FUTUREPLAN by ASCENSUS

September 3, 2026

Pension Benefit Guaranty Corporation
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

Dear Sir or Madam:

Thank you for the opportunity to comment on the proposed regulation, **Penalties for Failure to Provide Certain Notices or Other Material Information (RIN 1212-AB50)**. We appreciate PBGC's efforts to provide greater transparency and consistency regarding the assessment and waiver of penalties for missed filings and notices. We also support PBGC's stated goals of encouraging compliance, voluntary self-reporting, and self-correction.

We are writing specifically regarding the proposal to assess penalties for missed reportable event filings under ERISA §4071. We particularly appreciate several aspects of the proposal that acknowledge the unique circumstances of small pension plans (fewer than 100 participants), including reduced penalty rates and the inclusion of waiver and mitigation criteria. These provisions reflect an understanding that small plan sponsors often operate with limited administrative resources and face compliance challenges that differ significantly from those of larger employers.

While we recognize the importance of providing PBGC with timely information and understand the role reportable events play in monitoring pension risk, we believe that the proposed framework does not adequately distinguish between large plans that may pose meaningful exposure to the PBGC insurance program and small plans whose potential impact on the insurance program is minimal. The proposed rule itself acknowledges that penalty amounts are intended to reflect the potential for harm to participants and the PBGC insurance program.

The risk profile for small plans differs significantly from that of large plans. The liabilities involved are often modest in relation to the PBGC insurance program as a whole. In addition, where a small plan terminates with insufficient assets, majority owners may reduce their benefits rather than shifting significant losses to the PBGC. As a result, a missed reportable event filing by a small plan often presents a considerably lower risk of harm than the same filing failure involving a large underfunded plan.

As noted in the supplementary information to the proposed regulations, PBGC has historically maintained a non-enforcement policy regarding reportable event penalties. PBGC reports that during the 2019-2024 period there were 947 reportable event violations in total, including 521 violations involving small entities. Despite these violations, PBGC collected no reportable event penalties and issued no waivers because PBGC followed an internal non-enforcement policy.

These statistics are important. They demonstrate that reportable event filing errors occur with some frequency, particularly among smaller plans, but historically have not been viewed as requiring monetary penalties to protect participants or the PBGC insurance program. We are concerned that moving directly from a long-standing non-enforcement approach to a formal penalty regime may impose costs on small employers without a corresponding benefit to the insurance program. A more measured approach focused on education, correction, and voluntary compliance would better reflect the relatively low risk posed by most small plans.

Accordingly, we respectfully suggest that PBGC consider the following modifications for reportable event filings involving small plans.

1. Provide Relief for First-Time Offenders

PBGC's proposed waiver provisions appropriately recognize factors such as reasonable cause, error of law, and self-correction. We recommend that PBGC expressly establish administrative relief for first-time reportable event violations by small plans when:

- The violation was not willful;
- The filing is submitted promptly after discovery; and
- The sponsor has not previously committed a substantially similar violation.

A first-time filing failure often reflects a lack of familiarity with a complex reporting requirement rather than disregard for PBGC's rules. Providing relief for an initial violation would further PBGC's stated objective of encouraging compliance while avoiding disproportionate penalties for employers that are making good-faith efforts to satisfy their obligations.

The historical data cited by PBGC further supports such relief. A first-time offender program would provide a reasonable transition from that historical practice while maintaining incentives for future compliance.

2. Permit Self-Correction Without Penalty

The proposed rule identifies self-correction as a mitigating factor but generally requires the filer to notify PBGC before PBGC identifies the potential noncompliance. We recommend going further for small plans and allowing penalty-free self-correction when a missed reportable event filing is voluntarily submitted before any enforcement action has begun.

This approach would strongly incentivize voluntary compliance. Employers and practitioners who discover an omitted filing would have every reason to correct the error immediately rather than spending time evaluating potential penalty exposure. Such a policy would likely increase reporting compliance while reducing administrative costs for both plan sponsors and PBGC.

3. Cap Penalties on a Per-Participant Basis

The proposal includes participant-based caps for other filing requirements applicable to small plans. For example, certain standard termination penalties are capped based on the number of participants or distributees, reflecting a proportional relationship between the severity of the penalty and the size of the plan. In addition, PBGC’s 1995 penalty policy generally limited penalties assessed under its default ERISA §4071 framework to $100 per participant, while reserving the ability to impose higher penalties for willful, harmful, or particularly time-sensitive violations.

We recommend that PBGC adopt a similar principle for reportable event penalties involving small plans. A per-participant cap would better align the penalty with the actual size of the plan and the potential risk presented to PBGC. Without such a limitation, a relatively minor reporting oversight could result in a penalty that is disproportionate to the economic impact of the underlying event.

4. Allow Penalty-Free Corrections Following PBGC Notification

Under the proposal, self-correction is generally available only when the filer identifies and reports the issue before PBGC notifies the filer of possible noncompliance. We appreciate PBGC's acknowledgment in the proposal that it has generally refrained from assessing penalties for ordinary late ERISA §4071 filings despite the absence of an explicit provision in the prior policy. Because that longstanding practice has provided a fair and practical framework for encouraging voluntary compliance, we encourage PBGC to codify a similar approach in the final fee schedule. In particular, we believe a more effective compliance-focused approach would permit a small plan sponsor to correct a missed reportable event filing without penalty within a reasonable period after receiving notice from PBGC.

Under such a framework, PBGC could:

- Notify the sponsor of the filing deficiency;
- Provide a reasonable correction period; and
- Assess penalties only if the deficiency remains outstanding after the correction period expires.

PBGC already follows a similar compliance-first approach in other contexts by notifying filers of certain late filings and providing an opportunity to comply before penalties are assessed. Extending that concept to reportable events for small plans would encourage prompt correction, improve reporting compliance, and avoid penalizing oversights that pose little practical risk to the insurance program.

Conclusion

We commend PBGC for its efforts to create a more transparent and consistent penalty framework. However, we believe additional accommodations are warranted for small defined benefit plans with respect to reportable event filings.

The statistics included in the proposed rule underscore why additional flexibility is warranted for small plans. As mentioned earlier, there were 521 reportable event violations involving small plans, yet no penalties were collected because PBGC followed a non-enforcement policy. These numbers demonstrate that reportable event filing failures have historically been treated as compliance issues rather than enforcement matters. Given the comparatively limited risk that small plans present to the PBGC insurance program, we believe the final regulation should preserve that compliance-focused philosophy by emphasizing voluntary correction, education, and reasonable opportunities to cure violations before penalties are imposed.

We respectfully urge PBGC to:

1. Provide penalty relief for first-time reportable event violations involving small plans.
2. Permit voluntary self-correction without penalty.
3. Establish participant-based caps on reportable event penalties for small plans.
4. Allow penalty-free correction within a reasonable period after PBGC identifies a missed filing.

These changes would better align penalties with actual risk, promote compliance, and continue PBGC's longstanding practice of avoiding unduly harsh results for small plans and small businesses.

Thank you for your consideration of these comments. We would be pleased to discuss these recommendations further.

Respectfully submitted,

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