HEIR COMMAND™

September 18, 2026

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

Submitted electronically via Federal eRulemaking Portal
http://www.regulations.gov

Re: RIN 1212-AB50; Penalties for Failure to Provide Certain Notices or Other Material Information (proposed rule, published July 21, 2026; 91 FR 45739)

Dear Sir or Madam:

Heir Command, LLC builds ownership continuity infrastructure for the retirement system.

We write in response to PBGC's express request for comment on mitigating and aggravating factors under proposed parts 4071 and 4302 and on the proposed rule's impact on small entities. Our comment is narrow. It concerns the failure to furnish a notice of intent to terminate or a notice of plan benefits to a participant or beneficiary whom the plan administrator cannot locate. We take no position on the proposed penalty amounts, the reportable-event categories, or, except as noted in Part VI, the inflation-adjustment alternative.

Our central point is one of internal consistency. Part 4041 already addresses what happens when a required notice cannot be issued to an affected party because the person cannot be located. Section 4041.3(c)(2)(ii) provides that the omission does not cause the notice to be untimely where the plan administrator could not locate the affected party after making reasonable efforts and issues the notice promptly if the affected party is later located. Part 4050, in turn, supplies a concrete PBGC-authored diligent-search standard for substantially the same population and problem. Proposed § 4071.15 addresses penalties for notices required by §§ 4041.23 and 4041.24, but does not explain how § 4041.3(c)(2)(ii) applies or what constitutes the "reasonable efforts" that provision requires.

PBGC therefore does not need to create a new search obligation. It can connect rules it has already written: preserve the threshold protection in § 4041.3(c)(2)(ii), use the substantive search requirements in § 4050.104 as a presumptive benchmark for reasonable efforts, and require a contemporaneous record sufficient to show what the administrator actually did.

I. Part 4041 already distinguishes an unlocated participant from an ordinary late notice.

Section 4041.3(c)(2) governs omissions of affected parties from notices issued under part 4041. Under paragraph (c)(2)(ii), a failure to issue a notice within the specified period does not make the notice untimely if the plan administrator could not locate the affected party after making reasonable efforts and issues the notice promptly if the affected party is later located. That rule applies across part 4041, including the standard-termination notices addressed by proposed § 4071.15(b).

That existing rule changes the analytical frame. The question is not simply whether a notice reached every recipient by the ordinary deadline. PBGC has already recognized that an affected party may be unlocatable despite reasonable effort, and has already prescribed the consequence for timeliness. The unresolved question is what qualifies as "reasonable efforts" and what evidence should establish them.

Proposed § 4071.15(b)(3) and (4) speak of notices that have not been issued in accordance with §§ 4041.23 and 4041.24, yet the proposal does not mention § 4041.3(c)(2)(ii), "unlocated participants," or part 4050. The final rule should make clear that the penalty framework does not displace the existing omission rule and should give administrators and PBGC reviewers an objective way to evaluate reasonable efforts.

Two administrators who both have an unlocated participant are not similarly situated. One may have made the reasonable efforts part 4041 requires and preserved proof of those efforts. The other may have done nothing after learning that the available address was unusable. A documented record of a timely, PBGC-standard search permits PBGC to distinguish genuine unlocatability from avoidable administrative inaction without case-by-case reinvention of the diligence standard.

II. Part 4050 supplies the missing content for "reasonable efforts."

For a PBGC-insured single-employer defined benefit plan terminating in a standard termination, § 4050.104 requires a diligent search for each distributee whose location the plan administrator does not know with reasonable certainty upon close-out. For any benefit size, the administrator may use a commercial locator service meeting the definition in § 4050.104(b)(2). For a distributee whose normal retirement benefit is not more than $50 per month, the administrator may instead use the records-search method, which includes plan records, contributing-sponsor records, records of the sponsor's retirement or welfare plans in which the distributee participated, beneficiary contacts identified from those records, and a free internet search, subject to the regulation's feasibility and affordability limits.

The operational connection is already explicit in PBGC's current Form MP-100 instructions. Appendix 2 states that when a notice of intent to terminate is returned as undeliverable, the plan administrator must conduct a diligent search for a current address; if the distributee is not located through that search, no further search is required before the distributee may be reported as missing. PBGC has therefore already connected an undeliverable termination notice to the same diligent-search concept at issue here.

The overlap is unusually close. Section 4041.3(c)(2)(ii) asks whether the administrator made "reasonable efforts" to locate the affected party. Section 4050.104 tells PBGC-insured single-employer defined benefit plans in a standard termination what a PBGC-compliant diligent search looks like. Using § 4050.104 as a benchmark would not impose an unfamiliar methodology on administrators; it would give concrete content to an otherwise undefined phrase in PBGC's own termination rules.

One timing distinction matters. Section 4050.104(d) requires the close-out diligent search to occur within nine months before the missing-participants filing. That timing rule should not be imported into the notice context. PBGC should borrow the substance of § 4050.104, not its close-out timing rule. For notice purposes, the search should be undertaken promptly after the administrator knows or reasonably should know that the affected party cannot be located. If the location problem is known before the notice deadline, the administrator should act promptly then. If a notice was timely sent to the last-known address and is later returned as undeliverable, the administrator should begin the search promptly upon receiving that information. This timing rule tracks actual administration and avoids requiring a search before the administrator could know one was necessary.

III. Recommended clarification and documentation standard.

We respectfully recommend that PBGC include the following clarification in § 4071.15 or, at minimum, in the final-rule preamble or formal enforcement guidance:

For purposes of § 4071.15(b)(3) and (4), PBGC will apply § 4041.3(c)(2) in determining whether an omission of an affected party from a notice within the otherwise applicable period constitutes untimely noncompliance. Where § 4041.3(c)(2)(ii) applies, the omission will not be treated as untimely for penalty purposes.

In determining whether the plan administrator made the "reasonable efforts" described in § 4041.3(c)(2)(ii), PBGC will treat a diligent search satisfying the substantive requirements of § 4050.104(a) through (c), without regard to the close-out timing rule in § 4050.104(d), and undertaken promptly after the administrator knew or reasonably should have known that the affected party could not be located, as presumptive evidence of reasonable efforts. Other evidence may establish reasonable efforts based on the facts and circumstances.

The plan administrator should retain a contemporaneous record identifying the affected party; the last-known address or other contact information; the event indicating that the information was undeliverable, unavailable, or otherwise unreliable; the search method used; the dates and sources searched; the results obtained; any beneficiary contacts; whether and when the notice was issued if the affected party was later located; and the ultimate disposition of the benefit.

PBGC should treat as aggravating the absence of a documented effort after the administrator knew or reasonably should have known the affected party could not be located; material or unexplained delay in undertaking or completing reasonable search efforts; continued reliance on contact information known to be unreliable; failure to issue the required notice promptly after the affected party is located; or failure to complete applicable part 4050 close-out duties, including the required filing and, as applicable, transfer of the benefit obligation to PBGC or purchase of an irrevocable commitment and reporting to PBGC of the information required under part 4050.

This formulation preserves both sides of the rule. It does not excuse an administrator that failed to act, and it does not convert § 4050.104 into the exclusive means of proving reasonable efforts. It gives an administrator that followed PBGC's own diligent-search standard a predictable evidentiary benchmark and gives PBGC reviewers a consistent record against which to evaluate the facts.

The same record also fits the proposed waiver framework. Proposed § 4071.22 generally waives a penalty where noncompliance arose from circumstances beyond the filer's control and could not have been avoided through ordinary business care and prudence. If PBGC determines that § 4041.3(c)(2)(ii) does not fully resolve a particular case, a timely, documented, PBGC-standard search is directly relevant to whether the administrator exercised that care and prudence. The evidence therefore serves both the threshold timeliness inquiry and, where necessary, the penalty-discretion inquiry.

PBGC could also publish a short recipient-level search-log format. Use of the log need not create a new routine filing requirement. It could simply establish the documentation PBGC expects when a plan relies on unlocatability under § 4041.3(c)(2)(ii) or seeks mitigation or waiver. That would improve consistency without requiring PBGC to audit every search in the ordinary course.

IV. PBGC's own enforcement history makes prospective clarity especially important.

The proposal shows extensive use of waiver discretion in standard-termination administration. From 2019 through 2024, PBGC reports 1,683 post-distribution certification violations and 1,656 waivers. For small entities, PBGC reports that 98% of post-distribution certification violations and 82% of premium-filing violations received waivers. Those figures demonstrate that individualized penalty discretion is already a significant feature of PBGC administration.

More importantly for this comment, PBGC states that during that same 2019-2024 period it did not collect data on violations or penalties for standard termination notices, notices of plan benefits, or notices of intent to terminate because it was not enforcing penalties for those filing violations. The final rule will therefore create a more formal penalty framework for the precise notice categories addressed here without a recent published enforcement record showing how unlocatable-recipient cases were treated.

That makes prospective clarity particularly valuable. The agency should state, before enforcement begins under the new framework, how the existing § 4041.3(c)(2)(ii) rule interacts with proposed § 4071.15 and what evidence will establish reasonable efforts. Doing so advances PBGC's stated objective of treating similar facts and circumstances consistently and increasing transparency.

V. Small entities: proration addresses penalty amount; a diligence standard addresses conduct.

PBGC specifically requests comment on the rule's impact on small entities and recognizes in the preamble that smaller plans may have resource limitations. Proposed § 4071.11(d) reduces the general penalty for a plan with fewer than 100 participants to the greater of $10 per day or the unreduced general penalty multiplied by a fraction whose numerator is the plan's participant count and whose denominator is 100. That adjusts the amount of the penalty. It does not answer whether the administrator made reasonable efforts once a participant could not be located.

Within the defined records-search alternative, PBGC has already recognized that the required scope of a search may account for feasibility, affordability, access to records, and the relationship between search cost and the benefit at stake.

Using that existing standard as a presumptive benchmark under § 4041.3(c)(2)(ii) is more responsive to the small-entity issue than further reducing the daily rate alone. It distinguishes inability to locate a participant despite documented effort from inaction, while preserving PBGC's ability to evaluate the facts and circumstances of each case.

VI. The 1995 Policy predates the rules that now govern this problem.

PBGC invites comment on an alternative under which the 1995 Policy amounts would be adjusted for inflation and used as the starting point for parts 4071 and 4302. Whatever PBGC concludes about the amounts, the relevant legal architecture has changed materially since 1995.

The current unlocated-participant rule in § 4041.3(c)(2)(ii) was adopted after the 1995 Policy, and the Missing Participants Program was comprehensively revised and expanded in the 2017 final rule for plans terminating on or after January 1, 2018. The current § 4050.104 diligent-search standard and today's Form MP-100 instructions therefore postdate the penalty policy that this rulemaking is replacing. A final framework designed to provide greater certainty should expressly account for both.

VII. A contemporaneous search record would improve data provenance.

In January 2022, PBGC's Office of Inspector General reported that it analyzed more than 87,000 Missing Participants Program records and that PBGC had assumed approximately $188 million for 30,000 participants whose benefits were transferred to PBGC. The evaluation also found inconsistencies in PBGC's program data and concluded that the data were unreliable, preventing a performance analysis beyond a census-data compilation. See PBGC Office of Inspector General, PBGC Can Improve the Effectiveness of the Missing Participants Program, EVAL-2022-04 (Jan. 7, 2022).

Those findings concern PBGC's administration and data-management practices; they should not be attributed to terminating plans. They nevertheless underscore the value of consistent, auditable information at every stage of the missing-participant process. A contemporaneous search record would preserve what the plan knew, when it knew it, what sources it searched, what it found, and what remained unresolved before close-out. It would not by itself solve the data-management issues identified by the Inspector General, but it would give PBGC a clearer provenance record for the information and search history accompanying an unlocated distributee.

PBGC's current Form MP-100 already requires detailed recipient-level identifying information and certification that the filing was determined in accordance with the Missing Participants regulations and instructions, including the diligent-search requirements. A standardized search record would complement, not replace, those existing requirements.

VIII. One drafting inconsistency should be corrected.

Proposed § 4071.15(b)(3) provides that the information penalty for an untimely notice of intent to terminate generally is not assessed for any period after "distribution of benefits has begun." The preamble describes the same rule as running to the period after "distribution of assets has begun." Those are not necessarily the same event, and the difference can matter where an affected party cannot be located: plan assets may begin to be distributed while that individual's benefit has not been distributed to that person. PBGC should align the preamble and regulatory text so the triggering event is unambiguous.

IX. Conclusion.

We urge PBGC to make § 4041.3(c)(2)(ii) the threshold rule for unlocated affected parties under proposed § 4071.15; to use the substantive requirements of § 4050.104 as a presumptive benchmark for the "reasonable efforts" required by that rule; to state what a sufficient contemporaneous record contains; and to identify the absence of reasonable efforts, unreasonable delay, known-unreliable information, failure to issue promptly after location, and failure to complete applicable part 4050 close-out duties as aggravating circumstances.

This approach does not change a penalty amount, create a new search obligation, or excuse a notice requirement. It harmonizes three existing pieces of PBGC's own regulatory architecture: the part 4041 rule for unlocated affected parties, the part 4050 diligent-search standard, and the proposed part 4071 penalty framework. It also provides the transparency and consistency that PBGC identifies as central objectives of this rulemaking.

PBGC could implement the clarification in the final regulatory text, the preamble, formal enforcement guidance, or the standard-termination and Missing Participants Program instructions. The essential point is that the agency should state the standard prospectively, preserve the existing protection for a genuinely unlocatable affected party, and require enough evidence to distinguish documented diligence from inaction.

We appreciate the Corporation's consideration and would welcome the opportunity to respond to any questions.

Respectfully submitted,

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