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7709–02–P]

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4071 and 4302

RIN 1212–AB50

Penalties for Failure to Provide Certain Notices or Other Material Information

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: This proposed rule would provide the Pension Benefit Guaranty Corporation's policies for calculating, imposing, and waiving monetary penalties to pension plans for failure to provide certain required notices or other material information timely to PBGC and plan participants.

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*] to be assured of consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.* Include RIN 1212–AB50 in the subject line.
- *Mail or Hand Delivery:* Legislative and Regulatory Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

Commenters are strongly encouraged to submit comments electronically. Commenters who submit comments on paper by mail should allow sufficient time for mailed comments to be received before the close of the comment period.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and the Regulation Identifier Number (RIN) for this rulemaking (RIN 1212–AB50). All comments received will be posted without change to PBGC's website, *www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments may be submitted anonymously.

Commenters are encouraged to provide citations to the published materials referenced, including active hyperlinks. Likewise, commenters who reference materials which have not been published are encouraged to upload relevant data collection instruments, data sets, and detailed findings as a part of their comment. Providing such citations and documentation will assist us in analyzing the comments.

Copies of comments may also be obtained by writing to Disclosure Division, (*disclosure@pbgc.gov)*, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101, or calling 202–326–4040 during normal business hours. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Pursuant to the Administrative Procedure Act at 5 U.S.C. 553(b)(4), a plain language summary of the proposed rule is available at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph Krettek (*krettek.joseph@pbgc.gov*, 202–229–6772), Assistant General Counsel, Office of the General Counsel, or Andrew Wilson (*wilson.andrew1@pbgc.gov*, 202–860–8354), Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101. If you are deaf or hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose and authority

The purpose of this rulemaking is to provide the Pension Benefit Guaranty Corporation's (PBGC's) policies for assessing and waiving monetary penalties for failure to provide certain notices or other material information as required by statute or regulation. This proposed rule would state the penalty amounts that PBGC generally imposes for failure to furnish information timely and would explain the circumstances under which PBGC may waive penalties.

Legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA; section 4071 of ERISA (Penalty for Failure to Timely Provide Required Information); and section 4302 of ERISA (Penalty for Failure to Provide Notice).

B. Major Provisions

This proposed rule would:

- Establish that, for most failures to timely provide required notices or other material information, PBGC assesses penalties that are significantly below the maximum amounts allowed under the statute;
- Provide that PBGC, in its discretion and based on the facts and circumstances of each case, generally waives penalties for failure to timely provide required information, upon a showing of reasonable cause, error of law, or PBGC delay, or in other circumstances, as the agency deems appropriate;
- Encourage voluntary self-reporting and self-correction by providing lower penalties for violations reported and corrected early; and

- State that penalty amounts are intended to reflect the potential for harm to plan participants and to PBGC's insurance program caused by the untimely filing, meaning that higher potential for harm generally results in a higher penalty than lower potential for harm.

II. Background

PBGC administers two insurance programs for private-sector defined benefit pension plans under title IV of ERISA: a single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. In addition, PBGC administers a special financial assistance (SFA) program for certain eligible financially distressed multiemployer plans.

Under the single-employer plan termination insurance program, covered plans that are underfunded may terminate either in a distress termination under section 4041(c) of ERISA or in an involuntary termination (one initiated by PBGC) under section 4042 of ERISA. When such a plan terminates, PBGC typically is appointed statutory trustee of the plan, and becomes responsible for paying benefits in accordance with the provisions of title IV.[1]

Under the multiemployer insurance program, PBGC provides financial assistance under section 4261 of ERISA to plans that are insolvent and thus unable to pay benefits at the guaranteed level. This financial assistance is primarily in the form of financial assistance loans, paid to the plans periodically so that they are able to pay plan benefits when due. Under the SFA program, PBGC provides financial assistance under section 4262 of ERISA to certain financially troubled multiemployer plans upon application for assistance. Plans that receive SFA are subject to specified restrictions and conditions.

For PBGC's effective operation of its insurance programs, covered plans and their sponsors (filers) are required by statute and regulation to provide certain notices or other material information (required information or information requirement) to PBGC and other parties, such

[1] PBGC also pays non-guaranteed benefits when there are sufficient plan assets or recoveries.

as plan participants (recipients). Some required information must be provided annually;[2] other required information must be provided upon the occurrence of certain events,[3] and all required information is prescribed a statutory or regulatory due date by which the filer must furnish the required information. Required information allows PBGC to evaluate plans' premium calculations, evaluate plans' financial health, assess the risk of plan sponsors, preserve the assets of the insurance programs, and perform other tasks to carry out its agency functions.

Section 4071 of ERISA authorizes PBGC to assess a civil penalty for failure to provide a notice or other material information as required by subtitles A, B, C, or D of title IV or sections 303(k)(4) or 306(g)(4) of ERISA or their corresponding regulations. PBGC's regulation on Penalties for Failure to Provide Certain Notices or Other Material Information (29 CFR part 4071) specifies the maximum daily amount that may be assessed by PBGC for these violations. Section 4071 of ERISA and part 4071 of PBGC's regulations have limited applicability to multiemployer plans. Except for premium information requirements, most of the information requirements subject to section 4071 pertain to single-employer plans only. PBGC adjusts the maximum penalty amounts allowable under statute annually[4] and sets the maximum penalty assessed under part 4071 of PBGC's regulation after January 8, 2025, at $2,739 per day of delinquency.[5]

Section 4302 of ERISA authorizes PBGC to assess a civil penalty for failure to provide a notice as required by subtitle E of title IV, which provides the notice requirements unique to multiemployer plans. PBGC's regulation on Penalties for Failure to Provide Certain

[2] "Payment of Premiums," OMB control no. 1212–0009; "Annual Financial and Actuarial Reporting," OMB control no. 1212–0049.

[3] "Reportable Events," OMB control no. 1212–0013; "Notice of Failure to Make Required Contributions," OMB control no. 1212–0041; "Notices Following a Substantial Cessation of Operations," OMB control no. 1212–0073; "Termination of Single-Employer Plans," OMB control no. 1212–0036.; "Notice of Insolvency," OMB control no. 1212–0033; "Duties of Plan Sponsor Following Mass Withdrawal," OMB control no. 1212–0032.

[4] Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, P.L. 114-74, section 701, this amount is generally adjusted annually for inflation.

[5] This amount may be assessed after January 8, 2025, for any noncompliance with a provision covered under section 4071 of ERISA that occurred after November 2, 2015, the date of enactment of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, regardless of whether of the noncompliance occurred before the effective date of the 2025 adjustment.

Multiemployer Plan Notices (29 CFR part 4302) specifies the maximum daily penalties that may be assessed by PBGC for multiemployer notice violations. The maximum penalty is adjusted annually and was set at $365 per day of delinquency for penalties assessed after January 8, 2025.

On March 3, 1992, at 57 FR 7605, PBGC issued its first policy statement on how it would exercise its penalty authority under section 4071 of ERISA. PBGC followed up on July 18, 1995,[6] with a revised statement of policy (the "1995 Policy"), which is currently in effect.[7] Under the 1995 Policy, PBGC seeks to promote voluntary compliance, encourage self-corrections, and avoid unduly harsh penalties, particularly on small businesses and plans. Under the 1995 Policy, PBGC considers the facts and circumstances of each case to assure that the penalty fits the violation. Relevant factors include the seriousness of the violation, potential for harm to plan participants and to PBGC's insurance program, willfulness, and prior violations. In addition, under the 1995 Policy, penalty amounts increase with each day of delinquency and stop accruing once the required information is furnished. Finally, the policy states that penalties are lower for plans with fewer than 100 participants than for larger plans.

This proposed rule, when finalized, would supersede the 1995 Policy. PBGC has determined that the 1995 Policy is not adequate for addressing many situations of untimely filings. It lacks sufficient detail for certain situations of untimeliness under part 4071, does not cover untimeliness under part 4302, and does not reflect any changes in law, since 1995, under title IV. While this proposed rule, when finalized, would supersede the 1995 Policy, the changes do not reflect a change in PBGC's position on penalties. The proposed rule is intended to offer greater detail and certainty for the public by including more information about the mitigating and aggravating factors PBGC will consider in assessing or waiving penalties.

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[6] *See* 60 FR 36837.

[7] On January 12, 2001, at 66 FR 2856, PBGC published a proposed rule to revise and codify its policies for penalties assessed under section 4071 of ERISA. Other than a provision concerning administrative review, the portion of the 2001 proposed rule regarding section 4071 penalties was never finalized. *See* 77 FR 22488 (Apr. 16, 2012).

III. Overview of Proposed Rule

Proposed parts 4071 and 4302 mirror each other. Subparts A would contain general provisions, including definitions and the maximum daily amount. Subparts B would contain rules for requesting reconsideration of penalties. Subparts C and D would provide assessment rules and rules for waivers.

IV. Assessment Rules

Proposed §§ 4071.11 and 4302.11 would provide PBGC's general standards for assessing information penalties. PBGC would use its discretion to assess information penalties as appropriate under the facts and circumstances of each case, treating similar facts and circumstances consistently. When assessing penalties, if PBGC has prior knowledge of a filer's circumstances such that PBGC would waive the penalty upon request, PBGC could decide in its discretion to assess no penalty.

V. Penalty amounts

A. Part 4071

In proposed part 4071, PBGC encourages compliance and correction by not assessing penalties that are overly punitive. Under proposed § 4071.11(c), PBGC would assess a general penalty of $25 per day for the first 90 days of delinquency and $50 per day beginning on the 91st day of delinquency and thereafter. The 1995 Policy stated that, in general, PBGC will assess a penalty of $25 per day for the first 90 days of delinquency and $50 per day beginning on the 91st day of delinquency and thereafter. By setting per diem—as opposed to flat rate—penalties, PBGC is encouraging voluntary self-reporting and self-correction. All per diem penalty amounts under part 4071 will be reviewed annually and adjusted for inflation as needed.[8]

Also in this proposed rule, PBGC recognizes the limitations on the resources of small plans. Under proposed § 4071.11(d), PBGC would proportionately reduce the general penalty

[8] Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, P.L. 114-74, section 701, these penalties are generally adjusted annually for inflation.

amounts of $25 and $50 per day for untimely information concerning plans with fewer than 100 participants. The penalty would be reduced proportionately based on the number of participants by multiplying the general penalty times a fraction where the numerator is equal to the number of plan participants and the denominator is 100, subject to a floor of $10 per day. For example, when assessing a penalty for 12 days of delinquency on a plan with 30 participants, PBGC would assess 30 percent of the general penalty, but not less than a total of $120. Under proposed § 4071.11(e), a plan's participant count is the number of participants for whom flat-rate premiums were payable for the plan year preceding the plan year in which the noncompliance occurred, or, for filings or notices related to a plan's termination, the number of persons entitled to distributions (distributees).

These general rules would apply, as discussed later, for certain reportable events, premium information requirements, certain standard termination information requirements, and certain annual financial and actuarial information reporting requirements. In addition, they would apply for late filings or notices for distress terminations under part 4041 and other untimely furnishing of required information not otherwise specified.

1. Reportable Events

Proposed § 4071.12 covers noncompliance with the reporting requirements under PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043), applicable to single-employer plans.[9] Required information under this part can be time sensitive, as it may indicate that a plan sponsor is not able to maintain a plan or that a plan is not financially secure. Failure to provide required information to PBGC by the regulatory deadlines may hinder PBGC's efforts to assist sponsors in maintaining existing plans and to protect participants and the single-employer insurance program. The 1995 Policy allowed PBGC to assess penalties as high as the maximum statutory amount for failure to provide an advance

[9] *See* 29 CFR 4043.4(c), which waives reporting requirements under section 4043 of ERISA for multiemployer plans.

notice of a reportable event under section 4043(b) of ERISA or a notice of a missed contribution under what is now section 303(k)(4) of ERISA (Form 200).

Proposed § 4071.12 divides the information requirements in part 4043 into three categories and provides different penalty amounts for each category based on the time sensitivity of the required reports and on the level of risk of harm to participants and to the PBGC insurance program arising from untimely filings. Category 1 is for specified events, including active participant reduction, distribution to a substantial owner, and extraordinary dividend or stock redemption. For this category, PBGC would apply the general penalty of $25 and $50 per day, reduced proportionately for filings concerning plans with fewer than 100 participants, but not lower than $10 per day. Category 2 is for all reportable events that are not in the first or third categories. For Category 2 events, the penalty would be $100 per day, reduced proportionately for filings concerning plans with fewer than 100 participants, but not lower than $25 per day. Category 3 is for the most time sensitive events, including failure to make contributions over $1 million and advance notice reportable events. For Category 3 events, the penalty would be $1,000 per day. Category 3 penalties are not subject to proportionate reduction, as information requirements for reportable events in the third category are generally not applicable to plans with fewer than 100 participants. The three categories of penalties are listed in the following table.

Reportable Event Category	Reportable Event Type	Penalty Amount
1	• Active participant reduction • Distribution to a substantial owner • Extraordinary dividend or stock redemption	• $25 per day for first 90 days, $50 per day thereafter • Reduced proportionately for plans with under 100 participants, subject to a floor of $10 per day
2	• Failure to make required minimum funding payment • Inability to pay benefits when due • Change in controlled group • Liquidation • Transfer of benefit liabilities • Application for minimum funding waiver • Loan default • Insolvency or similar settlement • Other reportable event	• $100 per day • Reduced proportionately for plans with under 100 participants, subject to a floor of $25 per day
3	• Failure to make contributions over $1 million • Advance notice reportable events	• $1,000 per day (not subject to reduction, as these information requirements are generally not applicable to plans with under 100 participants)

2. Section 4062(e) Events and Substantial Employer Withdrawals

Proposed § 4071.13 covers noncompliance with the reporting requirements of sections 4062(e) and 4063 of ERISA, applicable to single-employer plans. Section 4062(e) requires the submission of notices to PBGC following a substantial cessation of operations. Section 4063 requires notice to PBGC following the withdrawal of a substantial employer from a multiple employer plan. The penalty for noncompliance with these notification requirements is generally $1,000 per day. Like the filings under section 4043, filings required by sections 4062(e) and 4063 of ERISA are highly time sensitive. These filings allow PBGC to assess and enforce an employer's liability to a plan, which is critical to the agency's safeguarding of plans and of the PBGC insurance program. The penalty amount reflects the importance of the required information. Also, the penalty for noncompliance with the information requirements under sections 4062(e) and 4063 of ERISA is not subject to proportionate reduction, as these information requirements are generally not applicable to plans with fewer than 100 participants.

3. Premium Information Requirements

Proposed § 4071.14 covers noncompliance with the reporting requirements under PBGC's regulation on Payment of Premiums (29 CFR part 4007). For violations of section 4007, PBGC would apply the general penalty of $25 and $50 per day, reduced proportionately for filings concerning plans with fewer than 100 participants, but not lower than $10 per day. However, in general, before issuing an assessment of a penalty for noncompliance with the reporting requirements of part 4007, PBGC sends multiple past due filing notices to the filer, and if the filer in a timely manner after receiving the past due filing notices submits the past due premium filing, PBGC does not assess a penalty under section 4071 for the late premium filing.

4. Standard Terminations

Proposed § 4071.15(b) covers noncompliance with the standard termination information requirements under subpart B of PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041). For a standard termination of a single-employer plan, PBGC requires, among other notices, the filing of a standard termination notice ("Form 500") and a post-distribution certification ("Form 501") to PBGC, and the issuance of notices of intent to terminate and notices of plan benefits to affected parties. For an untimely Form 501, notice of intent to terminate, or notice of plan benefits, PBGC would apply the general penalty of $25 and $50 per day. For an untimely Form 500, the proposed penalty is $50 per day for the first 90 days of delinquency and $100 per day beginning on the 91st day of delinquency and thereafter. In addition, all information penalties assessed on plans with under 100 distributees for untimely standard termination filings and notices would be subject to proportional reduction under § 4071.11(d), but not lower than $10 per day.

PBGC also proposes penalty caps for standard termination filings and notices not provided timely. Generally, penalties are assessed to encourage compliance and discourage noncompliance by filers as a whole and particularly by noncompliant filers against whom penalties have been assessed. However, in the case of a noncompliant standard termination, this purpose of encouraging compliance by the terminating plan is diminished. A standard termination, once completed, ends a plan's relationship with the PBGC insurance program, and there is little opportunity to self-correct failures and no opportunity to take preventative measures to ensure future compliance. To avoid assessing penalties that may become unduly harsh, particularly for small business, PBGC is proposing penalty caps for certain standard termination information. PBGC proposes that the penalty amounts for an untimely post-distribution certification and an untimely notice of plan benefits are limited to $100 times the number of distributees or participants, as applicable. PBGC also proposes that, for a plan with under 100 distributees, the penalty for an untimely standard termination notice is capped at 5 percent of the value of benefits distributed at plan termination (*e.g.*, a plan with 90 distributees with the value of benefits distributed at plan termination equal to $200,000 would have a penalty cap of $10,000.).

The proposed penalty for an untimely notice of intent to terminate would not be assessed for the period after distribution of assets has begun. Finally, PBGC generally would treat multiple failures to timely furnish either notices of intent to terminate or notices of plan benefits as single incidents. The penalty amounts and caps are listed in the following table.

<table>
<tr><td>Standard Termination Information Requirement</td><td>Penalty Amount</td><td>Cap</td></tr>
<tr><td>Standard termination notice</td><td>$50 per day for first 90 days, $100 per day thereafter
Reduced proportionately for plans with under 100 distributees, subject to a floor of $10 per day</td><td>5 percent of benefits distributed at plan termination for plans with under 100 distributees</td></tr>
<tr><td>Post distribution certification</td><td rowspan="3">$25 per day for first 90 days, $50 per day thereafter
Reduced proportionately for plans with under 100 distributees, subject to a floor of $10 per day</td><td rowspan="2">$100 multiplied by the number of distributees or participants, as applicable</td></tr>
<tr><td>Notice of plan benefits</td></tr>
<tr><td>Notice of intent to terminate</td><td>Not assessed for the period after distribution of assets has begun</td></tr>
</table>

5. Annual Financial and Actuarial Information Reporting

Proposed § 4071.16 covers noncompliance with information requirements under PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010). Under this regulation, filers for certain underfunded single-employer plans must report identifying, financial, and actuarial information to PBGC. The penalty for noncompliance with the information requirements under part 4010, except for the information requirements under § 4010.6(a)(2), would be generally $100 per day. For the information requirements under § 4010.6(a)(2), which are applicable where a full filing was required for the preceding year but only a limited filing is required for the current year, PBGC would apply the general penalty of $25 per day for the first 90 days and $50 per day thereafter. The penalties for noncompliance with the information requirements under part 4010 are not subject to proportionate reduction with respect to plans with fewer than 100 participants because filing requirements under part 4010 apply on a controlled group basis, not a plan basis, and therefore, penalties for noncompliance are assessed on a controlled group basis. PBGC determined that there is no need to include a proportionate reduction in situations where the aggregate number of participants in the controlled group is less than 100 because 4010 reporting requirements are generally waived if the number of participants is less than 500.

B. Part 4302

PBGC historically has not assessed penalties for untimely multiemployer plan notices covered under part 4302, such as filings under part 4245 (Duties of Plan Sponsor of an Insolvent Plan) and filings under part 4281 (Duties of Plan Sponsor Following Mass Withdrawal).[10] Instead, in the event of an untimely notice, PBGC informs the filer of the requirement, and the filer generally complies. Generally, PBGC will continue this practice and is codifying it for filings required under the multiemployer plan insolvency insurance program. If a filer remains noncompliant after being informed of the lateness, PBGC assesses a penalty under part 4302.

Under proposed § 4302.11(c), PBGC may assess the maximum statutory amount, which for 2025 is $365 per day of delinquency. PBGC believes that this amount is not overly punitive

[10] Section 4302 of ERISA also applies to an annual statement of compliance required by 29 CFR 4262.16(i) and other multiemployer plan notices and filings.

because it is well below the maximum amount allowed under part 4071 (which may be assessed on multiemployer plans for untimely premium and termination filings), and because PBGC generally would not assess any penalty unless the filer failed to comply with a past due notice of the late filing. This system of assessing the maximum penalty after informing the filer of the lateness will encourage compliance, voluntary self-reporting, and self-correction. There are no reductions applicable to small plans, as very few multiemployer plans have under 100 participants.[11] However, PBGC may exercise its discretion to waive the penalty for a small plan if the circumstances warrant. All per diem penalty amounts under part 4302 will be reviewed annually and adjusted for inflation as needed.[12]

VI. Requests for Reconsideration

Under §§ 4071.5 and 4302.5, a filer aggrieved by PBGC's initial determination with respect to information penalties would have the opportunity to request reconsideration in accordance with PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003). A filer can submit the reconsideration request in writing within 30 days of the date of the initial determination of which reconsideration is sought, explain why the determination was wrong, and convey the sought result.[13] The same department of PBGC that issued the information penalty would receive and consider the request, and a PBGC official with

[11] Based on data from premium filings, PBGC estimates that only 46 of the approximately 1,319 multiemployer plans are small plans with under 100 participants. These figures represent participant count information reported in the most recent premium filing submitted as of November 30, 2024 (*i.e.*, the 2024 filing if already submitted and the 2023 filing, otherwise).

[12] Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, P.L. 114-74, section 701, this penalty is generally adjusted annually for inflation.

[13] For more information about reconsiderations, see 29 CFR part 4003, subpart C. Information filed with a request for consideration is governed by OMB control no. 1212–0063.

a level of authority higher than that of the person who issued the initial determination would render the final decision on the request for reconsideration.

VII. Waivers

Under §§ 4071.21 and 4302.21 of the proposed rule, PBGC, in its discretion, may waive in whole or in part penalties assessed on filers under section 4071 or 4302 of ERISA. Whether PBGC grants a waiver would depend on the facts and circumstance of each case, and PBGC would be consistent in its treatment of similar facts and circumstances. In determining whether to grant a waiver, PBGC would determine whether the filer's situation is one of reasonable cause (discussed in §§ 4071.22 and 4302.22), error of law (discussed in §§ 4071.23 and 4302.23), or PBGC delay (discussed in §§ 4071.24 and 4302.24).[14] In addition, PBGC would examine the presence of mitigating factors listed in §§ 4071.25 and 4302.25 or aggravating factors listed in §§ 4071.27 and 4302.27. Finally, under §§ 4071.26 and 4302.26, PBGC would have the authority to grant a waiver in other circumstances if the agency deemed it appropriate to do so,[15] while remaining consistent in its treatment of similar facts and circumstances. A filer would be able to submit information relevant to a waiver both before and after the assessment of an information penalty.

A. Reasonable Cause

Proposed §§ 4071.22 and 4302.22 state that PBGC generally will waive a penalty upon a showing of reasonable cause. A showing of reasonable cause means that the filer has demonstrated that the untimeliness was due to circumstances beyond the control of the filer, and that the filer could not have complied with the deadline by the exercise of ordinary business care and prudence. The specific circumstances that constitute reasonable cause will vary. PBGC considers the size of a plan or employer and the seriousness of the violation in determining

[14] These situations are intended to mirror the situations of reasonable cause, legal errors, and pendency of PBGC procedures found in 29 CFR part 4007, App., question 21(b)(2), (3), and (4).

[15] This provision is intended to mirror PBGC's authority to waive penalties in 29 CFR part 4007, App., question 21(b)(5).

reasonable cause. A lack of knowledge of a deadline or other legal obligation on the part of a filer does not constitute reasonable cause.

PBGC is aware that many filers rely on the assistance of outside advisors, such as actuaries, attorneys, and third-party administrators, to learn of and fulfill their filing and notice requirements. For purposes of determining reasonable cause under the proposed regulation, PBGC imputes the actions of outside advisors to the filer. Thus, in determining whether a filer should receive a waiver of penalty, PBGC considers whether a filer's outside advisor exercised ordinary business care and prudence in the actions or inactions that led to the untimeliness. A filer's exercise of ordinary business care and prudence in selecting and interacting with the outside advisor is not a relevant factor in determining reasonable cause.

B. Error of Law

Proposed §§ 4071.23 and 4302.23 state that PBGC generally waives a penalty under sections 4071 and 4302 of ERISA if the filer demonstrates that the untimeliness was due to an "erroneous interpretation" or a "change in the law." PBGC proposes errors of law as grounds for a waiver because it does not wish to penalize filers that take reasonable and defensible (even if ultimately incorrect) legal positions.

C. PBGC Delay

Under proposed §§ 4071.24 and 4302.24, PBGC generally will waive the portion of a penalty that accrues because of a delay in PBGC's response to a non-frivolous argument against a PBGC notice requirement. Thus, if a filer submits a non-frivolous argument regarding a deadline with which it failed to comply and PBGC is delayed in its response to this argument, then PBGC likely will waive any portion of the penalty that accrued during the time of the delay.

D. Mitigating Factors

Under proposed §§ 4071.25 and 4302.25, PBGC is more likely to waive a penalty issued under sections 4071 and 4302 of ERISA if the filer demonstrates one or both of the following mitigating factors: self-correction and preventive measures. Self-correction means that a filer promptly corrected the noncompliance upon discovering it and notified PBGC of the noncompliance before PBGC notified the filer of the possible noncompliance. PBGC will also consider preventive measures, meaning that it will look at whether the filer cooperates with PBGC in taking steps to ensure further compliance. PBGC proposes to provide that it may reduce or waive penalties for filers that self-correct or take preventative measures because those actions ultimately serve to protect plans, participants, and the PBGC insurance program. PBGC specifically requests comments on mitigating factors that PBGC should consider when reviewing violations and assessing or waiving penalties.

E. Aggravating Factors

Under proposed §§ 4071.27 and 4302.27, PBGC is less likely to waive a penalty and is more likely to increase a penalty possibly up to the maximum amount when one or more aggravating factors is present: potential for harm, repeated offenses, and willfulness. Potential for harm means that the specific instance of noncompliance could cause significantly greater harm than is typical, whether or not harm actually occurs. PBGC may also consider whether a filer has a pattern of noncompliance or if the instance of noncompliance is conscious and purposeful rather than inadvertent or accidental. Each of these factors is ultimately detrimental to PBGC's ability to efficiently run the insurance program. PBGC specifically requests comments on aggravating factors that PBGC should consider when reviewing violations and assessing or waiving penalties.

VIII. Compliance with Rulemaking Guidelines

A. Executive Orders 12866, 13563, and 14192

The Office of Management and Budget (OMB) has determined that this proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, OMB has reviewed the proposed rule under Executive Order 12866.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

PBGC has examined the economic and policy implications of this proposed rule and has concluded that there will be no significant economic impact as a result of the proposed amendments to PBGC's regulations. Most of the proposed amendments merely codify or explain existing PBGC policies and practices. For instance, PBGC is codifying its practice of sending out past due notices before assessing penalties under part 4071 for untimely premium filings and under part 4302 for untimely multiemployer notices. In addition, PBGC is clearly outlining the grounds for waivers and reductions of penalties for transparency. For the specific instances of lateness where PBGC is increasing penalties, those assessments are not expected to have a significant economic impact.

PBGC considered an alternative approach for establishing the per diem penalty amounts under parts 4071 and 4302. Instead of maintaining the figures from the 1995 Policy, PBGC evaluated whether to use the Bureau of Labor Statistics inflation calculator to adjust those amounts to their present-day value. Because the objective of this proposed rule is to enhance transparency rather than increase potential penalty burdens, PBGC is proposing to maintain the 1995 Policy amounts. As stated earlier in this rule, if this rule is finalized, PBGC will adjust the per diem amounts under parts 4071 and 4302 annually for inflation consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. PBGC invites comment on a regulatory alternative where PBGC would adjust the 1995 Policy amounts to account for inflation from 1995 up to the current day as the starting point for parts 4071 and 4302.

PBGC examined data from 2019 through 2024 on the number of filing violations, number of waivers, the amount of penalties collected, and the average penalty amount. The table below shows this data for the following filings: standard termination post-distribution certification, premiums, annual financial and actuarial information under 29 CFR part 4010, and reportable events. Note that the data below includes the portion attributable to small entities.

Filing Type	Total Number of Violations under 29 CFR part 4071	Total Number of Waivers Issued	Total Amount Collected	Average Penalty Amount
Standard Termination Post-Distribution Certification	1,683	1,656	$60,187.50	$2,243
Premiums	2,259	1,858	$243,880.99	$499.80
4010 Information	448	28*	$0	$0
Reportable Events	947	0	$0	$0

*There were an additional 197 waivers issued under the one-time 4010 filing waiver in PBGC's Technical Update 23–1 (August 7, 2023).

As noted in the table, there was no penalty amount collected for both 4010 information violations and reportable events violations. In addition, there were no waivers issued for reportable events violations because there was an internal non-enforcement policy. During this time frame (2019–2024), PBGC did not collect data on violations and penalties for standard termination notices, notices of plan benefits, notices of intent to termination, or any multiemployer plan notices because it was not enforcing penalties for filing violations.

PBGC has maintained an informal, internal non-enforcement policy for 4010 information and reportable events while this proposed rule was being developed and chose to refrain from imposing penalties for these filings until formal regulatory guidance could be implemented. PBGC is not proposing to codify this temporary non-enforcement approach. Instead, this proposed regulation is intended to provide the public greater clarity on PBGC's penalty practices and to support a consistent and transparent framework for assessing and waiving penalties.

It is uncertain how the implementation of this regulation, if finalized, will modify the volume of violations and waivers and the amount of penalties collected by PBGC. The goal is that the transparency created by this regulation would incentivize compliance, thereby reducing the number of violations and amount of penalties collected.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that "may be outmoded, ineffective, insufficient, or excessively burdensome." These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified the proposed amendments to the regulations on penalties for failure to provide certain notices or other material information as consistent with the principles for review under Executive Order 13563. PBGC believes that, by codifying PBGC's policies on assessing and waiving penalties, this proposed rule will update and provide expanded and clearer guidance to the public.

Executive Order 14192 requires agencies to identify at least ten existing regulations to be repealed when the agency issues a new regulation and that new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs associated with prior regulations. As OMB explains in its memorandum, "Guidance Implementing Section 3 of Executive Order 14192, Titled 'Unleashing Prosperity Through Deregulation,'" an "Executive Order 14192 regulatory action" is defined as a significant regulatory action (as defined in section 3(f) of Executive Order 12866) that would impose total costs greater than zero.[16] This rule, if finalized, qualifies as an "Executive Order 14192 deregulatory action" (as defined in M-25-20) because it includes simplifications and efficiencies that, even if not quantifiable, are consistent with Executive Order 14192's purpose to reduce the regulatory burden on the public. This regulatory action would not impose total costs greater than zero. Instead, this proposed rulemaking promotes transparency, which is intended to reduce any regulatory burden on the public.

[16] Office of Management and Budget, Memorandum M-25-20: Guidance Implementing Section 3 of Executive Order 14192, Titled "Unleashing Prosperity Through Deregulation" (Mar. 26, 2025).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act[17] (RFA) imposes certain requirements respecting rules that are subject to the notice-and-comment requirements of section 553(b) of the Administrative Procedure Act, or any other law,[18] and that are likely to have a significant economic impact on a substantial number of small entities. Under 5 U.S.C. 603, an agency must prepare an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seek public comment on such impact, unless an agency certifies that the proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions.[19] For purposes of the RFA requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants.[20] This is substantially the same criterion PBGC uses in other regulations[21] and is consistent with certain requirements in title I of ERISA[22] and the Internal Revenue Code[23] ("the Code"), as well as the definition of a small entity that PBGC and the Department of Labor ("DOL") have used for purposes of the RFA.[24]

Most small plans are maintained by small employers. Some large employers may maintain small plans, but it is highly unlikely that a small employer would have reporting requirements for a plan with over 100 participants. PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small

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[17] 5 U.S.C. 601 *et seq*.
[18] The applicable definition of "rule" is found in section 601 of the RFA. *See* 5 U.S.C. 601(2).
[19] The applicable definitions of "small business," "small organization," and "small governmental jurisdiction" are found in section 601 of the RFA. *See* 5 U.S.C. 601.
[20] PBGC consulted with the Small Business Administration's Office of Advocacy before making this determination. Memorandum received from the U.S. Small Business Administration, Office of Advocacy on March 9, 2021.
[21] *See*, *e.g.*, special rules for small plans under part 4007 (Payment of Premiums).
[22] *See, e.g.*, section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.
[23] *See, e.g.*, section 430(g)(2)(B) of the Code, which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.
[24] *See, e.g.*, PBGC's proposed rule on Reportable Events and Certain Other Notification Requirements, 78 FR 20039, 20057 (April 3, 2013) and DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact on small entities of this proposed rule.

As of November 30, 2024, there are 18,821[25] small single-employer plans covered under title IV of ERISA. These allowances for assessment of increased penalties would affect only a fraction of the 18,821 small single-employer plans. Penalties will be assessed only on entities that have a filing requirement and are late with that required filing. Of these 18,821 small single-employer plans, only a fraction[26] have any non-premium filing requirements each year. PBGC expects that most plans will comply with their filing requirements and thus not face any penalties. While it is possible that individual small plans may be impacted by the increase in penalties for late filings under part 4010, part 4041, or part 4043, and have to pay more in penalties than they would before the rule, the overall effect on small plans will not be significant. PBGC does not expect a substantial number of small entities to face significant economic impact as a result of codifying the penalty policy.

PBGC collected data on the number of violations and waivers for small entities and amount of penalties collected from 2019 through 2024. It is important to note that controlled groups that have fewer than 500 participants in all plans are exempt from the Annual Financial and Actuarial Information Reporting[27] under 29 CFR part 4010.[28] As a result of this exemption, small entities under the proposed definition do not make filings under 29 CFR part 4010.

Filing Type	**Number of Violations by Small Entities**	**Number of Waivers for Small Entities**	**Amount Collected from Small Entities**	**Average Penalty Amount per Small Entity**

[25] These figures represent participant count information reported in the most recent premium filing submitted as of November 30, 2024.
[26] PBGC estimates approximately 2,500 total annual filings under parts 4010, 4041 and 4043 as provided to OMB for purposes of the Paperwork Reduction Act.
[27] OMB control no. 1212-0049.
[28] 29 CFR 4010.11(b).

Standard Termination, Post-Distribution Certification	1,485	1,460	$49,787.50	$2,007.50
Premiums	2,145	1,765	$173,610.65	$278.65
Reportable Events	521	0	0	0

For post-distribution certification filing violations by small entities, 98 percent received waivers, and for premium filing violations, 82 percent received waivers. The average penalty collected per small entity is lower than the maximum daily penalty permitted under statute. It is important to note that, as stated above, there were no waivers issued or penalties collected for reportable event filing violations due to non-enforcement. It is uncertain how many filers will receive waivers and how much will be collected in penalties after the publication of a final rule.

The intent of this proposed rule is not to collect additional monies but rather to increase transparency and increase compliance with filing requirements. PBGC does not anticipate any additional penalty collections for most of the instances of lateness addressed in this proposed rule. For instance, as stated above, this proposed rule codifies PBGC's existing practices of informing filers of untimely late premium filings and untimely multiemployer notices before assessment of penalties, and the total penalties collected from small or large plans for failure to comply with those requirements are not expected to increase.

In the instances where PBGC may allow penalties above the stated amounts in the regulation, PBGC has drafted the rule to minimize the impact on small plans. As described earlier in the preamble, PBGC would reduce the general penalty amounts of $25 and $50 per day for untimely information concerning plans with fewer than 100 participants. The penalty would be lowered proportionately based on the number of participants by multiplying the general penalty times a fraction where the numerator is equal to the number of plan participants and the denominator is 100, subject to a floor of $10 per day. Penalties for untimely standard termination notices would be capped at 5 percent of benefits distributed at plan termination for plans with under 100 distributees, and penalties for untimely post distribution certification would be capped at $100 per distributee. Finally, PBGC would take plan size into account when determining whether penalties should be waived. PBGC requests comments about the possible impact of this penalty regulation on small entities, using the proposed definition discussed in this section.

List of Subjects

29 CFR Part 4071

Penalties.

29 CFR Part 4302

Penalties.

In consideration of the foregoing, PBGC proposes to amend 29 CFR parts 4071 and 4302 as follows.

1. Revise part 4071 to read as follows:

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

4071.25 Mitigating factors.
4071.26 Other circumstances.
4071.27 Aggravating factors.

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.

Subpart A—Purpose and Definitions

§ 4071.1 Purpose and scope.

This part specifies the penalty amounts that may be assessed by PBGC under section 4071 of ERISA for failure to provide certain notices or other material information.

§ 4071.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA and PBGC. In addition, for purposes of this part:

Filer means a person required to timely provide section 4071 information.

Information penalty means a penalty under section 4071 of ERISA for failure to timely provide section 4071 information.

Noncompliance means failure to timely provide section 4071 information.

Section 4071 information means any notice or other material information to which section 4071 of ERISA applies.

§ 4071.3 Maximum daily amount.

The maximum daily amount of the penalty under section 4071 of ERISA is $2,739. Such amount has been adjusted to account for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Subpart B—Opportunity for Reconsideration

§ 4071.5 Reconsideration.

A person aggrieved by an initial determination with respect to penalties under section 4071 of ERISA may request reconsideration in accordance with the rules prescribed in subpart C of part 4003 of this chapter.

Subpart C—Assessment Rules

§ 4071.11 General assessment.

(a) *Assessment is discretionary.* PBGC generally assesses information penalties under this subpart in such amounts as PBGC, in its discretion, determines are appropriate under the facts and circumstances of each case.

(b) *Assessment principles.* In exercising its discretion to assess information penalties, PBGC considers the penalty waiver principles in subpart D of this part and is consistent in its treatment of similar facts and circumstances.

(c) *Daily amount.* If no other section in this subpart applies, information penalties are generally $25 per day for the first 90 days late and $50 per day thereafter.

(d) *Penalty reduction*. Where a penalty is subject to reduction for plans with under 100 participants, the penalty is generally reduced to an amount equal to the greater of—

(1) $10 per day, or

(2) The unreduced penalty amount multiplied by a fraction—

(i) The numerator of which is the number of plan participants, and

(ii) The denominator of which is 100.

(e) *Counting participants.* Where the amount of an information penalty depends on the number of plan participants, the relevant number of participants is generally—

(i) For a filing or notice related to a plan termination, the number of persons entitled to distributions under the plan, and

(ii) In any other case, the number of participants for whom flat-rate premiums were payable for the plan year preceding the plan year in which the noncompliance occurred.

§ 4071.12 Reportable events.

(a) *In general.* In assessing penalties for noncompliance with reporting requirements under part 4043 of this chapter, PBGC is guided by the standards in this section.

(b) *Category 1 events.* For Category 1 events, PBGC is guided by the standards in § 4071.11(c), and the penalty amount is subject to reduction as provided in § 4071.11(d).

(c) *Category 2 events.*

(1) For Category 2 events, the penalty generally assessed is $100 per day.

(2) For plans with under 100 participants, the penalty amount is subject to reduction as provided in § 4071.11(d), except that it may not be reduced below $25 per day.

(d) *Category 3 events.* For Category 3 events, the penalty generally assessed is $1,000 per day, and the penalty amount is not subject to reduction under § 4071.11(d).

(e) *Event categories.* For purposes of this section—

(1) Category 1 events are those described in §§ 4043.23 (active participant reduction), 4043.27 (distribution to a substantial owner), and 4043.31 (extraordinary dividend or stock redemption) of this chapter.

(2) Category 2 events are those described in §§ 4043.25 (failure to make required minimum funding payment), 4043.26 (inability to pay benefits when due), 4043.29 (change in controlled group), 4043.30 (liquidation), 4043.32 (transfer of benefit liabilities), 4043.33 (application for minimum funding waiver), 4043.34 (loan default), and 4043.35 (insolvency or similar settlement) of this chapter and other reportable events that are not Category 1 events or Category 3 events.

(3) Category 3 events are those described in §§ 4043.62 (advance notice of change in contributing sponsor or controlled group), 4043.63 (advance notice of liquidation), 4043.64 (advance notice of extraordinary dividend or stock redemption), 4043.65 (advance notice of

transfer of benefit liabilities), 4043.66 (advance notice of application for minimum funding waiver), 4043.67 (advance notice of loan default), 4043.68 (advance notice of insolvency or similar settlement), and 4043.81 (PBGC Form 200, notice of failure to make required contributions over $1 million; supplementary information).

§ 4071.13 Section 4062(e) events and substantial employer withdrawals.

(a) In assessing penalties for noncompliance with reporting requirements under sections 4062(e) and 4063 of ERISA, PBGC is guided by the standards in this section.

(b) For events under section 4062(e) of ERISA and substantial employer withdrawals under section 4063 of ERISA, the penalty generally assessed is $1,000 per day, and the penalty amount is not subject to reduction under § 4071.11(d).

§ 4071.14 Premium information requirements.

In assessing information penalties for noncompliance with premium-related information submission requirements under part 4007 of this chapter, PBGC is guided by the standards in § 4071.11(c), and the penalty amount is subject to reduction as provided in § 4071.11(d).

§ 4071.15 Plan termination information requirements.

(a) *In general.* (1) In assessing penalties for noncompliance with information requirements under part 4041 of this chapter, PBGC is guided by the standards in this section.

(2) PBGC generally does not assess an information penalty for noncompliance with filing and issuance requirements in connection with a plan termination under section 4041 of ERISA if PBGC nullifies the termination.

(b) *Standard terminations.* For information requirements under subpart B of part 4041 of this chapter, PBGC is guided by the standards in § 4071.11(c) and the penalty amount is subject to reduction as provided in § 4071.11(d), except with respect to penalty amounts as follows—

(1) If a post-distribution certification has not been filed in accordance with § 4041.29 of this chapter, the information penalty generally assessed is not more than $100 times the number of distributees.

(2) If a standard termination notice has not been filed before the distribution of benefit liabilities in accordance with § 4041.25 of this chapter, the information penalty generally assessed is $50 per day for the first 90 days late and $100 per day thereafter, and for under 100 participants, the penalty amount is subject to reduction as provided in § 4071.11(d) and is not more than 5 percent of the value of benefits distributed at plan termination.

(3) If a notice of intent to terminate has not been issued in accordance with § 4041.23 of this chapter, the information penalty generally is not assessed for any period after distribution of benefits has begun.

(4) If a notice of plan benefits has not been issued in accordance with § 4041.24 of this chapter, the information penalty generally assessed is not more than $100 times the number of participants.

(c) *Distress terminations.* For information requirements under subpart C of part 4041 of this chapter, PBGC is guided by the standards in § 4071.11(c), and the penalty amount is subject to reduction as provided in § 4071.11(d).

§ 4071.16 Annual financial and actuarial information reporting.

(a) In assessing penalties for noncompliance with reporting requirements under part 4010 of this chapter, PBGC is guided by the standards in this section.

(b) Except as provided in paragraph (c) of this section, for information requirements under part 4010 of this chapter, the penalty generally assessed is $100 per day.

(c) For information requirements under § 4010.6(a)(2), PBGC is guided by the standards in § 4071.11(c), and the penalty amount is not subject to reduction under § 4071.11(d).

Subpart D—Waivers

§ 4071.21 Waivers.

(a) *Waivers are discretionary.* PBGC waives all or a portion of information penalties to the extent that PBGC, in its discretion, determines is appropriate under the facts and circumstances of each case.

(b) *Waiver principles.* In exercising its discretion to waive information penalties, PBGC is guided by the provisions of §§ 4071.22–4071.26 for waiver of information penalties and § 4071.27 for aggravating factors. The principles in §§ 4071.22–4071.26 make it more likely that a penalty will be waived and tend to decrease the amount of any penalty, and the principles in § 4071.27 make it less likely that a penalty will be waived and tend to increase the amount of any penalty.

(c) *Consistency.* In exercising its discretion to waive information penalties, PBGC is consistent in its treatment of similar facts and circumstances.

§ 4071.22 Reasonable cause.

(a) *In general.* PBGC generally waives information penalties to the extent that PBGC determines that noncompliance was due to reasonable cause, that is—

(1) The noncompliance arose from circumstances beyond the control of the filer, and

(2) The filer could not avoid noncompliance by the exercise of ordinary business care and prudence.

(b) *Outside advisors.* In determining to what extent there was reasonable cause, PBGC generally treats outside advisors as part of the filer.

(c) *Size of filer.* In determining whether ordinary business care and prudence was exercised, PBGC recognizes that the size of the organization may affect what ordinary business care and prudence would require.

(d) *Seriousness of matter.* In determining whether ordinary business care and prudence was exercised, PBGC recognizes that the importance of a matter generally influences the degree of business care and prudence appropriate to attending to the matter.

§ 4071.23 Error of law.

(a) *Erroneous interpretation.* PBGC generally waives information penalties to the extent that PBGC determines that noncompliance was due to reasonable reliance on an erroneous interpretation of law if either—

(1) The interpretation was not frivolous and was timely disclosed to PBGC, or

(2) The interpretation was supported by substantial weight of authority.

(b) *Change in law.* PBGC generally waives information penalties to the extent that PBGC determines that noncompliance was due to excusable ignorance of a recent change in the law, if—

(1) The filer's behavior would have been compliant under the law before the change,

(2) The change was very recent,

(3) The change received little notice, and

(4) The change was technical.

§ 4071.24 PBGC delay.

PBGC generally waives information penalties to the extent that PBGC determines that noncompliance was due to PBGC delay in considering non-frivolous arguments of the filer about the applicability of a statutory or regulatory requirement to provide section 4071 information.

§ 4071.25 Mitigating factors.

(a) *In general.* In deciding whether to waive an information penalty, PBGC may consider the mitigating factors in this section.

(b) *Self-correction.* It is a mitigating factor if the filer—

(1) Promptly, upon discovery, corrected the noncompliance, and

(2) Notified PBGC of the noncompliance before PBGC notified the filer of possible noncompliance.

(c) *Preventive measures.* It is a mitigating factor if the filer cooperates with PBGC in taking steps to ensure future compliance.

(d) *Identical information requirements.* PBGC generally treats noncompliance with a requirement to provide multiple persons with notices that contain identical information requirements as a single incidence of noncompliance.

§ 4071.26 Other circumstances.

PBGC may waive information penalties in other circumstances if PBGC determines that it is appropriate to do so.

§ 4071.27 Aggravating factors.

(a) *In general.* PBGC generally does not waive information penalties and may assess a penalty as much as the maximum daily amount specified in § 4071.3 when any of the aggravating factors in this section are applicable.

(b) *Potential for harm.* Noncompliance has the potential for significantly more harm than is typically associated with noncompliance with information requirements, whether or not any harm is in fact caused.

(c) *Repeat offender.* The filer has a previous instance of noncompliance with respect to an information requirement subject to section 4071 of ERISA that applied to the filer.

(d) *Willfulness.* An instance of noncompliance is conscious and purposeful rather than inadvertent and accidental.

2. Revise part 4302 to read as follows:

PART 4302—PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER NOTICES

4302.26 Other circumstances.

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.

Subpart A—Purpose and Definitions

§ 4302.1 Purpose and scope.

This part specifies the penalty amounts that may be assessed by PBGC under section 4302 of ERISA for failure to provide certain notices required for multiemployer plans.

§ 4302.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: ERISA and PBGC. In addition, for purposes of this part:

Filer means a person required to timely provide section 4302 information.

Information penalty means a penalty under section 4302 of ERISA for failure to timely provide section 4302 information.

Noncompliance means failure to timely provide section 4302 information.

Section 4302 information means any multiemployer notice to which section 4302 of ERISA applies.

§ 4302.3 Maximum daily amount.

The maximum daily amount of the penalty under section 4302 of ERISA is $365. Such amount has been adjusted to account for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, and as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

Subpart B—Opportunity for Reconsideration

§ 4302.5 Reconsideration.

As permitted by § 4003.1(c)(1) of this chapter, PBGC allows a person aggrieved by an initial determination with respect to penalties under section 4302 of ERISA to request reconsideration in accordance with the rules prescribed in subpart C of part 4003 of this chapter.

Subpart C—Assessment Rules

§ 4302.11 General assessment.

(a) *Assessment is discretionary.* PBGC generally assesses information penalties under this subpart in such amounts as PBGC, in its discretion, determines are appropriate under the facts and circumstances of each case.

(b) *Assessment principles.* In exercising its discretion to assess information penalties, PBGC considers the penalty waiver principles in subpart D of this part and is consistent in its treatment of similar facts and circumstances.

(c) *Daily amount.* Information penalties are generally the maximum daily amount specified in § 4302.3 for each day late.

Subpart D—Waivers

§ 4302.21 Waivers.

(a) *Waivers are discretionary.* PBGC waives all or a portion of information penalties to the extent that PBGC in its discretion determines is appropriate under the facts and circumstances of each case.

(b) *Waiver principles.* In exercising its discretion to waive information penalties, PBGC is guided by the provisions of §§ 4302.22–4302.26 for waiver of information penalties, and the principles in §§ 4302.22–4302.25 make it more likely that a penalty will be waived and tend to decrease the amount of any penalty.

(c) *Consistency.* In exercising its discretion to waive information penalties, PBGC is consistent in its treatment of similar facts and circumstances.

§ 4302.22 Reasonable cause.

(a) *In general.* PBGC generally waives information penalties to the extent that PBGC determines that noncompliance was due to reasonable cause, that is—

(1) The noncompliance arose from circumstances beyond the control of the filer, and

(2) The filer could not avoid noncompliance by the exercise of ordinary business care and prudence.

(b) *Outside advisors.* In determining to what extent there was reasonable cause, PBGC generally treats outside advisors as part of the filer.

(c) *Size of filer.* In determining whether ordinary business care and prudence was exercised, PBGC recognizes that the size of the organization may affect what ordinary business care and prudence would require.

(d) *Seriousness of matter.* In determining whether ordinary business care and prudence was exercised, PBGC recognizes that the importance of a matter generally influences the degree of business care and prudence appropriate to attending to the matter.

§ 4302.23 Error of law.

(a) *Erroneous interpretation.* PBGC generally waives information penalties to the extent that PBGC determines that noncompliance was due to reasonable reliance on an erroneous interpretation of law if either—

(1) The interpretation was not frivolous and was timely disclosed to PBGC, or

(2) The interpretation was supported by substantial weight of authority.

(b) *Change in law.* PBGC generally waives information penalties to the extent that PBGC determines that noncompliance was due to excusable ignorance of a recent change in the law, if—

(1) The filer's behavior would have been compliant under the law before the change,

(2) The change was very recent,

(3) The change received little notice, and

(4) The change was technical.

§ 4302.24 PBGC delay.

PBGC generally waives information penalties to the extent that PBGC determines that noncompliance was due to PBGC delay in considering non-frivolous arguments of the filer about the applicability of a statutory or regulatory requirement to provide section 4302 information.

§ 4302.25 Mitigating factors.

(a) *In general.* In deciding whether to waive an information penalty, PBGC may consider the mitigating factors in this section.

(b) *Self-correction.* It is a mitigating factor if the filer—

(1) Promptly upon discovery corrected the noncompliance, and

(2) Notified PBGC of the noncompliance before PBGC notified the filer of possible noncompliance.

(c) *Preventive measures.* It is a mitigating factor if the filer cooperates with PBGC in taking steps to ensure future compliance.

(d) *Identical information requirements.* PBGC generally treats noncompliance with a requirement to provide multiple persons with notices that contain identical information requirements as a single incidence of noncompliance.

§ 4302.26 Other circumstances.

PBGC may waive information penalties in other circumstances if PBGC determines that it is appropriate to do so.

§ 4302.27 Aggravating factors.

(a) *In general.* PBGC generally does not waive information penalties when any of the aggravating factors in this section are applicable.

(b) *Potential for harm.* Noncompliance has the potential for significantly more harm than is typically associated with noncompliance with information requirements, whether or not any harm is in fact caused.

(c) *Repeat offender.* The filer has a previous instance of noncompliance with respect to an information requirement subject to section 4302 of ERISA that applied to the filer.

(d) *Willfulness.* An instance of noncompliance is conscious and purposeful rather than inadvertent and accidental.

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