From: seth morrow
To: RegComments
Subject: RIN 1212-AB50 — Comment on auditable initial penalty determinations
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Pension Benefit Guaranty Corporation
Penalties for Failure to Provide Certain Notices or Other Material Information
RIN 1212-AB50

Public comment:

I support PBGC’s goal of increasing transparency and compliance by codifying predictable penalty and waiver policies. I recommend one additional procedural safeguard so that the reconsideration right in proposed §§ 4071.5 and 4302.5 is practically usable: require the initial penalty determination to show the material facts and arithmetic that produced the assessed amount.

Existing 29 CFR 4003.21 requires an initial determination to be in writing, state the reason for the determination, and describe the right to review. Under this proposal, however, an information penalty may depend on the specific information requirement, due date, cure date, number of days late, changing daily rates, participant-count reductions, caps, mitigating or aggravating factors, and waiver determinations. A bottom-line amount plus a general statement of lateness may not allow a filer to identify a counting or factual error within the 30-day reconsideration period.

Suggested requirement:

For an initial determination assessing a penalty under part 4071 or part 4302, PBGC should identify, to the extent applicable:

1. the specific notice, filing, or information requirement that PBGC determined was not timely satisfied;
2. the due date used by PBGC and any extension or alternate due date taken into account;
3. the date PBGC determined compliance occurred, or the date through which continuing noncompliance was measured;
4. the number of penalty days and how those days were counted;
5. each daily rate or other penalty formula applied and the periods to which each rate applied;
6. any participant-count reduction, statutory/regulatory cap, or other numerical adjustment;
7. the arithmetic producing the assessed amount;
8. any waiver, mitigating, aggravating, or other discretionary factor that materially changed the amount, together with the factual basis actually relied on; and
9. the deadline and method for requesting reconsideration.

This would not alter PBGC’s statutory authority, penalty levels, discretion, or standards for waiver. It would make the assessment reproducible from the face of the initial determination and allow PBGC and filers to resolve straightforward factual or arithmetic errors efficiently during reconsideration.

The proposal repeatedly emphasizes transparency, predictability, consistency, and compliance. A calculation-level initial determination would advance those goals and create a cleaner administrative record for any disputed assessment.

Thank you for considering this comment.

Seth Morrow