DATES: The revised policy takes effect on July 18, 1995 with respect to any matter for which a notice of final penalty assessment has not been issued as of that date.


SUPPLEMENTARY INFORMATION: Section 4071 of the Employee Retirement Income Security Act of 1974 authorizes the PBGC to assess a penalty of up to $1,000 per day for failure to provide any required notice or other material information within the specified time limit. A decision to assess a penalty under section 4071 does not preclude other enforcement or remedial action by the PBGC.

On March 3, 1992, the PBGC issued its first statement of policy on how it would exercise this penalty authority. Pursuant to the President’s April 21, 1995, directive on penalties, the PBGC has reviewed its experience under this penalty policy and has concluded that a revised policy statement is appropriate to promote voluntary compliance. This replaces the March 1992 statement, and applies to any notice or other material information required to be provided to the PBGC or other parties to which section 4071 penalties may apply (other than premium-related submissions).

The PBGC will amend Chapter 8, Section 1 of the PBGC Operating Policy Manual (and related departmental manuals) to reflect these general guidelines. The PBGC may amend these guidelines through changes to the Manual as the PBGC gains experience with the new policy.

Penalty Guidelines

The PBGC will continue to consider the facts and circumstances of each case to assure that the penalty fits the violation. Among the factors the PBGC will consider are the importance and time-sensitivity of the required information, the extent of the omission of information, the willfulness of the failure to provide the required information, the length of delay in providing the information, and the size of the plan. In most cases, the PBGC will: (1) increase penalties as the period of delinquency increases; (2) reduce penalties for small plans; and (3) limit total penalties based on plan size. In general, the PBGC will assess a penalty of $25 per day for the first 90 days of delinquency, and $50 per day thereafter. In addition, the penalty will be proportionately reduced in accordance with the number of participants in the case of plans with fewer than 100 participants, subject to a floor of $5 per day. For example, the penalty for a plan with 25 participants...

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1 The participant count calculation will be tied to the appropriate participant count. Thus, in the case of a post-distribution certification, the appropriate participant count will be the number of participants entitled to a distribution in the termination. Where there is no clearly appropriate participant count, the participant count generally will be determined using the most recently filed Form 1 for the relevant plan or plans.
would be $6.25 per day (25% of $25 per day) for the first 90 days, and $12.50 per day (25% of $50 per day) thereafter.

Under these general guidelines, the total penalty for any violation would not exceed $100 times the number of plan participants. In the above example, because the plan has 25 participants, the total penalty would not exceed $2,500.

The PBGC may assess a penalty larger than the general penalty if there is a willful failure to comply (e.g., where a plan administrator willfully fails to issue a notice to participants required under section 4011 of ERISA) or if there is a pattern or practice of failure to provide material information. Similarly, the PBGC may assess a penalty larger than the general penalty if the harm to participants or the PBGC resulting from a failure to timely provide material information is substantial. For example, a larger penalty may apply where there is a failure to provide the PBGC with timely post-event notice of a reportable event involving a large company or plan or with annual information required by section 4010 of ERISA.

The PBGC will generally assess the full $1,000 per day penalty for failure to provide an advance notice of a reportable event under ERISA section 4043(b) or a notice to the PBGC of a missed contribution under ERISA section 302(f)(4). This information is so time sensitive and significant that a larger penalty is warranted.

Reasonable Cause Guidelines

The PBGC will waive all or part of a section 4071 penalty where reasonable cause is shown. The PBGC will evaluate each request for a waiver to determine whether the responsible person exercised ordinary business care and prudence and delay resulted from circumstances beyond that person’s control.

Other Matters

The PBGC will continue to review initial penalty assessments if requested in writing within 30 days of the date of the notice of initial penalty assessment. Assignment of penalty assessment and review functions remains unchanged.

Issued in Washington, DC, this 12th day of July 1995.

Martin Slate,
Executive Director, Pension Benefit Guaranty Corporation.

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