

**Billing Code 7709-01-P**

**PENSION BENEFIT GUARANTY CORPORATION**

**Premium Penalty Relief; Alternative Premium Funding Target Election Relief**

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice.

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**SUMMARY:** Executive Order 13563 on Improving Regulation and Regulatory Review directs agencies to review and improve their regulatory processes. As a result of this regulatory review, and in response to comments by premium payers and pension professionals, PBGC is providing relief from certain premium penalties and in certain situations involving alternative premium funding target elections.

**FOR FURTHER INFORMATION CONTACT:** Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024 or [klion.catherine@pbgc.gov](mailto:klion.catherine@pbgc.gov). (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4024).

**SUPPLEMENTARY INFORMATION:**

As a result of PBGC's regulatory review under Executive Order 13563 and in response to comments by premium payers and pension professionals, PBGC is granting relief in several situations:

- For 2011 and later plan years, PBGC will waive premium penalties assessed solely because payments are late by not more than seven calendar days.
- For 2010 and later plan years, PBGC is providing relief similar to, but more expansive, than the relief provided in Technical Update 10-2 (Variable Rate Premiums; Alternative Premium Funding Target Elections; Box 5 Relief).<sup>1</sup>

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<sup>1</sup> [www.pbgc.gov/res/other-guidance/tu/tu10-2.html](http://www.pbgc.gov/res/other-guidance/tu/tu10-2.html) .

- For 2008 and 2009 plan years, PBGC will waive premium penalties for late premiums in connection with certain box 5 errors.

### **Seven Day Rule**

Under ERISA section 4007 and PBGC's regulation on Payment of Premiums (29 CFR part 4007), late payment charges — interest and late payment penalties — apply to required annual premium payments that are not timely made. Penalties (but not interest) may be waived in accordance with the premium payment regulation. PBGC's premium penalty policy is set forth in the appendix to the premium payment regulation.

For plan years beginning after 2010, PBGC will automatically waive premium payment penalties that are assessed solely because premium payments are late by not more than seven calendar days.<sup>2</sup> In applying this policy, PBGC will assume that each premium payment was made seven calendar days before it was actually made. All other rules will then be applied as usual. If the result of this procedure is that no penalty would arise, then any penalty assessed on the basis of the actual payment dates will be waived. Filers may seek reconsideration of late payment penalties assessed in circumstances to which the relief under this Notice does not apply.

### **Alternative Premium Funding Target Elections**

For plan years beginning after 2007, PBGC's premium regulations allow a plan to elect to use the alternative premium funding target to calculate its variable rate premium (VRP). The regulations require that such an election be filed with PBGC before the VRP due date. A plan makes an election by checking box 5 in Part II (Alternative Premium Funding Target Election) of the comprehensive premium filing for the first plan year to which the election applies.<sup>3</sup> If an

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<sup>2</sup> The premium penalty relief described in this Notice does not apply to late payment interest charges, to penalties for failure to timely file required premium information, or to penalties for late payment of termination premiums.

<sup>3</sup> Premium information must be submitted electronically. PBGC provides on its Web site, [www.pbgc.gov](http://www.pbgc.gov), filing instructions that include an illustrative form with a line number for each data element. This Notice refers to those

election to use the alternative premium funding target is not in effect, the plan must calculate its VRP using the standard premium funding target.<sup>4</sup>

For 2008 and 2009 plan years, over ninety-five percent of the plans that used the alternative method filed valid elections to do so. However, some plans that used the alternative method did not make a valid election to do so and later requested that PBGC treat them as having made a valid election. In response, on June 16, 2010, PBGC issued Technical Update 10-2, under which a plan was deemed to have made a valid election if certain conditions were met.

Most plans with box 5 errors for 2008 or 2009 plan years were eligible for the Technical Update 10-2 relief or were granted similar relief upon reconsideration based on the facts and circumstances. PBGC spent considerable time reviewing requests for reconsideration to ensure that due process was followed, that plans with similar situations were treated consistently, and that discretion was exercised fairly and reasonably. To date, PBGC has denied fewer than 50 requests for reconsideration with respect to box 5 errors in 2008 or 2009 plan years.

Premium payers and pension professionals requested further relief from box 5 errors, including relief for plan years starting after 2009 and relief for plans that did not qualify for the Technical Update 10-2 relief for 2008 and 2009 plan years.

### **Relief for plan years beginning after 2009**

PBGC has taken steps to reduce box 5 errors for 2010 and later plan years. The agency has modified its online Premium Filing application (MyPAA) to provide additional “error check” or “alert” notices. PBGC assists vendors with their systems and encourages vendors to have similar error check and alert notices as MyPAA. PBGC urges all filers to check filings to avoid

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line numbers.

<sup>4</sup> This Notice will refer to use of the alternative premium funding target as the “alternative method” and to use of the standard premium funding target as the “standard method.”

making errors, pay close attention to the MyPAA warnings, and print and save receipts showing that filings are actually submitted.

Despite these efforts, PBGC still occasionally finds box 5 errors. PBGC is providing relief similar to, but more expansive, than the relief provided in Technical Update 10-2 for plan years beginning after 2009. Specifically, relief is available where the plan used the alternative method to determine the VRP for the applicable plan year without filing a valid election to do so for the applicable plan year or a prior plan year. Similar relief is available where the plan used the standard method, but inadvertently made an election to use the alternative method for the applicable plan year (*e.g.*, box 5 was checked because of an errant mouse click).

In either case, PBGC bases its determination of which method was used to determine the VRP for the applicable plan year solely on the information reported in line 7d(1) of Part III (Premium Information). For example, if “alternative” is checked, PBGC determines that the alternative method was used.

If an election to use the alternative method is invalid solely because the filing was submitted after the due date, relief is available only if the filing is not an amendment of a timely filing in which the plan used the standard method to determine the VRP and the filing is submitted by the earlier of:

- The 90<sup>th</sup> day after the filing due date.
- The 30<sup>th</sup> day after the date of any PBGC notification that no filing has been received.<sup>5</sup>

PBGC is contacting plans entitled to this relief to explain the options and actions required, if any (*e.g.*, whether the inconsistent filing must be amended). Plans that do not qualify for this relief may seek reconsideration based on the facts and circumstances.

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<sup>5</sup> PBGC generally notifies plans within 30 days of the filing due date.

### **Premium penalty relief for 2008 and 2009 plan years**

In situations where a plan with a box 5 error for 2008 or 2009 plan years was not eligible for the Technical Update 10-2 relief and a request for reconsideration was denied (or not submitted), the plan was required to amend the applicable premium filing and recalculate the VRP using the standard method. In some cases, this resulted in additional premium being due. Because the additional premium was paid after the due date, late payment charges (penalties and interest) were assessed on the additional premium. In many cases, the late payment penalties were equal to 100 percent of the additional premium. In response to concerns of premium payers and pension professionals, PBGC will waive premium penalties in connection with these errors for 2008 and 2009 plan years.

PBGC will also waive premium penalties for plans that used the standard method but inadvertently checked box 5 and were required to recalculate the VRP using the alternative method.

PBGC will contact plans entitled to this penalty relief. If a plan entitled to this relief has already paid the late payment penalty, the penalty amount will be converted into a credit that can be used to offset future premiums. If a plan entitled to this relief has not amended the relevant filing and paid the additional premium due, PBGC will waive the penalty only if the filing is amended and the additional premium paid within 30 days of the notification.

### **Contact information**

For questions, contact Robert Callahan of the Financial Operations Department at 202-326-4067, ext. 3258, or [callahan.robert@pbgc.gov](mailto:callahan.robert@pbgc.gov) or Bill O'Neill, at 202-346-4067, ext. 6758, or [oneill.bill@pbgc.gov](mailto:oneill.bill@pbgc.gov) .

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