

§ 4000.5 Does the PBGC have discretion to waive these filing requirements?

We retain the discretion to waive any requirement under this part, at any time, if warranted by the facts and circumstances.

Subpart B—Issuance Rules**§ 4000.11 What are these issuance rules about?**

Where a particular regulation calls for their application, the rules in this subpart B of part 4000 tell you what methods you may use to issue a notice or otherwise provide information to any person other than us (*e.g.*, a participant or beneficiary). They do *not* cover payments to third parties. In some cases, the PBGC regulations tell you to comply with requirements that are found somewhere other than in the PBGC's own regulations (*e.g.*, requirements under the Internal Revenue Code). If so, you must comply with any applicable issuance rules under those other requirements. (Subpart A tells you what filing methods you may use for filings with us. Subpart C tells you how we determine your filing or issuance date. Subpart D tells you how to compute various periods of time. Subpart E tells you how to maintain required records in electronic form.)

§ 4000.12 What definitions do I need to know for these rules?

You need to know two definitions from § 4001.2 of this chapter: PBGC and person. You also need to know the following definitions:

Filing means any notice, information, or payment that you submit to us under our regulations.

Issuance means any notice or other information you provide to any person other than us under our regulations.

We means the PBGC.

You means the person providing the issuance to a third party.

§ 4000.13 What methods of issuance may I use?

(a) *In general.* You may use any method of issuance, provided you use measures reasonably calculated to ensure actual receipt of the material by the intended recipient. Posting is not a permissible method of issuance under the rules of this part.

(b) *Electronic safe-harbor method.* Section 4000.14 provides a safe-harbor method for meeting the requirements of paragraph (a) of this section when providing an issuance using electronic media.

§ 4000.14 What is the safe-harbor method for providing an issuance by electronic media?

(a) *In general.* Except as otherwise provided by applicable law, rule or regulation, you satisfy the requirements of § 4000.13 if you follow the methods described at paragraph (b) of this section when providing an issuance by electronic media to any person described in paragraph (c) or (d) of this section.

(b) *Issuance requirements.* (1) You must take appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents—

(i) Results in actual receipt of transmitted information (*e.g.*, using return-receipt or notice of undelivered electronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and

(ii) Protects confidential information relating to the intended recipient (*e.g.*, incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by anyone other than the intended recipient);

(2) You prepare and furnish electronically delivered documents in a manner that is consistent with the style, format and content requirements applicable to the particular document;

(3) You provide each intended recipient with a notice, in electronic or non-electronic form, at the time a document is furnished electronically, that apprises the intended recipient of—

(i) The significance of the document when it is not otherwise reasonably evident as transmitted (*e.g.*, “The attached participant notice contains information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation.”); and

(ii) The intended recipient's right to request and obtain a paper version of such document; and

(4) You give the intended recipient, upon request, a paper version of the electronically furnished documents.

(c) *Employees with electronic access.* This section applies to a participant who—

(1) Has the ability to effectively access the document furnished in electronic form at any location where the participant is reasonably expected to perform duties as an employee; and

(2) With respect to whom access to the employer's electronic information system is an integral part of those duties.

(d) *Any person.* This section applies to any person who—

(1) Except as provided in paragraph (d)(2) of this section, has affirmatively consented, in electronic or non-electronic form, to receiving documents through electronic media and has not withdrawn such consent;

(2) In the case of documents to be furnished through the Internet or other electronic communication network, has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the person's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(3) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(i) The types of documents to which the consent would apply;

(ii) That consent can be withdrawn at any time without charge;

(iii) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other person's address for receipt of electronically furnished documents or other information;

(iv) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge;

(v) Any hardware and software requirements for accessing and retaining the documents; and

(4) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the person will be unable to access or retain electronically furnished documents,

(i) Is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(ii) Is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(iii) Again consents, in accordance with the requirements of paragraph (d)(1) or paragraph (d)(2) of this section, as applicable, to the receipt of documents through electronic media.

§ 4000.15 Does the PBGC have discretion to waive these issuance requirements?

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