



PBGC PROPOSES UPDATES TO ADMINISTRATIVE REVIEW RULES

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Oct. 11, 2019*

The latest PBGC [proposed regulations](#) — the third set issued in less than a week — clarify procedures for requesting administrative review of agency decisions. The changes will not affect most plan sponsors, though employers contesting an unfavorable determination will have to follow the new procedures once the final rule takes effect. Comments are due Dec. 3.

Reconsideration and appeal. The proposal would change which PBGC personnel perform a second review of certain agency decisions. The regulations provide for two types of review: reconsideration and appeal. In a reconsideration, a higher-level official within the same department that issued the initial determination reviews the request for reconsideration. In an appeal, the PBGC Appeals Board performs an independent review of the case. A single member of the board reviews routine cases, while a three-member panel reviews nonroutine cases.

Current regulations list which determinations are subject to reconsideration or appeal. The proposal would reorganize this list by subjecting the following determinations to appeal:

- All coverage determinations — currently, determinations that a plan isn't PBGC-covered are subject to appeal, but determinations that a plan is covered undergo reconsideration
- All determinations concerning the allocation of a terminated plan's assets, except determinations regarding residual assets for well-funded plans, which would remain subject to reconsideration

Other clarifications. Additional proposed clarifications to the reconsideration and appeals process include:

- In the rare case that PBGC makes an initial determination effective immediately, affected parties have no right to request reconsideration or appeal, but can seek judicial review.
- A decision on a request for reconsideration (like a decision on appeal) is a final action binding on all parties.

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- Requests for information in PBGC's possession should be submitted under the agency's Freedom of Information Act procedures, while requests for assistance obtaining information not in PBGC's possession must be sent to the Appeals Board or department that's reviewing the initial determination.
- Requests for an extension of time to file an appeal should be sent to the Appeals Board while requests for additional time to request reconsideration should be sent to the department that made the initial determination.

RELATED RESOURCES

- [Proposed Regulations on PBGC Administrative Reviews](#) (Federal Register, Oct. 4, 2019)

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