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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4010, 4041, 4071, and 4302

RIN 1212-AB33

Adjustment of Civil Penalties

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to adjust the penalties provided for in sections 4071 and 4302 of the Employee Retirement Income Security Act of 1974. This action is being taken in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget memorandum M-16-06. The regulations being amended are those on Penalties for Failure to Provide Certain Notices or Other Material Information (29 CFR part 4071) and Penalties for Failure to Provide Certain Multiemployer Plan Notices (29 CFR part 4302). Conforming amendments are also being made to the regulations on Annual Financial and Actuarial Information Reporting (29 CFR part 4010) and Termination of Single-Employer Plans (29 CFR part 4041).

DATES: The amendments are effective August 1, 2016. Also see **Applicability**, below.

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20005–4026; 202–326–4400 extension 3451. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4400 extension 3451.)

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

This rule is needed to carry out the requirements of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The rule adjusts the maximum civil penalties that PBGC may assess for failure to provide certain notices or other material information.

PBGC’s legal authority for this action comes from the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and from sections 4002(b)(3), 4071, and 4302 of the Employee Retirement Income Security Act of 1974.

Major Provisions of the Regulatory Action

This rule adjusts the maximum civil penalties that PBGC may assess under sections 4071 and 4302 of ERISA. The new maximum amounts are \$2,063 for section 4071 penalties and \$275 for section 4302 penalties.

Background

The Pension Benefit Guaranty Corporation (PBGC) administers title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Title IV has two provisions that authorize PBGC to assess civil monetary penalties.¹ Section 4302, added to ERISA by the Multiemployer Pension Plan Amendments Act of 1980, authorizes PBGC to assess a civil penalty of up to \$100

¹ Under the Federal Civil Penalties Inflation Adjustment Act of 1990, a penalty is a civil monetary penalty if (among other things) it is for a specific monetary amount or has a maximum amount specified by Federal law. Title IV also provides (in section 4007) for penalties for late payment of premiums, but those penalties are neither in a specified amount nor subject to a specified maximum amount.

a day for failure to provide a notice under subtitle E of title IV of ERISA (dealing with multiemployer plans). Section 4071, added to ERISA by the Omnibus Budget Reconciliation Act of 1987, authorizes PBGC to assess a civil penalty of up to \$1,000 a day for failure to provide a notice or other material information under subtitles A, B, and C of title IV and sections 303(k)(4) and 306(g)(4) of title I of ERISA.

The Federal Civil Penalties Inflation Adjustment Act of 1990 called for reports by the President to Congress about the effect of inflation on civil penalties and the adjustment of civil penalties for inflation. The Debt Collection Improvement Act of 1996 amended the 1990 act to require agencies to make inflation adjustments of civil monetary penalties by regulation in accordance with principles in the 1990 act. On July 10, 1997 (at 62 FR 36993), PBGC published a final rule to implement the 1996 act. That final rule added to PBGC's regulations parts 4071 and 4302, which provided that the maximum penalty amounts under sections 4071 and 4302 were \$1,100 a day for section 4071 and \$110 a day for section 4302.

Several of PBGC's regulations note that section 4071 penalties may be assessed for failure to provide notices or other material information required under those regulations, but only two mention the adjusted maximum amount. The two regulations that do so are those on Annual Financial and Actuarial Information Reporting (29 CFR part 4010) and Termination of Single-Employer Plans (29 CFR part 4041).

Adjustment of civil penalties

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,² which further amended the 1990 act. The 2015 act requires agencies to adjust civil monetary penalties for inflation and to publish the adjustments in

² Sec. 701, Pub.L. 114-74, 129 Stat. 599-601 (Bipartisan Budget Act of 2015).

the Federal Register. An initial adjustment must be made by interim final rule published by July 1, 2016, and effective by August 1, 2016. Subsequent adjustments must be promulgated by January 15 of each year after 2016. Adjustments must be based on changes in the Consumer Price Index, and the initial adjustment is to be made from the penalty level most recently established, other than by an adjustment under the 1990 act. The initial adjustment cannot increase a penalty more than 150 percent over its level on November 2, 2015. Adjusted penalties are to be rounded to the nearest dollar.

On February 24, 2016, the Office of Management and Budget issued memorandum M-16-06 on implementation of the 2015 act.³ The memorandum provides guidance to agencies about how to comply with the act. In particular, the memorandum includes a table of multipliers to use for the initial adjustment. The multiplier for 1980 (when section 4302 was added to ERISA) is 2.80469. The multiplier for 1987 (when section 4071 was added to ERISA) is 2.06278. Applying these multipliers to the enacted maximum amounts of the two penalties yields new maximum penalty levels (rounded to the nearest dollar) of \$280 for section 4302 and \$2,063 for section 4071. But applying the 150-percent-maximum-increase rule, the maximum penalty under section 4302 may not exceed \$275. Accordingly, PBGC is adjusting the maximum penalty under section 4071 to \$2,063 and adjusting the maximum penalty under section 4302 to \$275.

Given the prospect of annual adjustments of the maximum section 4071 penalty, PBGC is simply removing the references in its other regulations to the maximum amount of section 4071 penalties. Removal of these references has no substantive effect, since the operative provision

³ <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

for the maximum amount is in part 4071; and removal avoids the need for annual amendments to these other regulations to track adjustments in the maximum penalty level.

Applicability

The increases in the civil monetary penalties under sections 4071 and 4302 provided for in this rule apply on and after August 1, 2016.

Compliance with regulatory requirements

PBGC has determined, in consultation with the Office of Management and Budget, that this rule is not a “significant regulatory action” under Executive Order 12866.

PBGC has determined that notice and public comment on this interim final rule are unnecessary because the adjustment of civil penalties implemented in the rule is required by law. See 5 U.S.C. 553(b).

Because no general notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4010

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4041

Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4071

Penalties.

29 CFR Part 4302

Penalties.

- In consideration of the foregoing, PBGC amends 29 CFR parts 4010, 4043, 4071, and 4302 as follows:

PART 4010 — ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

- 1. The authority citation for part 4010 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1310.

§ 4010.14 [Amended]

- 2. In § 4010.14, the words “of up to \$1,100 a day for each day that the failure continues” are removed.

PART 4041 — TERMINATION OF SINGLE-EMPLOYER PLANS

- 3. The authority citation for part 4041 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344, 1350.

§ 4041.6 [Amended]

- 4. In § 4041.6, the words “of up to \$1,100 a day for each day that the failure continues” are removed.

PART 4071 — PENALTIES FOR FAILURE TO PROVIDE CERTAIN NOTICES OR OTHER MATERIAL INFORMATION

- 5. The authority citation for part 4071 is revised to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub.L. 114-74, 129 Stat. 599-601; 29 U.S.C. 1302(b)(3), 1371.

§ 4071.3 [Amended]

- 6. In § 4071.3, the figures “\$1,100” are removed and the figures “\$2,063” are added in their place.

PART 4302 — PENALTIES FOR FAILURE TO PROVIDE CERTAIN MULTIEMPLOYER PLAN NOTICES

- 7. The authority citation for part 4302 is revised to read as follows:

Authority: 28 U.S.C. 2461 note, as amended by sec. 701, Pub.L. 114-74, 129 Stat. 599-601; 29 U.S.C. 1302(b)(3), 1452.

§ 4302.3 [Amended]

- 8. In § 4302.3, the figures “\$110” are removed and the figures \$275” are added in their place.

Issued in Washington DC this 5 day of May, 2016.

W. Thomas Reeder
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Pension Benefit Guaranty Corporation

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