6 may be signed by the Board Representative of the disqualified Board Member to the extent the matter is delegable under these bylaws.

§ 4002.6 Conflict of interest.

(a) *Board Members and Director.* The Board Members and the Director must work with their respective ethics office to identify actual or potential conflicts of interest under 18 U.S.C. 208 or section 4002(j) of ERISA or the appearance of the loss of impartiality under 5 C.F.R. 2635.502.

(b) *Disqualification.* A Board Member and the Director must notify the Board Members of disqualification in any decision or activity based on a conflict of interest under paragraph (a) of this section. To the extent a matter is delegable under these bylaws, the disqualified Board Member's Board Representative, acting independently of that Member, may vote on the matter in the Member's place. The disqualified Board Member may not ratify any action taken on the matter giving rise to his or her disqualification.

§ 4002.7 Director of the Corporation and senior officers.

(a) *Director of the Corporation.* Section 4002(a) and (c) of ERISA establish that the Corporation is administered by a Director. Subject to policies established by the Board, the

Director is responsible for the Corporation's management, including its personnel, organization and budget practices, and for carrying out the Corporation's functions under Title IV of ERISA. The Director will timely provide the Board any information necessary to assist the Board in exercising its statutory responsibilities. The Director must submit the Corporation's budget to the Chair of the Board for review and approval before formally submitting the budget to OMB.

(b) *Senior officers.* The senior officers of the Corporation report directly to the Director. The Director must consult with the Board before eliminating or creating a senior officer position or making an appointment to a senior officer position.

§ 4002.8 Emergency procedures.

(a) An emergency exists if a quorum of the Corporation's Board cannot readily be assembled or act through written contact because of the declaration of a government-wide emergency. These emergency procedures must remain in effect during the emergency and upon the termination of the emergency will cease to be operative unless and until another emergency occurs. The emergency procedures operate in conjunction with the PBGC Continuity of Operations Plan (“COOP Plan”) of the current year, and any government-wide COOP protocols in effect.

(b) During an emergency, the business of the PBGC must continue to be managed in accordance with its COOP Plan. The functions of the Board of Directors must be carried out by those Members of the Board of Directors in office at the time the emergency arises, or by persons designated by the agencies' COOP plans to act in place of the Board Members, who are available to act during the emergency. If no such persons are available, then the authority of the Board must be transferred to the Board Representatives who are available. If no Board

Representatives are available, then the Director of the Corporation must perform essential Board functions.

(c) During an emergency, meetings of the Board may be called by any available Member of the Board. The notice thereof must specify the time and place of the meeting. To the extent possible, notice must be given in accordance with these bylaws. Notice must be given to those Board Members whom it is feasible to reach at the time of the emergency, and notice may be given at a time less than 24 hours before the meeting if deemed necessary by the person giving notice.

§ 4002.9 Seal.

The seal of the Corporation must be in such form as may be approved from time to time by the Board.

§ 4002.10 Authority and amendments.

(a) Section 4002 of ERISA and the bylaws establish the authority and responsibilities of the Board, the Board Representatives, and the Director.

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

Issued in Washington, DC:

W. Thomas Reeder,

Director, Pension Benefit Guaranty Corporation

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