AMERICAN BENEFITS COUNCIL

September 21, 2026

Submitted electronically via www.regulations.gov

Legislative and Regulatory Division
Office of General Counsel
Pension Benefit Guaranty Corporation
445 12th Street SW
Washington, DC 20024-2101

Re: RIN 1212-AB50—Penalties for Failure to Provide Certain Notices or Other Material Information

Dear Sir or Madam:

The American Benefits Council ("the Council") appreciates the opportunity to comment on the Pension Benefit Guaranty Corporation's (PBGC) proposed rule concerning penalties for failure to provide certain notices or other material information under sections 4071 and 4302 of the Employee Retirement Income Security Act of 1974, as amended (ERISA).

The Council is a Washington D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

The Council supports PBGC's effort to replace its existing penalty policies with a regulatory framework that provides greater transparency, consistency, and predictability. We also support PBGC's decision generally to retain general Section 4071 penalty amounts substantially below the statutory maximum and to recognize circumstances in which penalties should be waived or reduced.

At the same time, the final rule should do more to ensure that penalties (1) are reasonable and not punitive, and (2) support, rather than undermine, defined benefit plan maintenance. We are concerned that, in some cases, the proposed structure could be viewed as punitive, which would undermine our joint efforts to preserve and strengthen the defined benefit plan system. Penalties intended to promote compliance should not operate in a manner that unnecessarily punishes inadvertent violations or produces assessments disproportionate to the conduct involved or the harm or risk created.

Our principal recommendations are set forth below.

Outside-advisor errors should be evaluated in light of the filer's own conduct.

Employers and plan administrators necessarily depend upon lawyers, actuaries, consultants, recordkeepers, and other professionals to comply with PBGC's highly technical reporting requirements, including in determining whether a filing is required at all. For example, in determining whether a reportable event has occurred, plan sponsors rely on outside experts and generally do not have the expertise to even know that one may have occurred.

In this context, we urge PBGC to reconsider the proposed rule that "[i]n determining to what extent there was reasonable cause, PBGC generally treats outside advisors as part of the filer" and the following statement in the preamble: "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."

For example, assume that an employer carefully selected and monitored an advisor, and the advisor has a history of excellent compliance and advice. But the advisor inadvertently makes an error, such as entering the wrong plan number in a timely filing or not aggregating events that together constitute a reportable event. It seems punitive to say that that plan sponsor should be subject to a penalty.

The Council agrees that retaining an outside advisor should not relieve a filer of its underlying legal responsibility. Nor should an advisor's mistake automatically establish reasonable cause. But PBGC should distinguish between (1) a filer that exercised ordinary business care and prudence and experienced an isolated professional error by a very compliant advisor, and (2) a filer that failed to exercise reasonable care in selecting, instructing, supplying information to, or overseeing its advisor.

Where the filer selected and monitored a qualified advisor, timely supplied necessary information, reasonably communicated and monitored responsibilities, appropriately responded to warning signs, and acted promptly after discovering the problem, the noncompliance that resulted solely from the advisor's error should not trigger a penalty.

Absence of actual or reasonably expected harm should be an express mitigating consideration, including triggering only a warning in appropriate circumstances.

The proposal recognizes unusually high potential for harm as an aggravating factor. The final rule should likewise recognize the demonstrated absence of actual or reasonably expected material harm as a mitigating consideration.

PBGC need not establish actual harm in order to find a reporting violation. But where a violation caused no material harm, created no reasonably foreseeable risk of material harm during the period of noncompliance, did not deprive PBGC or participants of a meaningful opportunity to act, and left no material continuing risk after correction, those circumstances should bear directly on whether any monetary penalty is appropriate.

Specifically, the Council recommends a rebuttable presumption that an inadvertent violation should result in a written warning rather than a monetary penalty where there was no material actual or reasonably expected harm, the filer promptly corrected the violation after discovery, cooperated with PBGC, and implemented appropriate preventive measures. Such an approach would not diminish the importance of compliance. To the contrary, it would give filers a strong incentive to identify problems, disclose them, correct them promptly, and improve their procedures.

And in evaluating harm, PBGC's very large surplus should be taken into account as a powerful mitigating factor. For example, assume that a plan with $100 million of liabilities is 95% funded on a termination basis. Assume further that that plan fails to timely report a reportable event. In the worst case scenario, that exposes PBGC to $5 million of liability, which is .008% of PBGC's surplus of $62.2 billion.

Daily penalty accrual should remain proportionate.

The number of days a filing is late is relevant, but elapsed time alone is not an adequate measure of the seriousness of a violation. A filing that is a year late is not necessarily twelve times as serious as one that is a month late, particularly where the violation was inadvertent and caused no material harm or meaningful risk. In other words, if a circumstance or issue was just missed despite a robust compliance process, the fact that the circumstance or issue was not subsequently identified should not give rise to exponentially higher penalties. For example:

- Often, the sponsor/advisor may carry on for some period without being aware of the failure to file, particularly with reportable events. For example, a plan sponsor intends to sign a funding balance application for a quarterly contribution obligation, but the plan sponsor inadvertently forgets to sign or send it, and that failure is not discovered until the next quarterly contribution is due. The plan sponsor may now be viewed as late on a Form 200 and not have realized it while accruing meaningful penalties, even if the plan sponsor corrects the situation as soon as it is uncovered.

- Another situation could involve filing waivers. For example, assume that a plan sponsor, in good faith (which is documented internally), believes that it qualifies for a filing waiver but later determines that it did not satisfy the requirements for such a waiver, either through its own review or questions from PBGC. This realization could happen a long period after the filing would have initially been due.

- A plan sponsor intends to timely make its minimum required contribution (MRC), but for some reason, this did not occur — *e.g.*, wire instructions to the trustee weren't totally correct, so the trustee rejected the wire. In that situation, the plan sponsor might need to reallocate a prior quarterly contribution to cover the otherwise missed MRC. In this case, the timing for reporting for the late quarterly contribution in that situation should be triggered by the final MRC due date, and not the due date for the quarterly that would now retroactively be considered "late." If not, this is another example of how a penalty for the length of a filing failure should be proportionate.

The Council therefore recommends that PBGC establish reasonable presumptive limits on the number of penalty days for ordinary, non-willful violations, or adopt a graduated structure under which the rate of accrual diminishes or ceases after appropriate periods. PBGC could retain authority to depart from those presumptions where willfulness, repeated disregard after notice, unusual potential for harm or other significant aggravating circumstances are present.

This would preserve meaningful consequences for lengthy delinquencies without permitting elapsed time by itself to produce a penalty disproportionate to the underlying conduct.

The final rule should strengthen incentives for self-correction and recognize additional mitigating factors.

The final rule should make clear that a filer can obtain meaningful self-correction credit by promptly notifying PBGC that it has discovered apparent noncompliance even though the filer reasonably needs additional time to investigate the matter, determine the appropriate corrective action, and complete that action.

The rules also should recognize as mitigating considerations a filer's reasonable preexisting compliance procedures, adherence to those procedures, and strong prior compliance history. An organization that has invested in reasonable compliance systems and has generally complied with PBGC requirements should not necessarily be treated in the same manner as one that lacks meaningful controls or has a history of recurring failures.

PBGC should preserve broad small-plan and overall penalty relief.

Small plans generally have fewer administrative resources available to address increasingly complex reporting requirements. The proportionate reductions in the proposal are not consistent with this point. For example, under the proposal, a 90-participant plan should not have a penalty that is 90% of the penalty borne by a 50,000-participant plan. That is not proportionality. Instead, PBGC should broadly preserve the proportional small-plan relief reflected in its existing penalty policy rather than limit that relief to selected information requirements.

The Council also recommends that PBGC limit the total penalty for a violation to $100 multiplied by the number of plan participants, subject to appropriate exceptions or departures where the particular facts and circumstances warrant different treatment. This general limitation appropriately recognizes proportionality for both small and larger plans.

Related deficiencies should not automatically produce multiple penalties.

A single programming error, mailing error, template problem, data-extraction error or other common operational failure can produce deficiencies affecting multiple recipients, plans, controlled-group members, or data elements. The number of persons or data elements affected should not, standing alone, determine the number of separately penalized violations.

PBGC should consider whether deficiencies arose contemporaneously from a common underlying act or omission, involved substantially the same information, required separate corrective action, and created genuinely distinct risks. Substantially identical deficiencies resulting from a single contemporaneous error ordinarily should be treated as a single incidence of noncompliance.

Similarly, a request by PBGC for clarification or nonmaterial supplemental information should not itself convert an otherwise timely and materially sufficient submission into a delinquent filing.

Aggravating factors should be applied carefully and without double counting.

Where PBGC has established a higher base penalty for a particular category of information requirement because of its ordinary importance, urgency or potential for harm, those same characteristics should not be used again as an aggravating factor to increase the penalty unless they are present to a materially greater degree in the particular case.

Likewise, repeat-offender treatment should be reserved for a meaningful pattern of relevant noncompliance rather than an isolated and remote prior error. Willfulness should continue to require conscious and purposeful noncompliance rather than mere negligence, inadvertence or a reasonable misunderstanding of a complex reporting obligation.

When aggravating factors produce a material upward departure from the otherwise applicable penalty, PBGC should briefly identify the factor, the principal supporting facts and the reason an upward departure is warranted.

Part 4302 notice and cure should be expressly codified.

PBGC explains in the preamble that it historically has relied upon notice and voluntary compliance for filings under the multiemployer plan insolvency insurance program and generally intends to continue doing so. That practice is particularly important because the proposal generally contemplates assessment of the statutory maximum once a Part 4302 violation becomes subject to penalty.

The final regulation itself therefore should provide that, absent circumstances warranting different treatment, PBGC generally will notify a filer of apparent noncompliance and provide a reasonable opportunity to cure before assessing a Part 4302 information penalty. A filer that timely cures following PBGC notice ordinarily should not be assessed a monetary penalty, and a filer that independently discovers and corrects a failure should receive treatment at least as favorable.

The final rule should provide clear and fair transition rules.

The final rule should clearly address violations occurring before its effective date and violations that begin before and continue after that date. Newly specified higher penalty amounts should apply only to acts of noncompliance first occurring on or after the effective date.

In particular, PBGC should not use the final rule to impose newly stated harsher consequences for pre-effective date conduct that occurred while applicable PBGC non-enforcement practices or lower penalty regimes were in place. Clear prospective transition rules are important both as a matter of fairness and to give the regulated community adequate notice of the consequences of future noncompliance.

The Council notes that, on September 17, 2026, The Wagner Law Group submitted a comment letter addressing this proposed rule. We have reviewed that submission, which addresses many of the above issues, and believe it deserves careful consideration by PBGC.

CONCLUSION

The Council supports PBGC's effort to establish a transparent and predictable regulatory framework for information penalties. The ultimate objective of that framework should be compliance—not punishment for its own sake. A penalty system best advances that objective when it distinguishes between knowing or serious misconduct and inadvertent errors, recognizes prompt disclosure and correction, takes account of actual or reasonably expected harm and produces assessments proportionate to the particular violation. We therefore urge PBGC to revise the final rule along the lines described above.

The Council appreciates PBGC's consideration of these comments and would welcome the opportunity to discuss these issues with the agency.

Sincerely,

Lynn D Dudley

Lynn Dudley
Senior Vice President, Global Retirement & Compensation Policy