

>From: kheck73@aol.com[SMTP:KHECK73@AOL.COM]
>Sent: Saturday, May 15, 2004 2:12:33 AM
>To: RegComments
>Subject: Assessment of and Relief from Penalties -- Participant Notices

Name: Karl Heck

[NON-COMMENT INFORMATION REDACTED]

My comment on your change in penalties:

I see now by the modification of the penalty law that enough companies must have taken advantage of this golden goose to lobby for reduction in penalties. Companies can make more money by screwing people out of their pensions and dumping it on the PBGC. If PBGC can't afford it, then taxpayers will pay, which means I will be paying taxes for my own pension that I already worked for. If this change reduces penalties for non-complying companies, I am fully against it.

Sincerely, Karl Heck.

>From: nanapap@zoomnet.net[SMTP:NANAPAP@ZOOMNET.NET]
>Sent: Wednesday, June 09, 2004 10:27:15 AM
>To: RegComments
>Subject: Assessment of and Relief from Penalties -- Participant Notices

Name: larry mabry

Comment: I think there should be very strick rule for companies who fail to pay into the retirement plans as required. I myself am a victim of a corrupt company not supporting the pension plan and the court went along with the company therefore I now draw 2/3 of the pensions I should be recieving. Only about 5 years ago when the co. was owned by Inco Alloys it was overfunded but only after 3 years of ownership by Special Metals it was underfunded. I can't help but wonder where all the money went at the retirees expense and no one really cares about us, the retired men and women who worked the biggest part of their lives for the company.

>From: wpitio@amre.com[SMTP:WPITIO@AMRE.COM]
>Sent: Friday, June 11, 2004 9:11:05 AM
>To: RegComments
>Subject: Assessment of and Relief from Penalties -- Participant Notices

Name: Walter Pitio

Comment: So you impose a penalty on companies that fail to inform workers or retirees when their pension plans are underfunded. How does that help the worker or retiree? Why not pump those penalties back into the pension fund rather than into the Government?

>From: dwhittington@winco.net[SMTP:DWHITTINGTON@WINCO.NET]
>Sent: Saturday, June 12, 2004 9:11:24 AM
>To: RegComments
>Subject: Assessment of and Relief from Penalties -- Participant Notices

Name: Dick Whittington

Comment: I believe that whatever it takes to get pensions fully funded MUST be done. otherwise the taxpayer will be footing the bill that the co. misshandled! Let's have no less than 90% funding on pensions that workers have helped fund as part of their benefits package. It was really their investment anyway!

>From: rogcar@att.net[SMTP:ROGCAR@ATT.NET]
>Sent: Saturday, June 12, 2004 12:43:08 PM
>To: RegComments
>Subject: Assessment of and Relief from Penalties -- Participant Notices

Name: Carol E. Ramsey

Comment: The way I see it, these "administrators" are being paid, probably from funds generated by MY pension money....why shouldn't they be punished for not following the rules; I would be. And why not issue a rule to eliminate giving these non compliant people bonuses; then say there aren't enough funds (or won't be enough) for our pensions, when we are the ones WORKING for the money and we sure don't get any bonuses. This really is irritating me no end. I just want them to do their jobs, administer the pension funds, and NO PERKS!!!!!!

>From: jjacobson@abcstaff.org[SMTP:JJACOBSON@ABCSTAFF.ORG]
>Sent: Thursday, July 01, 2004 12:00:09 PM
>To: RegComments
>Subject: Assessment of and Relief from Penalties -- Participant Notices

Name: James A. Klein
Organization: American Benefits Council
1212 New York Avenue NW Suite 1250
Washington, DC 20005

Comment:

July 1, 2004

VIA EMAIL

Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, DC 20005-4026

Re: Comment letter on proposed new penalty structure for failure to issue participant notices required under Section 4011 of ERISA

Dear PBGC:

The American Benefits Council (the Council) appreciates the opportunity to comment on the proposed new penalty structure for failure to issue participant notices required under Section 4011 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and would like to commend the Pension Benefit Guaranty Corporation (PBGC) for its efforts to ensure that the penalty corresponds to the significance of the failure in order to be more effective. However, the Council is concerned that basing the penalty on the number of participants in a plan without any allowances for inadvertent errors (that do not qualify for a reasonable cause waiver) or comparisons to the variable rate premiums (VRP) actually owed by the plan would result in onerous penalties for many large plans.

The Council is a public policy organization dedicated to the employee benefit plan system, representing sponsors of retirement and health plans and service providers to those plans. Collectively, the Council's members help provide benefits to more than 100 million participants. Many of our members are sponsors of large plans and the Council appreciates the opportunity to make their concerns known to the PBGC.

A penalty based on the number of participants in a plan with no caps or other limitations could be particularly onerous for large plan sponsors. Under the proposed rule, a large plan sponsor could face a multi-million dollar penalty for failure to provide the notices when the VRP for the time period was only \$1,000. Another inadvertent failure could be caused by a change in personnel that results in the responsibility falling on someone who is not aware of the problem until it is too late. In addition, a computer problem could result in notices not being sent to one of the company's divisions. Many of these inadvertent errors may not qualify for the reasonable cause waiver, but could result in substantial fees for a large plan (especially if they are not discovered until the plan is audited).

The Council suggests that the PBGC consider several additions to the proposed rule:

- A cap on the penalty equal to the lesser of the VRP or \$500,000 (with no cap for willful violations) (this proposed cap borrows from the limitation on penalties for COBRA violations under Internal Revenue Code Section 4980B);
- In lieu of a cap, a graduated scale of penalties that increases with the number of participants on a sliding scale but not in direct proportion to the number of participants (similar to the graded scale used by the IRS in Section 12.02(1) of its Voluntary Compliance Program, Rev. Proc. 2003-44);
- If the failure is simply due to an error in calculation, a grace period (after discovery) during which the plan can provide the notices without facing a penalty (in many instances, the plan administrator would already face a penalty for late payment of premiums because of the error).

The Council would also like to briefly comment on the participant notice Voluntary Correction Program issued simultaneously with the proposed new structure. While the Council appreciates the PBGC's efforts through the VCP program to recognize the difficult VRP calculation and participant notice structure that plan sponsors grappled with in 2002 and 2003, we do not think the program goes far enough. As you know, a different interest rate was applied in those years to determine whether a VRP or participant notice was required. Although that issue was alleviated in 2004 by the Pension Funding Equity Act of 2004, plan sponsors should not be penalized for confusing inconsistency. The Council requests that the PBGC consider waiving the notice requirement for plans that, because of the interest rate difference, were required to provide participant notices even though no VRP was required.

Finally, the Council requests that the PBGC reopen the penalty policy and provide further clarification on what constitutes "reasonable cause" for purposes of waiving the penalty and guidelines for waiving or reducing the penalties. The Council understands that the PBGC did not receive comments on this the last time the policy was revised in 2001. Unfortunately, this is probably an acknowledgement that the previous penalty structure was not significant enough for large plans to warrant that level of attention. With the new penalty structure and potential penalties in the hundreds of thousands if not millions of dollars for inadvertent errors, Council members would like the opportunity to provide input to the PBGC on these issues.

Thank you again for the opportunity to provide comments on these new proposals. We believe the Council is uniquely situated to provide useful feedback to the PBGC. If we can assist further, please contact Jan Jacobson, director, retirement policy, of the American Benefits Council.

Sincerely
James Klein

>From: amrosen@cox.net[SMTP:AMROSEN@COX.NET]
>Sent: Friday, July 02, 2004 11:58:07 PM
>To: RegComments
>Subject: Assessment of and Relief from Penalties -- Participant Notices

Name: Arthur Rosen

Comment: PBGC is closing the door after the horses get out of the barn. Why a penalty after the fact; don't let them underfund, period. An example of what I am saying is: You allowed the Polaroid Company to give many fat "lump sum" payments to employees which then caused the pension fund to be under-funded which then caused the PBGC to take over Polaroid's pension which then made the taxpayers pay the remaining pensions. YOU SHOULD HAVE STOPPED POLAROID FROM ANY LUMP SUM PAYMENTS THAT CAUSED THEM TO BECOME UNDERFUNDED. If your answer is that is the law, then get up to Congress and inform them. If they don't listen, go to the newspapers.



July 6, 2004

Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, DC 20005

To Whom This May Concern:

This letter is in response to PBGC's proposed statement of policy revising the method used for assessing penalties when plan administrators fail to notify participants of their pension's underfunded status. The proposed policy would change the existing fee structure from a per-day penalty to a per-participant penalty and would continue the current policy of allowing case by case consideration to ensure that the penalty fits the violation.

AARP is a nonprofit membership organization of more than 35 million persons age 50 or older, dedicated to addressing the needs and interests of older Americans. AARP publications – the Bulletin, AARP The Magazine – reach more households than any other publication in the United States. Approximately 45% of AARP's members are working. AARP fosters the economic security of individuals as they age by seeking to increase the availability, security, equity, and adequacy of pension benefits. AARP and its members have a substantial interest in ensuring that plan participants receive timely notice of their pension's underfunded status. This information will allow participants to factor in the financial health of their pension when planning for retirement.

AARP supports the PBGC's proposed change in penalty structure. A per-participant fine is likely to result in greater compliance because the consequences for violations of the notice requirement would be more serious than a per-day fine. Moreover, the change in penalty structure would have the greatest impact on larger plans where the effects of underfunding could be more significant.

AARP suggests that the PBGC consider drafting a set of guidelines or model language for plans to use in providing notice of underfunded status. Guidelines should include a requirement that the information be understandable by average plan participants and be provided in a balanced way. Participants should have adequate accurate information to comprehend the financial status of their pensions. Objective, commonsense standards or model language could make it easier for plans to provide clear and accurate information to participants without unduly alarming participants.

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AARP also suggests that the PBGC consider providing for additional penalties for egregious failure to notify participants of the plan's financial status. Examples of what should be considered egregious include intentional failure to provide a funding status notice and the lateness of the notice. By imposing greater penalties for flagrant violations, plan administrators would be deterred from paying a fine that they may consider less burdensome than the expected consequences of providing notice. The PBGC might consider requiring the plan sponsor to notify participants not only about the pension's underfunded status but also that it failed to notify participants on time and had to pay a fine for noncompliance. The PBGC could go a step further and provide that it would give participants notice of the underfunding and fine because of the deliberate failure by the plan to do so.

Thank you for the opportunity to comment on the proposed policy change. If you have any questions, please do not hesitate to contact me or Amy Shannon of our Federal Affairs staff at 202/434-3760.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Director
Federal Affairs