AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

September 21, 2026

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

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

The American Retirement Association ("ARA") is writing in response to the proposed rule on penalties for failure to provide certain notices or other material information published in the Federal Register on July 21, 2026 (the "Proposed Rule").[1] ARA thanks the Pension Benefit Guaranty Corporation ("PBGC") for the opportunity to provide input on these matters.

ARA is a national organization of over 40,000 members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines, including financial advisors, consultants, administrators, actuaries, accountants, and attorneys. ARA is the coordinating entity for its five underlying affiliate organizations, representing the full spectrum of America's private retirement system: the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's membership is diverse but united in a common dedication to America's employer-based retirement plan system.

Summary

ARA appreciates PBGC's stated intent in the Proposed Rule to codify existing policies and not increase penalties. Additionally, ARA agrees that penalties should reflect the severity and potential harm of a violation and appreciates the proposed rule's recognition that small plans have unique resource limitations that warrant proportional treatment. To further align the Proposed Rule with this intent, ARA recommends that PBGC revise the Proposed Rule as follows:

- Establish a hard cap for late Category 2 reportable event filings based on participant count for plans with fewer than 100 participants.
- Provide a streamlined filing pathway, staged submission process, or reduced supporting-information requirement for lower-risk small plans filing Form 10.
- Establish a self-correction period of longer than 30 days and define timely self-correction by reference to prompt action after discovery.
- Provide an automatic waiver or rebuttable presumption in favor of waiver for first-time offenders where the violation is inadvertent and promptly corrected.
- Permit penalty-free correction when PBGC identifies a missed filing and the filer corrects it within a stated cure period.

[1] Penalties for Failure to Provide Certain Notices or Other Material Information, 91 Fed. Reg. 45739 (July 21, 2026).

Discussion

The Proposed Rule would supersede PBGC's 1995 Policy[2] on penalties, including the participant-based caps and other limitations on penalties under that policy, and would codify standards for assessing and waiving penalties for failures to provide required notices or other material information. PBGC stated that the Proposed Rule is intended to improve transparency and compliance, rather than to increase penalty collections.

ARA supports timely compliance and recognizes PBGC's need for information that meaningfully protects participants and the insurance program. As PBGC finalizes the Proposed Rule, ARA urges particular attention to the potential impact on small defined benefit plans.

ARA members work directly with employers of all sizes across the employer-based retirement system, and ASEA members represent a significant portion of the defined benefit plans sponsored by small employers and regularly provide support related to Form 10 compliance, minimum funding obligations, and the information needed to complete reportable-event filings.

Small plan sponsors often rely heavily on outside advisors for actuarial, administrative, and compliance support, and they may not have dedicated internal benefits staff, nor ready access to all controlled-group financial information. For example, small businesses may not have a reason to regularly produce quarterly financial statements that are routine for larger businesses. Additionally, fewer employees in a small business means that turnover can dramatically affect the continuity of institutional knowledge needed to efficiently compile the information required for a filing. For these and other reasons, small plan sponsors may not have all the information necessary for a Form 10 filing readily available.

The required information can be burdensome and time-consuming for small employers to assemble, and, while advisors may make every effort to facilitate timely filing, delays often occur because necessary information must be compiled from external sources. Specifically, the Form 10 filing requires financial statements (or tax returns) from all controlled group members, controlled group structure illustrations, plan lists and month-end market values, and multiple assessments and reports from the actuary. Many of these items are either not part of regular plan administration and/or not yet available because of the timing of tax return preparation or the annual valuation cycle.[3] All of this information must be assembled within 30 days after the plan administrator or contributing sponsor knows or has reason to know of the reportable event. For a small plan sponsor without dedicated compliance staff, this is a significant burden. As a result, a missed or late filing for small plans may reflect practical limitations in identifying, gathering, or generating required information rather than a disregard for PBGC's reporting rules.

Additionally, small plans covered by PBGC present materially different risks to PBGC than larger plans. Not only is the size of the potential liability smaller, but many plans have a majority owner that forgoes benefits in the event of an underfunded termination—further reducing the risk to PBGC.

ARA suggests that PBGC make several revisions to reflect these considerations that apply to small plan sponsors so that PBGC's objectives can be met in a manner that is proportional, administrable, and responsive to the practical realities of small plans.

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[2] Assessment of Penalties for Failure to Provide Required Information, 60 Fed. Reg. 36837 (July 18, 1995), *available at* https://www.govinfo.gov/content/pkg/FR-1995-07-18/pdf/95-17629.pdf.

[3] *See* Post-Event Notice of Reportable Events (Form 10 Instructions), Pension Benefit Guaranty Corp. (2024), https://www.pbgc.gov/sites/default/files/documents/2024-form-10-instructions.pdf.

I. Hard Cap on Penalties for Small Plans

ARA recommends that PBGC restore the hard cap based on participant count for plans with fewer than 100 participants contained in the 1995 Policy. The Proposed Rule's proportional reduction, while well-intentioned, does not fully protect small plans.

For example, under the Proposed Rule, failure to make a required minimum funding payment is classified as a Category 2 reportable event with a proposed penalty of $100 per day, proportionately reduced for plans with fewer than 100 participants but subject to a $25-per-day floor. This daily floor still permits penalties to accumulate indefinitely and can yield a penalty disproportionate to the violation, the plan's size, the amount of the missed contribution, and the risk to PBGC.

This recommendation to establish a cap based on participants is consistent with PBGC's stated intent to not increase penalties from the 1995 Policy and also is consistent with other PBGC penalties, such as PBGC's proposed standard-termination rules that expressly cap certain penalties at $100 times the number of distributees or participants, and cap the penalty for an untimely standard termination notice for a plan with fewer than 100 participants at 5% of the value of benefits distributed at plan termination. ARA agrees with PBGC's recognition that caps may be needed to prevent unduly harsh penalties, particularly for small businesses, and recommends taking a similar approach for reportable events.

Additionally, because small plans present lower risk to PBGC, adopting the hard cap on penalties for small plans will align the rule with PBGC's stated principle that penalties should reflect the severity and potential harm of a violation and would be consistent with PBGC's stated intent to codify existing rules rather than increase penalties.

II. Streamlined Form 10 Filing for Small Plans

ARA recommends that PBGC balance the need for timely reporting and the practical realities of filing for small businesses by establishing a streamlined filing pathway, staged submission process, or reduced supporting-information requirement for lower-risk small plans filing under part 4043 of PBGC's regulations.

Specifically, ARA recommends allowing the initial notice to be timely filed with essential information—such as identifying information, a description of the event, and the date and amount of the missed contribution—followed by remaining supporting materials (e.g., audited or unaudited financial statements, actuarial information, and controlled group details) within a reasonable supplemental period. This staged approach would allow PBGC to receive timely notice of the event itself while recognizing that the supporting documentation may take longer to compile for small plans that must obtain financial statements from their sponsors or actuarial information from outside advisors.

III. Self-Correction Expansion

ARA recommends that PBGC establish a correction period of longer than 30 days during which plans may self-correct failures to provide notices or information, and penalties would be waived or reduced for low-risk self-corrections completed in this period. This self-correction is particularly appropriate when the plan has taken prompt action after discovery of the need to file, including situations where a small plan filer must obtain supporting information from outside parties.

Providing relief when there is prompt action after discovery is consistent with the Proposed Rule's preventive-measures mitigating factor, which looks to whether the filer "*promptly, upon discovery, corrected the noncompliance*." In order to provide greater detail and certainty for plan sponsors and encourage quick correction, we recommend PBGC include a period that is deemed prompt (absent actual harm, willfulness, or a pattern of noncompliance), such as 90 days following discovery.

ARA recommends that PBGC provide for this type of explicit self-correction relief because clear rules and standards are more predictable for plan sponsors and provide more consistent administrability for PBGC than relying solely on the discretionary waiver standards.

IV. First-Time Offender Relief

ARA recommends that PBGC establish an automatic waiver, or a rebuttable presumption in favor of waiver, for a first violation that is inadvertent, promptly corrected, and does not involve actual harm, willfulness, or a pattern of noncompliance. This is consistent with the Proposed Rule's desire to provide greater detail and certainty for plan sponsors and would encourage quick correction in situations where aggravating factors are not present.

V. Correction After PBGC Notice

ARA recommends that PBGC permit penalty-free correction when PBGC identifies a missed filing and the filer corrects it within a stated cure period, absent actual harm, willfulness, or a pattern of noncompliance. ARA regards PBGC's described notice-before-penalty practice for late premium filings and its proposed notice-and-cure approach for certain multiemployer notices as workable models for encouraging voluntary compliance and cooperation. We believe the time sensitivity concerns identified by PBGC in discussing risk of harm of reportable events would be mitigated in these circumstances.

ARA further recommends that, when PBGC applies penalties, it consider the amount and duration of the missed contribution, funded status, sponsor financial condition, correction timing, participant impact, and prior compliance history as mitigating factors. ARA notes that, consistent with its discussion of small plans and small employers in this letter, potential harm should be based on the facts of the particular violation and not presumed solely from the filing categories identified in the Proposed Rule.

Taken together, these recommendations are appropriate because they preserve PBGC's ability to obtain timely, meaningful information while ensuring that penalties remain proportional to the violation, the size and risk profile of the plan, and any actual harm to participants or the insurance program. Clear caps, staged filing options, expanded self-correction, first-time offender relief, and notice-and-cure procedures would encourage prompt compliance rather than discourage cooperation through penalties that may be disproportionate for small employers. These revisions would also make the penalty framework more transparent and administrable for PBGC, plan sponsors, and the professionals who support them, while advancing PBGC's stated objective of improving compliance without increasing penalty collections.

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ARA appreciates the opportunity to submit these comments on the Proposed Rule and would welcome the opportunity to discuss them further. Please contact Kelsey N.H. Mayo, Chief of Retirement Policy and Regulatory Affairs, at kmayo@usaretirement.org or (703) 516-9300, with any questions regarding this matter. Thank you for your time and consideration.

Sincerely,

/s/	/s/
Brian H. Graff, Esq., APM Executive Director/CEO American Retirement Association	Kelsey Mayo, Esq. Chief, Retirement Policy & Regulatory Affairs American Retirement Association

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