



[Billing Code 7709-02-P]

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4071 and 4302

RIN 1212-AB33

Adjustment of Civil Penalties

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is required to amend its regulations annually to adjust the penalties provided for in sections 4071 and 4302 of the Employee Retirement Income Security Act of 1974. This action is being taken in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget memorandum M-17-11. The regulations being amended are those on Penalties for Failure to Provide Certain Notices or Other Material Information and Penalties for Failure to Provide Certain Multiemployer Plan Notices.

DATES: *Effective date:* This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Applicability date: The increases in the civil monetary penalties under sections 4071 and 4302 provided for in this rule apply to such penalties assessed after [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Stephanie Cibinic, Deputy Assistant General Counsel for Regulatory Affairs (cibinic.stephanie@pbgc.gov), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-

4026; 202-326-4400 extension 6352. (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 6352.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This rule is needed to carry out the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The rule finalizes the 2016 interim final regulations required under the 2015 act and further adjusts, as required for 2017, the maximum civil penalties that PBGC may assess for failure to provide certain notices or other material information.

PBGC's legal authority for this action comes from the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and from sections 4002(b)(3), 4071, and 4302 of the Employee Retirement Income Security Act of 1974.

Major Provisions of the Regulatory Action

This rule adjusts as required by law the maximum civil penalties that PBGC may assess under sections 4071 and 4302 of ERISA. The new maximum amounts are \$2,097 for section 4071 penalties and \$279 for section 4302 penalties.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Title IV has two provisions that authorize PBGC to assess civil monetary penalties.¹ Section 4302, added to ERISA by the Multiemployer Pension Plan Amendments Act of 1980, authorizes PBGC to assess a civil penalty of up to \$100 a day for failure to provide a notice under subtitle E of title IV of ERISA (dealing with multiemployer plans). Section 4071, added to ERISA by the Omnibus Budget Reconciliation Act of 1987, authorizes PBGC to assess a civil penalty of up to \$1,000 a day for failure to provide a notice or other material information under subtitles A, B, and C of title IV and sections 303(k)(4) and 306(g)(4) of title I of ERISA.

Adjustment of Civil Penalties

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,² which requires agencies to adjust civil monetary penalties for inflation and to publish the adjustments in the Federal Register. An initial adjustment was required to be made by interim final rule published by July 1, 2016, and effective by August 1, 2016. Subsequent adjustments must be promulgated in January each year after 2016. In an interim final rule published on May 13, 2016 (at 81 FR 29765), PBGC adjusted the maximum penalty under section 4071 to \$2,063 and adjusted the maximum penalty under section 4302 to \$275.³

¹ Under the Federal Civil Penalties Inflation Adjustment Act of 1990, a penalty is a civil monetary penalty if (among other things) it is for a specific monetary amount or has a maximum amount specified by Federal law. Title IV also provides (in section 4007) for penalties for late payment of premiums, but those penalties are neither in a specified amount nor subject to a specified maximum amount.

² Sec. 701, Public Law 114-74, 129 Stat. 599-601 (Bipartisan Budget Act of 2015).

³ The Office of Management and Budget issued memorandum M-16-06 on implementation of the 2015 act, including multipliers to use in the initial adjustment.

On December 16, 2016, the Office of Management and Budget issued memorandum M-17-11 on implementation of the 2017 annual adjustment pursuant to the 2015 act.⁴ The memorandum provides agencies with the cost-of-living adjustment multiplier for 2017, which is based on the Consumer Price Index (CPI-U) for the month of October 2016, not seasonally adjusted. The multiplier for 2017 is 1.01636. The memorandum also provides guidance to agencies on finalizing their 2016 interim final rules. Accordingly, PBGC is adopting the 2016 interim final rule with a change to the maximum penalty amount for 2017 as required by the 2015 act and Office of Management and Budget memorandum M-17-11. The adjusted maximum amounts are \$2,097 for section 4071 penalties and \$279 for section 4302 penalties.

Compliance With Regulatory Requirements

The Office of Management and Budget has determined that this rule is not a “significant regulatory action” under Executive Order 12866 and therefore not subject to their review.

The Office of Management and Budget also has determined that notice and public comment on this final rule are unnecessary because the adjustment of civil penalties implemented in the rule is required by law. See 5 U.S.C. 553(b).

Because no general notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4071

Penalties.

29 CFR Part 4302

⁴ https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf

Penalties.

In consideration of the foregoing, the interim final rule, which was published at 81 FR 29765 on May 13, 2016, is adopted as a final rule with the following changes:

PART 4071 — PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION

- 1. The authority citation for part 4071 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114-74, 129 Stat. 599-601; 29 U.S.C. 1302(b)(3), 1371.

§ 4071.3 [Amended]

- 2. In § 4071.3, the figures “; \$2,063” are removed and the figures “\$2,097” are added in their place.

PART 4302 — PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES

- 3. The authority citation for part 4302 continues to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub. L. 114-74, 129 Stat. 599-601; 29 U.S.C. 1302(b)(3), 1452.

§ 4302.3 [Amended]

- 4. In § 4302.3, the figures “\$275” are removed and the figures “\$279” are added in their place.

Issued in Washington DC by

W. Thomas Reeder,

Director,

Pension Benefit Guaranty Corporation.

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