



PENSION ANALYST COMPLIANCE BULLETIN



PBGC increases civil penalties for failure to provide notices

On May 13, 2016, the Pension Benefit Guaranty Corporation (PBGC) published an interim final rule that increases the maximum civil penalties the PBGC may assess for the failure to provide certain notices and other material information required by the PBGC. These increases are effective August 1, 2016.

Background

The Federal Civil Penalties Inflation Adjustment Act (Act) of 1990 requires the President to report to Congress about the effect of inflation on civil penalties and the adjustment of civil penalties for inflation. Under the Act, a penalty is a civil penalty if (among other things) it is for a specific monetary amount or has a maximum amount specified by Federal law. PBGC rules include two provisions that authorize PBGC to assess civil monetary penalties for failure to provide notices and other information.

On November 2, 2015, President Obama signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which amended the 1990 Act. The 2015 law requires federal agencies to adjust civil monetary penalties for inflation. An initial adjustment must be made by July 1, 2016 and effective August 1, 2016. Adjustments must be based on changes in the Consumer Price Index.

Increased penalties

In response to the 2015 law, the PBGC has increased the following civil monetary penalties:

- The maximum daily penalty for failure to provide notices pertaining to reportable events, missed contributions, single-employer plan terminations and section 4010 reporting for certain underfunded plans is increased from \$1,100 to \$2,063.
- The maximum daily penalty for failure to provide certain multiemployer notices such as multiemployer withdrawal liability notices is increased from \$110 to \$275.

However on its website, the PBGC noted that it “fairly uncommon” to assess information penalties. When the PBGC does assess penalties, it considers many factors in determining the amount of the penalty such as:

- Plan size;
- Whether the failure to report was “willful”;
- Whether the information was time-sensitive; and
- The length of the delay.

Next steps

Plan sponsors should become familiar with the information discussed in this newsletter and the situations in which the PBGC may assess penalties. If they have any questions regarding the information contained in this publication, they should contact their legal counsel or their plan’s enrolled actuary.

Compliance Bulletin by Prudential Retirement

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