The Wagner Law Group Urges Proportionate Penalties in Comments on Proposed PBGC Rule

Former PBGC officials recommend protections for diligent filers, prompt correction, and clearer standards distinguishing technical errors from gross misconduct

BOSTON, MA, UNITED STATES, September 30, 2026 / EINPresswire.com/ -- The Wagner Law Group has submitted comments urging the Pension Benefit Guaranty Corporation (PBGC) to adopt a practical, proportionate framework for penalties involving required notices and other material information under ERISA Sections 4071 (for single-employer plans) and 4302 (for multiemployer plans). The Firm supports codifying PBGC's penalty policies to improve transparency and consistency, while recommending changes that encourage voluntary compliance and distinguish inadvertent, harmless errors from knowing, repeated, or obstructive conduct.

> "The Firm's recommendations draw on first-hand knowledge of PBGC's penalty framework to help produce a practical, fair final rule focused on conduct warranting a monetary sanction"
>
> *Marcia S. Wagner, Founder and Managing Partner*

The comments were developed primarily by partners Harold J. Ashner and Israel Goldowitz, whose combined PBGC legal service exceeds 50 years. Ashner, formerly PBGC's Assistant General Counsel for Legislation and Regulations, supervised development of the agency's 1995 Section 4071 penalty policy, its 1996 and 1997 revisions, and a 2001 proposal to codify an expanded policy. The 1995 and 1996 Section 4071 penalty guidance that Ashner supervised remains in effect and would be superseded by the final rule to the extent it addresses penalties governed by that rule. Goldowitz, who served as PBGC's Chief Counsel and Deputy General Counsel for Program Law and Policy, supervised its original 1992 penalty policy.

Five additional former PBGC professionals—Linda Rosenzweig, Camille Castro, John Langhans, Jonathan Henkel, and Ellan Spring—contributed perspectives reflecting nearly 90 additional

years of agency service across legal, ombuds, actuarial, financial, and benefit-policy functions.


Harold J. Ashner


Israel Goldowitz

"PBGC is right to bring greater transparency to this area," said Marcia S. Wagner, Founder and Managing Partner. "The Firm's recommendations draw on uncommon first-hand knowledge of the agency's penalty framework and are intended to help PBGC produce a final rule that is practical, fair, and focused on conduct that truly warrants a monetary sanction."

The Firm supports the proposal's basic structure, including ordinary Section 4071 penalty amounts of $25 and $50 per day, individualized consideration, and relief based on reasonable cause, error of law, agency delay, self-correction, and preventive measures.

The Firm's principal recommendations would give substantial weight to a filer's diligence in selecting, instructing, supplying information to, and overseeing outside advisers, without automatically excusing adviser mistakes.

"The filer remains responsible for the required information," Ashner explained. "But responsibility for the filing does not settle what penalty is appropriate when a careful filer encounters an isolated mistake by its adviser. PBGC should look at what the filer did to select, instruct, and oversee that adviser."

The comments also recommend allowing a filer's prompt preliminary disclosure to preserve eligibility for self-correction relief while the filer investigates and corrects a possible error in good faith. Existing compliance procedures and a strong prior compliance record should remain relevant mitigating factors. Related deficiencies arising from one act or omission should not be

multiplied mechanically by participants, plans, recipients, or data elements. Requests for clarification or nonmaterial supplementation should not alone turn timely submissions into continuing delinquencies.

The Firm urges PBGC to avoid double-counting aggravating facts, to establish workable standards for repeat violations and willfulness, and to provide brief explanations of material departures above ordinary penalty amounts. Demonstrated absence of actual or reasonably expected harm should mitigate penalties.

For a first inadvertent violation promptly corrected with cooperation and preventive measures, the Firm recommends a presumptive written warning if there is no material harm, no reasonably foreseeable material risk during noncompliance, and no material continuing risk after correction. This would be a rebuttable presumption, not a safe harbor; extreme lateness, recklessness, obstruction, false statements, or unusually serious risk could warrant penalties.

Additional recommendations include broader proportional relief for plans with fewer than 100 participants and a general total-penalty guideline of $100 per participant for plans of all sizes, allowing warranted departures and different treatment for advance reportable-event and certain missed-contribution notices. The Firm also recommends reasonable presumptive limits on the number of days for which penalties accrue, or diminishing accrual over time, for ordinary non-willful violations. The seriousness of a filing failure does not necessarily increase in direct proportion to its duration: a filing that is a year late is not necessarily 12 times as serious as one that is a month late, particularly where no material harm or risk results. The final rule should also clarify the treatment of periods attributable to PBGC delay.

“A penalty system works best when it encourages people to find problems, report them, and fix them,” Ashner said. “If every technical mistake can continue accruing indefinitely, even where no material harm occurred, the incentive can shift away from voluntary compliance.”

For multiemployer matters under Section 4302, the comments call for codifying notice and a reasonable opportunity to cure before penalties are assessed.

“PBGC should codify that notice-and-cure approach in the final rule because the agency relies on it to justify generally assessing multiemployer penalties at the statutory maximum once a violation becomes subject to penalty,” Goldowitz said. He added, “codification of single-employer penalty policy is also welcome, as long as the rule promotes compliance and does not unduly penalize, as Wagner recommends.”

The Firm also recommends a conforming administrative-review amendment clarifying reconsideration rights. Newly specified higher daily amounts should apply only to noncompliance on or after the final rule’s effective date, and the rule should preserve PBGC’s described non-enforcement treatment for covered pre-effective-date violations.

PLANADVISER covered the Firm's comments in its September 25, 2026, article, "Wagner Law Group Pushes Back on Proposed PBGC Penalty Rule."

About The Wagner Law Group's PBGC-Focused Practice Group:

The Practice Group advises plan sponsors, administrators, fiduciaries, financial institutions, and other stakeholders on the full range of PBGC matters, drawing on extensive private-practice experience and nearly 140 years of combined prior PBGC service.

For additional information, contact:
Harold J. Ashner — hashner@wagnerlawgroup.com
Israel Goldowitz — igoldowitz@wagnerlawgroup.com
Telephone: (202) 969-2800

Ari Sonneberg
The Wagner Law Group
6175328005 ext.
Visit us on social media:
LinkedIn
Instagram
Facebook
YouTube
X
Other

This press release can be viewed online at: https://www.einpresswire.com/article/946369044

EIN Presswire's priority is source transparency. We do not allow opaque clients, and our editors try to be careful about weeding out false and misleading content. As a user, if you see something we have missed, please do bring it to our attention. Your help is welcome. EIN Presswire, Everyone's Internet News Presswire™, tries to define some of the boundaries that are reasonable in today's world. Please see our Editorial Guidelines for more information.
© 1995-2026 Newsmatics Inc. All Right Reserved.