

**PENSION BENEFIT GUARANTY CORPORATION****29 CFR Part 4041****Assessment of Penalties for Failure to Provide Required Information**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Statement of policy.

**SUMMARY:** In order to provide penalty relief, the Pension Benefit Guaranty Corporation is announcing a new penalty policy. Under the new policy, the PBGC will not assess a penalty if a post-distribution certification is filed within 90 days after the deadline for completing distributions. Plan administrators are required to file these certifications in standard terminations and in sufficient distress terminations.

**DATES:** The revised policy takes effect on March 14, 1997 with respect to any matter for which a notice of final penalty assessment has not been issued as of that date.

**FOR FURTHER INFORMATION CONTACT:**

Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, or Catherine B. Klion, Attorney, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4024 (202-326-4179 for TTY and TDD).

**SUPPLEMENTARY INFORMATION:** Under the Employee Retirement Income Security Act of 1974, a plan administrator must file a post-distribution certification with the PBGC within 30 days after the final distribution of assets (other than excess assets) in a standard termination or in

a distress termination in which the plan is sufficient for at least guaranteed benefits. Practitioners have expressed concerns to the PBGC about their difficulties in meeting this certification deadline. In many cases, the plan administrator is not the person who distributes assets and thus may not know when the final distribution is made.

Failure to file a post-distribution certification on time may result in assessment of a penalty under section 4071 of ERISA. In addition, a late certification may result in the loss of (1) part or all of the plan's premium refund for its final short plan year (see 29 CFR 4006.5(f)(3)), and (2) the 30-day (or, in the case of a recently missing participant, 120-day) interest-free grace period for late payment of a designated benefit for a missing participant (see 29 CFR 4050.6).

Elsewhere in today's Federal Register, the PBGC is proposing a number of revisions to its termination regulation that, among other things, address the above concerns. Under the proposed rule, the PBGC will assess a penalty for a late post-distribution certification only to the extent the certification is filed more than 90 days after the distribution deadline (including extensions).

For example, if the distribution deadline is March 1, and the final distribution of assets is made January 15, the post-distribution certification is due February 14 (before the distribution deadline). Under the proposed rule, the PBGC will not assess a penalty for a late post-distribution certification if the certification is filed by May 30 (90 days

after March 1). If the certification is filed May 31, the PBGC will treat the filing as being only one day late for penalty assessment purposes.

The proposed rule provides the same penalty relief for the late filing of certain information under the missing participants program (see 29 CFR 4050.6(a)). It also eliminates the reduction resulting from a late post-distribution certification in the premium refund for a short plan year and waives interest for late payment of a missing participant's designated benefit throughout the period in which the post-distribution certification may be filed without penalty.

Effective immediately, the PBGC is implementing a policy under which it will apply the above rules regarding penalties for late filing of a post-distribution certification and other information. Pending the completion of the rulemaking on the PBGC's termination regulation, the provisions in the existing regulation regarding premium refunds for a short plan year and interest for late payment of a missing participant's designated benefit remain in effect.

The PBGC will continue to apply the penalty and reasonable cause guidelines and procedural requirements referred to in its July 18, 1995, policy statement.

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John Seal,

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

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