

Example 2. M is an Internet auction company that produces computer software within the United States that enables its customers to participate in Internet auctions for a fee. Under paragraph (i)(6)(ii) of this section, gross receipts derived from online services are attributable to a service and do not constitute a lease, rental, license, sale, exchange, or other disposition of computer software. M's activities constitute the provision of online services. Therefore, M's gross receipts derived from the Internet auction services are non-DPGR.

Example 3. N provides telephone services, voicemail services, and e-mail services. N produces computer software within the United States that runs all of these services. Under paragraph (i)(6)(ii) of this section, gross receipts derived from telephone and related telecommunication services are attributable to a service and do not constitute a lease, rental, license, sale, exchange, or other disposition of computer software. Therefore, N's gross receipts derived from the telephone and other telecommunication services are non-DPGR.

Example 4. O produces tax preparation computer software within the United States. O derives, on a regular and ongoing basis in its business, gross receipts from both the sale to customers that are unrelated persons of O's computer software that has been affixed to a compact disc as well as from the sale to customers of O's computer software that customers have downloaded from the Internet. O also derives gross receipts from customers from providing the computer software to its customers for the customers' direct use while connected to the Internet. Assume that the computer software sold on compact disc or by download has only minor or immaterial differences from the computer software provided over the Internet, and O does not provide any services in connection with the computer software provided over the Internet. Under paragraph (i)(6)(iii)(A) of this section, O's gross receipts derived from providing its computer software to customers over the Internet will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are domestic production gross receipts (DPGR) (as defined in § 1.199-3) (assuming all the other requirements of § 1.199-3 are met).

Example 5. The facts are the same as in *Example 4*, except that O does not sell the tax preparation computer software to customers affixed to a compact disc and O's only method of providing the tax preparation computer software to customers is over the Internet. P, an unrelated person, derives, on a regular and ongoing basis in its business, gross receipts from the sale to customers of P's substantially identical tax preparation computer software that has been affixed to a compact disc as well as from the sale to customers of P's substantially identical tax preparation computer software that customers have downloaded from the Internet. Under paragraph (i)(6)(iii)(B) of this section, O's gross receipts derived from providing its tax preparation computer software to customers over the Internet will be treated as derived from the lease, rental, license, sale, exchange, or other disposition

of computer software and are DPGR (assuming all the other requirements of § 1.199-3 are met).

Example 6. P produces payroll management computer software within the United States. For a fee, P provides the payroll management computer software to customers for the customers' direct use while connected to the Internet. This is P's sole method of providing its payroll management computer software to customers. In conjunction with the payroll management computer software, P provides storage of customers' data and telephone support. Q, an unrelated person, derives, on a regular and ongoing basis in its business, gross receipts from the sale to customers of Q's substantially identical payroll management software that has been affixed to a compact disc as well as from the sale to customers of Q's substantially identical payroll management software that customers have downloaded from the Internet. Under paragraph (i)(6)(iii)(B) of this section, P's gross receipts derived from providing its payroll management computer software to customers over the Internet will be treated as derived from the lease, rental, license, sale, exchange, or other disposition of computer software and are DPGR (assuming all the other requirements of § 1.199-3 are met). However, P's gross receipts derived from the fees it receives that are properly allocable to the storage of customers' data and telephone support are non-DPGR.

Par. 3. Section 1.199-8T is added to read as follows:

§ 1.199-8T Other rules (temporary).

(a) through (h) [Reserved]. For further guidance, see § 1.199-8(a) through (h).

(i) *Effective dates.* (1) through (3) [Reserved]. For further guidance, see § 1.199-8(i)(1) through (3).

(4) *Computer software.* Section 1.199-3T(i)(6)(ii) through (v) are applicable for taxable years beginning on or after June 1, 2006. Taxpayers may apply these temporary regulations to taxable years beginning after December 31, 2004, and before June 1, 2006. The applicability of § 1.199-3T(i)(6)(ii) through (v) expires on or before May 25, 2009.

Mark E. Mathews,

Deputy Commissioner for Services and Enforcement.

Approved: May 2, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 06-4828 Filed 5-24-06; 11:47 am]

BILLING CODE 4830-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4006, and 4007

RIN 1212-AB02

Electronic Premium Filing

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The PBGC is changing its regulations to require that premium declarations be filed electronically. The requirement becomes effective for plans with 500 or more participants for the prior plan year starting with filings for plan years beginning in 2006 that are made on or after July 1, 2006, and for smaller plans starting with filings for plan years beginning after 2006. Plans may apply for exemptions on a case-by-case basis. Filings may be submitted through the PBGC's on-line e-filing application ("My Plan Administration Account," or "My PAAA"). My PAA has data entry and editing screens that can be used to create and submit a filing, and can also accept uploaded files containing filing information that has been prepared and formatted using private-sector software in accordance with the PBGC's published standards.

DATES: Effective date: July 1, 2006. For a discussion of applicability of these amendments, see the *Applicability* section in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, or Deborah C. Murphy, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY/TTD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024.)

SUPPLEMENTARY INFORMATION: This final rule is part of an ongoing implementation of the Government Paperwork Elimination Act by the Pension Benefit Guaranty Corporation ("PBGC") and is consistent with the Office of Management and Budget's directive to remove regulatory impediments to electronic transactions. The rule addresses electronic submission of premium filings that are required under the regulation on Payment of Premiums (29 CFR part 4007) and builds in the flexibility needed to allow updating of the electronic filing process as technology advances.

The PBGC administers the pension insurance programs under Title IV of the Employee Retirement Income

Security Act of 1974 ("ERISA"). Pension plans covered by Title IV must pay annual premiums to the PBGC. Premium filings must include information to identify the plans for which premiums are paid and to demonstrate that the amounts paid are correct.

The PBGC has been processing premium filings for 30 years. The volume of filings processed annually is in the tens of thousands. Processing methods have become progressively more automated, and the specially designed premium forms that have been used for some years can be read by optical character recognition ("OCR") devices. Even with OCR, however, the capture of data from paper premium forms and the translation of the data into electronic data files is an imperfect process that inevitably gives rise to errors that can be difficult and burdensome to detect and correct. These errors cause problems for both the PBGC and premium filers, because they can lead to the issuance of improper bills for premiums that have in fact been paid, to delays in the processing of refund requests, to erroneous filing histories, etc.

With a view to reducing problems of this kind, and consistent with the Government Paperwork Elimination Act, optional electronic premium filing was introduced for plan years beginning in 2004 using an application on the PBGC's Web site (<http://www.pbgc.gov>) called "My Plan Administration Account" ("My PAA"). To make a premium filing using My PAA, a user logs onto a secure account on the Web site. My PAA has been enhanced since 2004 and now offers multiple methods for making premium filings.

The filing method first introduced in 2004 enables users to create electronic premium filings by entering information in on-line data entry screens, route those premium filings among themselves electronically for editing and for electronic certification, and submit completed filings with the click of a mouse. The information submitted can be loaded directly into the PBGC's premium data processing systems, thus eliminating the errors inherent in the OCR data capture process. Premium payments can also be made online as part of the filing process.

A second filing method, introduced in late summer 2005, accommodates pension practitioners who may prefer to continue using private-sector software—either purchased from a commercial developer or developed "in-house"—for preparing premium filings. The PBGC has issued standards for structuring a computer file containing premium filing

information; by incorporating those standards into their software, developers give software users the ability to create premium data files that they can upload through My PAA. (These standards are available on the PBGC's Web site, <http://www.pbgc.gov>.) Using this new method, practitioners can prepare premium filing information using their own software, which will put the information into files that meet the formatting standards, and can electronically transmit those files to the PBGC.

Finally, My PAA was enhanced in early 2006 to permit importation of draft filings that have been prepared with private-sector software into the My PAA data entry and editing screens, thus combining features of the first two methods.

E-filers using any of the My PAA filing methods can pay premiums either through My PAA (by credit card, electronic check, or Automated Clearing House (ACH) transfer) or outside My PAA (by paper check or wire transfer).

My PAA streamlines the premium filing process for users and contributes to making the processing of premium filings faster and more accurate. Thus it has the potential to help reduce the number of erroneous bills, to speed up refund processing, and in general to improve premium collection functions while enhancing service to premium payers.

On March 9, 2005 (at 70 FR 11592), a proposed rule was published that would require premium filings for large plans to be made electronically for plan years beginning after 2005, and premium filings for all plans to be made electronically for plan years beginning after 2006; exemptions from the electronic filing requirement could be granted for good cause in appropriate circumstances. (The electronic filing requirement would not apply to submission of information specially requested in connection with a premium compliance review.)

Four commenters submitted comments on the proposal. Changes to My PAA since the publication of the proposed rule address many of the comments on the proposed rule, and in most respects, the substance of the proposed rule has not been changed. However, to provide more time for software developers and filers to prepare for e-filing, applicability of the mandatory e-filing requirement has been delayed for six months. The comments are discussed below.

Payment Methods

Two commenters urged that filers be permitted to make payment outside the

e-filing system (e.g., by paper check). As noted above, My PAA has been enhanced to offer this feature. Like the proposed rule, the final rule does not require electronic payment, only electronic filing of premium information. However, the final rule clarifies that filing methods for payments (as well as for information) are governed by the premium filing instructions. While not anticipated, it is possible that at some future date, as e-filing becomes more prevalent, the electronic payment of premiums (via My PAA) may be required.

Certification

A number of comments addressed the procedures for certifying filings. For filings created and edited within My PAA, My PAA provides an electronic certification method similar to that used historically for paper premium filings. Before such a filing can be submitted, the plan administrator—and, where appropriate, the plan actuary—must provide a certification using an authentication process that establishes the identity of the person making the certification. For uploaded filings, a different certification process is provided: The plan administrator—and, where appropriate, the plan actuary—provide certifications that must be preserved for six years (as is already required for the information supporting the premium filing) but that need not be transmitted to the PBGC at the time of upload. The identity of the uploader is authenticated in a manner similar to that used for filings created within My PAA.

One commenter urged that the certification method used by those who create their filings within My PAA also be made available to filers who create their filings with private-sector software; another commenter urged that the certification method provided for uploaders be made available to those who create their filings within My PAA. The first of the two comments has already been addressed through the introduction of the import filing method in early 2006; filings created with private-sector software and imported into the data entry and editing screens can be certified in the same manner as filings created using those screens. The second suggestion is also worthwhile and is being considered for a future My PAA enhancement.

The same two commenters also objected to the logistical burden of obtaining and retaining plan administrator and enrolled actuary certifications of uploaded filings prepared with private-sector software. The upload certification process is no

more burdensome than the certification process for paper filings, especially if the plan administrator makes the upload. And the import filing method permits electronic certification of filings prepared with private-sector software. Nonetheless, consideration is being given to how the certification process (and indeed the whole premium filing process) can be further streamlined through future enhancements to My PAA. To provide more flexibility in improving the certification process, this final rule removes from the regulation on Premium Rates (29 CFR part 4006) the provisions for certification of specified items of information and replaces them with a centralized provision (in § 4007.3 of the premium payment regulation) for certifications in accordance with the premium instructions. This is a simplification from the current situation where some certification rules are in the regulations and others in the instructions.

A final objection to the certification process by one of the same two commenters was that plan administrators without Internet access would be unable to log on to My PAA to certify filings created within My PAA. Filers can avoid this difficulty by using the upload method, which does not require the plan administrator to certify on-line. Thus, this problem does not present an obstacle to adoption of the e-filing requirement.

Moving Between Systems/Formats

Three commenters raised issues about the need to move between different systems or formats in using the new premium e-filing methods. For example, one commenter noted that a filing for upload must be in a format (an XML computer file meeting prescribed specifications) that a plan administrator cannot typically read. Thus, the commenter noted, the filing data must be reproduced in another format for plan administrator review. The commenter suggested that there be a way to allow plan administrators to review (in My PAA) filings prepared with private-sector software, in the same way that filings created within My PAA can be reviewed. The recently introduced import filing method provides this capability.

The same commenter pointed out that many pension service providers prepare only variable-rate premium information (information that would go on paper Schedule A) for their pension plan clients, and that this information must then be combined with other information (information that would go on paper Form 1) for submission to the PBGC. The commenter expressed

concern that transcription errors could occur in the process of combining these two sets of data into a single uploadable file. The commenter recommended that there be a way to merge these two sets of data after upload. This data-merging problem can be avoided by having the service provider and the plan administrator enter their data into My PAA's data entry screens to produce a single filing that both parties can review. Nonetheless, the commenter's suggestion has merit and will be considered for a possible future enhancement to My PAA.

A second commenter objected that if a plan prepared a filing with private-sector software and then decided to use My PAA's data entry screens, the data would have to be reentered into My PAA. Of course, if the private-sector software were designed to work with the upload and import systems, the filing as initially prepared could simply be uploaded or imported; if the software were not so designed, the plan might choose not to use it in the first place, and simply use My PAA from the beginning.

A third commenter noted that My PAA neither performs actuarial calculations for determining the variable-rate premium nor produces Participant Notices required under the regulation on Disclosure to Participants (29 CFR part 4011), requiring the use of other systems for both purposes. Neither of these functions has been performed in the past by the paper filing system, and the information required for Participant Notices (e.g., the plan's current funded liability percentage and the guarantee limits under the pension insurance system) is different from the information required for premium filings. The 2005 enhancements to My PAA do, however, automate many of the calculations that filers have heretofore done themselves.

Work Flow

Two commenters raised work flow issues. One of them—a “volume preparer” of premium filings—recommended that a method be devised for accepting “batch” filings (multiple filings prepared with private-sector software and transmitted to the PBGC in a single computer file). The 2006 My PAA enhancements permit both batch uploads and batch imports.

The other commenter catalogued a number of difficulties in beginning to use My PAA: The need to educate clients, get authority to act as filing coordinator, determine filing team members, get them to register in My PAA, identify errors in information displayed in My PAA (due for example

to inaccurate data capture in the paper filing process), correct the errors, etc. (The commenter also noted that clients might need to rethink who certifies their filings “now that it requires more than physically signing the form placed in front of the individual.”)

There are one-time burdens associated with the shift to e-filing, although some of those mentioned by this commenter can be avoided by using the upload process. Furthermore, errors in a plan's information displayed in My PAA can generally be corrected while creating the plan's e-filings, and the PBGC stands ready to work with service providers who want to correct errors outside the e-filing process. But these start-up burdens are far outweighed by the benefits of electronic filing.

Effective Date

Start-up difficulties, however—those just mentioned and others—were also the basis for several requests for delay of the effective date of the mandatory premium e-filing requirements. One commenter stated that 12 months would be needed to convert its systems to produce uploadable filings. Another expressed concerns that the upload system would not be in place early enough to make sure that it was functioning properly before the first mandatory e-filings came due.

The upload and import systems are now in operation, and the original My PAA data entry filing method has been proven effective and reliable since 2004. Furthermore, e-filing will not become mandatory for the majority of plans—those with fewer than 500 participants—until the 2007 plan year, for which the earliest filings are due in October 2007. But for large plans, some delay in the proposed January 1, 2006, effective date seems appropriate to provide additional time to make software changes and become familiar with My PAA and the electronic filing process. Accordingly, the applicability of the mandatory premium e-filing requirements for large plans has been delayed until July 1, 2006. Premium e-filing will be mandatory for large plans starting with estimated or final filings for plan years beginning in 2006 that are made on or after July 1, 2006.

For example, a 2006 estimated filing for a large plan with a plan year starting May 1 that is made by the due date (June 30, 2006) may be made using paper Form 1-ES, whereas for a plan with a plan year starting July 1, the estimated filing would have to be made electronically. If the plan year begins June 1, the estimated filing (with a due date of July 31, 2006) would have to be made electronically if made on or after

July 1, 2006, but could be made on Form 1-ES if made before that date.

The PBGC believes that, with this delay, there will be adequate time for compliance with the mandatory e-filing requirements. In any event, the discretion to grant exemptions from the e-filing requirement for good cause in appropriate circumstances obviates any need to further delay the effective date of the whole regulation. The applicability of mandatory premium e-filing requirements for small plans has not changed from the proposed rule.

Resistance to Change

Two commenters advanced the thesis that a number of plan administrators are computer-illiterate, lack comfort with or confidence in electronic transactions, resist change, or for other reasons are reluctant to file electronically. To accommodate this circumstance (and/or other perceived difficulties, discussed above, with the e-filing proposal), one of them suggested the need for leniency in granting exemptions for the first year of mandatory e-filing, and the other that e-filing be made voluntary and be encouraged through the use of incentives, some of which also are discussed above. Other incentives mentioned were providing more edit checks and granting limited relief from penalties and/or interest for late e-filings.

The 2005 enhancements to My PAA's data entry and editing screens include more edit checks. ERISA does not provide for relief from interest on late premium payments. The policy on penalties for the late submission of premium information is sufficiently flexible to permit penalty relief where there is reasonable cause for delay in filing (although e-filing should make it easier, rather than harder, to file on time). And filers can expect that exemptions from the e-filing requirement will be granted wherever there is good cause in appropriate circumstances to do so. Conducting business electronically is becoming commonplace. As it continues to increase in popularity, individual reluctance to e-file is expected to diminish. Furthermore, the upload process offers a filing alternative for plan administrators who are uncomfortable about working in an electronic environment: They may choose to have their consultants do the electronic part of the filing process.

Exemptions

Finally, one commenter made some detailed comments about the exemption process. One was that plans with 25 or fewer participants should be exempted

from mandatory e-filing. Plans in this size range have until October 2007 to prepare to file electronically. Moreover, plans in this size range would inevitably move above and below the 25-participant cutoff from year to year, introducing the opportunity for confusion and administrative complexity.

The commenter also requested that guidance be provided on what constitutes "good cause in appropriate circumstances" for granting an exemption from the e-filing requirement. Each case must be judged on the basis of its own facts and circumstances. Because the nature and scope of exemption requests cannot be anticipated, it is difficult at this time to provide much guidance on what might be appropriate grounds for granting an exemption. Of course, if there should be some massive breakdown in the Internet or the electronic premium filing system, a broad e-filing exemption could be granted to deal with the problem or provide for relief from late filing penalties. As experience with exemption requests is gained, it may be possible to provide more guidance in this area.

Applicability

The changes to the filing requirements made by this final rule are applicable to filings for plan years beginning in 2006 that are made on or after July 1, 2006, for large plans (those with 500 or more participants for the prior plan year) and to filings for all plans for plan years beginning after 2006.

Other Changes

The adoption of this final rule provides an opportunity to make a technical correction to § 4007.11(b)(2) of the premium payment regulation. Section 4007.11(b) explains how to determine the number of plan participants for purposes of the early filing rule for flat-rate premiums of large plans. Paragraph (b)(2) states the dates as of which multiemployer plan participants are to be counted for this purpose, but the language was inadvertently truncated when the regulations were reorganized and renumbered in 1996. The technical correction being made in this final rule corrects that error. This correction makes no change in the substance of the regulation.

The adoption of this final rule also provides an opportunity to remove from the premium regulations references to the "Premium Payment Package," the paper premium filing booklet, which is expected to change function or be

phased out as the need for paper forms diminishes.

The final regulation includes some editorial changes from the proposed regulation designed to make the rules easier to understand.

Compliance with Rulemaking Guidelines

The PBGC has determined, in consultation with the Office of Management and Budget ("OMB"), that this rule is a "significant regulatory action" under Executive Order 12866. OMB has therefore reviewed this rule under Executive Order 12866.

The PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this rule will not have a significant economic impact on a substantial number of small entities. The PBGC expects electronic premium filing to be no more burdensome than paper filing for filers generally and will grant exemptions from the electronic filing requirement for good cause in appropriate circumstances. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply.

OMB has approved under the Paperwork Reduction Act the changes to the PBGC's collection of information for premium filing (OMB control number 1212-0009) made by this rule and by the My PAA enhancements discussed in this preamble.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4006

Pension insurance, Pensions.

29 CFR Part 4007

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

■ For the reasons given above, the PBGC is amending 29 CFR parts 4000, 4006, and 4007 as follows.

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

■ 2. In § 4000.3, paragraph (b) and paragraph (c) introductory text are revised to read as follows:

§ 4000.3 What methods of filing may I use?

* * * * *

(b) Electronic filings.

(1) You must file premium declarations under part 4007 of this chapter electronically in accordance with the instructions on the PBGC's Web site subject to the following provisions:

(i) This electronic filing requirement applies to filings for plan years beginning in 2006 that are made on or after July 1, 2006, for plans with 500 or more participants for the prior plan year and to filings for all plans for plan years beginning after 2006.

(ii) This electronic filing requirement does not apply to premium information to the extent that the PBGC grants an exemption for good cause in appropriate circumstances.

(iii) This electronic filing requirement does not apply to premium payments except to the extent that the PBGC so provides in the instructions on the PBGC's Web site.

(iv) This electronic filing requirement does not apply to information you file to comply with a request we make under § 4007.10(c) of this chapter (dealing with providing record information in connection with a premium compliance review).

(2) You must submit the information required under part 4010 of this chapter electronically in accordance with the instructions on the PBGC's Web site, except as otherwise provided by the PBGC.

(c) *Information on how to file.* Current information on how to file, including permitted filing methods, fax numbers, and mail and e-mail addresses, is—

* * * * *

PART 4006—PREMIUM RATES

■ 3. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 4. In § 4006.4, paragraph (a) introductory text is amended by removing the words “(a)(2), and shall be certified to in accordance with paragraph (a)(4)” and adding in their place “(a)(2)”; paragraph (b)(1) introductory text is amended by removing the words “an enrolled actuary certifies that”; paragraph (c) introductory text is amended by removing the words “shall be determined, in accordance with the Premium Payment Package, from values” and adding in their place the words “shall be determined from values”; paragraph (c) introductory text is further amended by removing the

words “the plan administrator certifies that”; paragraph (c)(3) is amended by removing the words “Premium Payment Package” and adding in their place the words “PBGC's premium instructions”; and paragraphs (a)(4), (d)(1)(i) and (d)(1)(ii) are revised to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

(a) *General rule.* * * *

* * * * *

(4) In the case of any plan that determines the amount of its unfunded vested benefits under the general rule described in this paragraph, the determination must be made in a manner consistent with generally accepted actuarial principles and practices.

* * * * *

(d) *Restrictions on alternative calculation method for large plans.*

(1) * * *

(i) No significant event, as described in paragraph (d)(2) of this section, has occurred between the first day and the last day of the plan year preceding the premium payment year; or

(ii) An enrolled actuary makes an appropriate adjustment to the value of unfunded vested benefits to reflect the occurrence of significant events that have occurred between those dates.

* * * * *

■ 5. In § 4006.5, paragraph (a)(5) introductory text is amended by removing the last sentence; paragraph (b) is amended by removing the words “in the Premium Payment Package”; and paragraphs (a)(1), (a)(2), and (a)(3) are revised to read as follows:

§ 4006.5 Exemptions and special rules.

(a) *Variable-rate premium exemptions.* * * *

(1) *Certain fully funded plans.* A plan is described in this paragraph if the plan had fewer than 500 participants on the last day of the plan year preceding the premium payment year, and as of that date, the plan had no unfunded vested benefits (valued at the interest rate prescribed in § 4006.4(b)(1)).

(2) *Plans without vested benefit liabilities.* A plan is described in this paragraph if it did not have any participants with vested benefits as of the last day of the plan year preceding the premium payment year.

(3) *Section 412(i) plans.* A plan is described in this paragraph if the plan was a plan described in section 412(i) of the Code and the regulations thereunder on the last day of the plan year preceding the premium payment year.

* * * * *

PART 4007—PAYMENT OF PREMIUMS

■ 6. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(a), 1306, 1307.

■ 7. Section 4007.3 is revised to read as follows:

§ 4007.3 Filing requirement; method of filing.

The estimation, declaration, reconciliation, and payment of premiums shall be made in accordance with the premium instructions on the PBGC's Web site (<http://www.pbgc.gov>). The plan administrator of each covered plan is responsible for filing prescribed premium information and payments. No later than the applicable due date(s) specified in § 4007.11, a plan's required premium payment(s) and related information, certified as provided in the premium instructions, must be filed in the manner and format prescribed in the instructions. Information must be filed electronically except to the extent that the PBGC grants an exemption for good cause in appropriate circumstances. The requirement to file electronically applies to filings for plan years beginning in 2006 that are made on or after July 1, 2006, for plans with 500 or more participants for the prior plan year and to filings for all plans for plan years beginning after 2006. (The requirement to file electronically does not apply to information filed to comply with a PBGC request under (4007.10(c) (dealing with providing record information in connection with a premium compliance review).)

■ 8. Section 4007.4 is revised to read as follows:

§ 4007.4 Where to file.

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

■ 9. In § 4007.11, paragraph (e) is amended by removing the words “in the Premium Payment Package”; and paragraph (b)(2) introductory text is revised to read as follows:

4007.11 Due dates.

* * * * *

(b) *Participant count rule for purposes of determining filing due dates.* * * *

* * * * *

(2) For a multiemployer plan, the number of participants determined as of the following date:

* * * * *

Issued in Washington, DC, this 25th day of May, 2006.

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.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E6-8433 Filed 5-31-06; 8:45 am]

BILLING CODE 7709-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 216

Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This document re-establishes the Department of Defense's rules addressing military recruiting and Reserve Officer Training Corps program access at institutions of higher education. These rules were inadvertently removed from the CFR by a document published in the **Federal Register** on March 18, 2006. These rules implement the National Defense Authorization Act for Fiscal Year 1995, the National Defense Authorization Act for Fiscal Year 1996, and the Omnibus Consolidated Appropriations Act, 1997 (the Acts). The Acts state that no funds available under appropriations acts for any fiscal year for the Departments of Defense, Transportation (with respect to military recruiting), Labor, Health and Human Services, Education, and Related Agencies may be provided by contract or grant (including a grant of funds to be available for student aid) to a covered school that has a policy or practice (regardless of when implemented) that either prohibits, or in effect prevents, the Secretary of Defense from obtaining, for military recruiting purposes, entry to campuses, access to students on campuses, access to directory information on students, or that has an anti-ROTC policy.

DATES: *Effective Date:* June 1, 2006.

FOR FURTHER INFORMATION CONTACT: William J. Carr, (703) 697-8444.

SUPPLEMENTARY INFORMATION: On March 10, 2006 (71 FR 12280), the Department of Defense removed 32 CFR Part 216 to correlate with the DoD Directive

1322.13 which was canceled in 1998. The part should remain in effect. This part is published as originally published. The only change made was to the first footnote 1 which gives an availability statement directed to the Web site.

List of Subjects in 32 CFR Part 216

Armed forces, Armed forces reserves, Colleges and universities, Education.

■ Accordingly, 32 CFR part 216 is added to read as follows:

PART 216—MILITARY RECRUITING AND RESERVE OFFICER TRAINING CORPS PROGRAM ACCESS TO INSTITUTIONS OF HIGHER EDUCATION

Sec.

216.1 Purpose.

216.2 Applicability.

216.3 Definitions.

216.4 Policy.

216.5 Responsibilities.

216.6 Information requirements.

Appendix A of part 216—Military Recruiting Sample Letter of Inquiry

Appendix B of part 216—ROTC Sample Letter of Inquiry.

Authority: 10 U.S.C. 983.

§ 216.1 Purpose.

This part:

(a) Implements the National Defense authorization Act of 1995 (108 Stat. 2663),

(b) Implements 10 U.S.C. 983, and
(c) Implements the Omnibus Consolidated Appropriations Act, 1997 (110 Stat. 3009).

(d) Updates policy and responsibilities relating to the management of covered schools that have a policy of either denying, or effectively preventing military recruiting personnel entry to their campuses, access to their students, or access to student recruiting information.

(e) Updates policy and responsibilities relating to the management of covered schools that have an anti-ROTC policy.

§ 216.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD components"). The policies herein also affect the Departments of Transportation, Labor, Health and Human Services, Education, and Related Agencies. The term "Military Services," as used herein, refers to the army, the Navy, the Marine Corps, the

Air Force, and the Coast Guard, including their Reserve or National Guard components. The term "Related Agencies," as used herein, refers to the Armed Forces Retirement Home, the Corporation for National and Community Service, the Corporation for Public Broadcasting, the Federal Mediation and Conciliation Service, the Federal Mine Safety and Health Review Commission, the National Commission on Libraries and Information Science, the National Council on Disability, the National Education Goals Panel, the National Labor Relations Board, the National Mediation Board, the Occupational Safety and Health Review Commission, the Physician Payment Review Commission, the Prospective payment Assessment Commission, the Social Security Administration, the Railroad Retirement Board and the United States Institute of Peace.

§ 216.3 Definitions.

(a) *Anti-ROTC policy.* A policy or practice whereby a covered school prohibits or in effect prevents the Secretary of Defense from maintaining, establishing, or efficiently operating a unit of the Senior ROTC at the covered school, or prohibits or in effect prevents a student at the covered school from enrolling in a Senior ROTC unit at another institution of higher education.

(b) *Covered school.* An institution of higher education, or a subelement of an institution of higher education, subject to the following clarifications:

(1) In the event of a determination (§ 216.5) affecting only a subelement of a parent institution (see § 216.3(d)), the limitations on the use of funds (§ 216.4(a) and (b)) shall apply only to the subelement and not to the parent institution as a whole.

(2) The limitations on the use of funds (§ 216.4(a) and (b)) shall not apply to any individual institution of higher education that is part of a single university system if that individual institution does not prevent entry to campus, access to students, or access to student recruiting information by military recruiters, or have an anti-ROTC policy, even though another campus of the same system is affected by a determination under § 216.5(a).

(c) *Student recruiting information.* For those currently enrolled, the student's name, address, telephone listing, age (or year of birth), level of education (e.g., freshman, sophomore, or degree awarded for a recent graduate), and major.

(d) *Institution of higher education.* A domestic college, university, or other institution (or subelement thereof) providing postsecondary school courses