

Billing Code 7709-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

Premium Penalty Relief for Certain Delinquent Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Policy statement.

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, among other initiatives, PBGC is announcing a limited window for covered plans that have never paid required premiums to pay past-due premiums without penalty.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion

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(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:

The Pension Benefit Guaranty Corporation (PBGC) administers the pension insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under sections 4006 and 4007 of ERISA, plans covered by title IV must pay premiums to PBGC. The vast majority of plans covered by PBGC make every effort to pay required premiums in full and on time. PBGC depends on these premium funds to provide participants and beneficiaries of terminated defined benefit plans guaranteed benefits as provided under ERISA.

A few times a year, PBGC becomes aware of a covered plan that has never filed PBGC premiums, in some cases because the plan administrator was unaware that the plan was covered.¹ PBGC's regulation on Payment of Premiums (29 CFR part 4007) requires that in addition to the unpaid premiums, such a plan must pay interest and penalties. PBGC believes that one reason plan administrators of covered plans that have not paid any required premiums fail to come forward is that penalties can be quite substantial, often as much as 100 percent of the unpaid premium (see 29 CFR § 4007.8(a)).

On January 18, 2011, the President issued Executive Order 13563 on Improving Regulation and Regulatory Review (76 FR 3821, Jan. 21, 2011). Executive Order 13563 calls, among other things, for agencies to develop a plan to review existing regulations to identify any that can be made more effective or less burdensome in achieving regulatory objectives.

As part of PBGC's review of its premium regulations pursuant to Executive Order 13563,² PBGC is adopting a voluntary compliance program to encourage compliance and reduce workload burden in connection with covered plans that have never paid required premiums. PBGC will waive premium payment penalties (as well as information penalties under ERISA section 4071 for failure to timely file premium information) for any such plan, if the plan administrator contacts PBGC, pays past due premiums, and files required information within the time frames described in this document.³ (The relief provided in this notice does not apply to late payment interest charges.)

¹ PBGC's benefit guarantees apply to plan participants in a covered plan even if the plan has failed to pay required premiums. However, if the sponsor goes out of business, PBGC often finds out that benefits need to be paid only when it is contacted by a plan participant.

² PBGC's Plan for Regulatory review can be found at www.pbgc.gov/documents/plan-for-regulatory-review.pdf.

³ PBGC recognizes that there may be difficulty in determining premiums and premium-related information for years in the distant past. PBGC is willing to discuss application of the relief in this notice even in situations where not all premiums for past years are paid and/or not all premium information for past years is provided.

To qualify for the relief provided in this document, the plan administrator of an eligible plan (or a representative) must –

1. **By July 31, 2012**, contact Robert Callahan (callahan.robert@pbgc.gov) or Bill O’Neill (oneill.bill@pbgc.gov) of PBGC’s Financial Operations Department (202–346–4067) to discuss how to comply with premium filing requirements to obtain this relief, and
2. **By August 31, 2012** (or a later date specified by PBGC), pay past-due premiums and file required premium information.⁴

PBGC will use its web site (www.pbgc.gov) and other methods (e.g., presentations at professional conferences) to educate plan administrators of covered plans that may not be paying required premiums about premium requirements. PBGC expects that these efforts, together with the relief provided in this document, will encourage compliance.

Out of fairness to compliant plan sponsors and to protect participants, after the end of the period for taking advantage of this relief, PBGC will step up its efforts to enforce premium requirements for covered plans that have not paid any required premiums, including assessment of penalties.

Issued in Washington, DC this 31st day of January, 2012.

Joshua Gotbaum
Director
Pension Benefit Guaranty Corporation

⁴ Currently, premiums must be filed electronically. The requirement to file electronically applies to filings for plan years beginning in 2006 that are made on or after July 1, 2006, for plans with 500 or more participants for the prior plan year and to filings for all plans for plan years beginning after 2006. Plan administrators and their representatives should review the information under the “New Users” heading at www.pbgc.gov/prac/prem/online-premium-filing-with-my-paa.html for information on how to file premiums electronically. PBGC will discuss with plan administrators how to file for years for which electronic filing was not available.

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