

PBGC Announces New Maximum Penalties

PBGC has issued regulations increasing certain maximum ERISA penalties as mandated by Congress and the OMB. However, PBGC did not revise its 1995 policy on penalties for failure to provide timely information. Until further changes are announced, it appears the reduced penalties for most violations will continue to apply.

Background

Two ERISA sections specify daily civil penalties the agency may impose for failures to provide certain notices. Section 4071 originally set a maximum of \$1,000 per day for single employer notices such as reportable events notices and Section 4010 financial reporting. Section 4302 originally set a maximum of \$100 per day for multiemployer plan failures. In 1997, PBGC regulations adjusted these amounts to \$1,100 and \$110 respectively, to reflect inflation.

In 1995, PBGC issued a [policy statement](#) designed to promote voluntary compliance. It called for lower penalties for plans of small businesses and violations that are speedily corrected. Under the policy, the maximum penalty is \$25 per day for the first 90 days of delinquencies and \$50 per day after that. Lower caps apply to small plans. The policy 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). Larger penalties would apply in certain situations judged to bring substantial harm to participants or where the failure is intentional. And the full penalty would be imposed for failure to provide notice of a reportable event subject to the advance reporting requirements or a required notice of a missed contribution.

2016 Civil Penalty Adjustments

In PBGC's [interim final regulation](#), the Section 4071 maximum penalty has been adjusted from \$1,100 to \$2,063, and the Section 4302 maximum penalty has been adjusted from \$110 to \$275.

PBGC adopted this change in response to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget (OMB) memorandum M-16-06.

The change is effective August 1, 2016.



Comment: With no mention in the regulation of a change to the 1995 policy, it appears the agency will continue to apply the stated caps — generally \$25 and \$50 per day. But for reportable events under the advance reporting requirements and for missed minimum funding contributions, the new maximums may apply.

In Closing

We expect PBGC may have more to announce as the August 1 effective date nears.

Authors

Marjorie Martin, FSPA, MAAA, EA

Joanne Jacobson, JD, LLM

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