

New PBGC Guidance Provides Premium Penalty Relief for Certain Late Payments and for Faulty Alternative Premium Funding Target Elections

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PBGC recently published guidance granting additional relief from penalties associated with late payment of premiums and in situations where a pension plan fails to comply with the mechanics for electing the alternative premium funding target to calculate the variable rate premium. The following summarizes the available relief and eligibility requirements.

On September 14, 2011, the Pension Benefit Guaranty Corporation (PBGC) issued a [notice](#) (Notice) that provides relief to pension plans from penalties associated with certain late payment of premiums and situations involving the failure to properly elect the alternative premium funding target (APFT) to calculate the variable rate premium (VRP). According to [PBGC's press release](#), the agency was granting premium-related relief as part of a continuing effort to ease regulatory burdens on its customers. Plan sponsors and industry groups continue to request that the PBGC expand premium penalty relief beyond the situations described below.

Relief from Late Payment of Premiums Penalty—the Seven Day Rule

Generally, PBGC assesses a late payment charge, composed of separate penalty and interest components, when the required annual premium payment is not timely made. PBGC may waive the penalty component, but not the interest component, upon a showing of reasonable cause and under certain other circumstances outlined in the premium payment regulations.

The Notice provides that for plan years beginning after 2010, PBGC will automatically waive premium payment penalties that are assessed solely because a premium payment was late by not more than seven calendar days. The relief does *not* apply to late payment interest charges. A filer who submits a premium payment that is delinquent by more than seven calendar days may seek reconsideration of the late payment penalty under the premium payment regulations.

While this relief may seem minor at first blush, it is valuable because PBGC premium payment penalties are based on the number of months from the due date to the date of payment, “counting any portion of a month as a full month” In other words, absent this relief, a payment that is only one day late could potentially trigger a penalty for a full month.

Relief for Improper APFT Elections

For plan years after 2007, PBGC premium regulations allow pension plans to elect the APFT to calculate the VRP. Pension plans elect the APFT method by checking Box 5 in Part II of the premium filing form. A number of pension plans failed to properly elect the APFT method for plan years 2008 and 2009. In response, PBGC issued Technical Update 10-2 under which a pension plan was deemed to have made a valid election for the 2008 or 2009 plan year provided certain conditions were met.

The Notice provides further relief for pension plans that did not qualify under Technical Update 10-2 as well as expands upon such relief for plan years after 2009. Under the Notice, relief is available when a pension plan uses the APFT method to determine VRP for the plan year without filing a valid election for the current or a prior plan year. PBGC determines the appropriate VRP determination method solely by reference to the information reported on Line 7d(1) of Part III. If “alternative” is selected, PBGC treats the plan as if it elected the APFT method.

In addition, the Notice provides limited relief to those pension plans that submit an otherwise valid APFT election after the filing due date. This relief is available when the delinquent filing is not an amendment of a timely filing in which the pension plan elected the standard method and the delinquent filing is submitted by the earlier of the 90th day after the due date or the 30th day after receiving notice from PBGC that the filing was delinquent.

Pension plans that are entitled to either form of relief will be contacted by PBGC to explain the options and actions required. Those pension plans not entitled to relief under the notice may seek reconsideration based on the facts and circumstances.

Relief from Late Payment Penalty for 2008 and 2009 Plan Years

Pension plans that did not qualify for relief under Technical Update 10-2 and pension plans for which PBGC denied any requests for reconsideration (or such requests were not submitted) were required to amend their premium filing and recalculate VRP using the standard method. This recalculation often resulted in additional premium liability that was paid after the due date and was subject to late payment charges. Under the Notice, for 2008 and 2009 plan years, PBGC waives the premium penalty that results from the recalculation of VRP for such pension plans.

PBGC will contact pension plans entitled to penalty relief. Pension plans that already paid the late payment penalty will receive a credit that can be used to offset future premiums. Pension plans that have

yet to amend their 2008 or 2009 filings to recognize the additional premium liability will receive the waiver if the filing is amended and the additional premium paid within 30 days of the date PBGC notifies the plan that it is entitled to relief.

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