[Billing Code 7709-02-P]

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4006, 4007, and 4047

RIN 1212-AB26

Premium Rates; Payment of Premiums; Reducing Regulatory Burden

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Corporation (PBGC) is making its premium rules more effective and less burdensome. Based on its regulatory review under Executive Order 13563 (Improving Regulation and Regulatory Review), PBGC proposed to simplify due dates, coordinate the due date for terminating plans with the termination process, make conforming and clarifying changes to the variable-rate premium rules, give small plans more time to value benefits, provide for relief from penalties, and make other changes. PBGC recently finalized the part of the proposal that eliminated the early payment requirement for large plans' flat-rate premiums. This action finalizes the rest of the proposal.

DATES: Effective [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**]. The changes are generally applicable for plan years starting on or after January 1, 2014. See **Applicability** later in the preamble for details.

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SUPPLEMENTARY INFORMATION:

Executive Summary — Purpose of the Regulatory Action

This rulemaking is needed to make PBGC's premium rules more effective and less burdensome. The rule simplifies and streamlines due dates, coordinates the due date for terminating plans with the termination process, makes conforming changes to the variable-rate premium rules, clarifies the computation of the premium funding target, reduces the maximum penalty for delinquent filers that self-correct, and expands premium penalty relief.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4007 of ERISA, which gives PBGC authority to set premium due dates and to assess late payment penalties.

Executive Summary — Major Provisions of the Regulatory Action

Due Date Changes

In recent years, premium due dates have generally depended on plan size. Large plans have paid the flat-rate premium early in the premium payment year and the variable-rate premium later in the year. Mid-size plans have paid both the flat- and variable-rate premiums by that same later due date. Small plans have paid the flat- and variable-rate premiums in the following year. PBGC recently eliminated the early due date for large plans' flat-rate premiums. PBGC is now completing the process of simplifying the due-date rules by making small plans' premiums due at the same time as large and mid-size plans' premiums. However, because of a transition rule that gives small plans more time to adjust to the new provisions, the due dates will

not be completely uniform until 2015. The following table shows how due dates differ under the previous and the new due date rules for calendar-year plans for 2014 (the transition year) and 2015 (the year full uniformity is achieved).

Plan size	**2014**			**2015**		
	Old Rules		**New Rules**	**Old Rules**		**New Rules**
	Flat-rate premium	Variable-rate premium	Entire Premium	Flat-rate premium	Variable-rate premium	Entire Premium
Large	2/28/2014	10/15/2014	10/15/2014	2/28/2015	10/15/2015	10/15/2015
Mid-size	10/15/2014	10/15/2014	10/15/2014	10/15/2015	10/15/2015	10/15/2015
Small	4/30/2015	4/30/2015	2/15/2015	4/30/2016	4/30/2016	10/15/2015

For the special case of a plan terminating in a standard termination, the final premium might come due months after the plan closed its books and thus be forgotten. Correcting such defaults has been inconvenient for both plans and PBGC. To forestall such problems, PBGC is setting the final premium due date no later than the date when the post-distribution certification is filed. PBGC is also making conforming changes to other special case due date rules.

Variable-Rate Premium Changes

Some small plans determine funding levels too late in the year to be able to use current-year figures for the variable-rate premium by the new uniform due date. To address this problem, PBGC is providing that small plans generally use prior-year figures for the variable-rate premium (with a provision for opting to use current-year figures).

To facilitate the due date changes, a plan will generally be exempt from the variable-rate premium for the year in which it completes a standard termination or (if it is small) for the first year of coverage.

In response to inquiries from pension practitioners, PBGC is clarifying the computation of the premium funding target for plans in "at-risk" status for funding purposes.

Penalty Changes

PBGC assesses late premium payment penalties at 1 percent per month for filers that self-correct and 5 percent per month for those that do not. The differential is to encourage and reward self-correction. But both penalty schedules have had the same cap — 100 percent of the underpayment — and once the cap was reached, the differential disappeared. To preserve the self-correction incentive and reward for long-overdue premiums, PBGC is reducing the 1-percent penalty cap from 100 percent to 50 percent.

PBGC is also codifying in its regulations the penalty relief policy for payments made not more than seven days late that it established in a Federal Register notice in September 2011 and is giving itself more flexibility in exercising its authority to waive premium penalties.

Other Changes

PBGC is also amending its regulations to accord with the Moving Ahead for Progress in the 21st Century Act and the Bipartisan Budget Act of 2013 and to avoid retroactivity of PBGC's rule on plan liability for premiums in distress and involuntary terminations.

Background

PBGC administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA sections 4006 and 4007, plans covered by the program must pay premiums to PBGC. PBGC's premium regulations — on Premium Rates (29 CFR part 4006) and on Payment of Premiums (29 CFR part 4007) — implement ERISA sections 4006 and 4007.

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. In response to and in support of the Executive Order, PBGC on August 23, 2011, promulgated its Plan for Regulatory Review,[1] noting several regulatory areas — including premiums — for immediate review.

PBGC reviewed its premium regulations and identified a number of ways to simplify and clarify the regulations, reduce burden, provide penalty relief, and generally make the regulations work better. On July 23, 2013 (at 78 FR 44056), PBGC published a proposed rule to replace the system of three premium due dates (based on plan size and premium type) with a single due date corresponding to the Form 5500 extended due date, to coordinate the due date for terminating plans with the termination process, to make conforming and clarifying changes to the variable-rate premium rules, to provide for relief from penalties, and to make other changes.

PBGC received comments on its proposed rule from six commenters — two employer associations, two associations of pension practitioners, an actuarial firm, and an individual actuary. All of the commenters approved of the proposal, and one specifically urged that it be made effective for 2014. The commenters also had suggestions for additional changes PBGC might make in its premium regulations or procedures. Those suggestions are discussed below with the topics they relate to. In response to the comments, PBGC has made changes both to the regulatory text and to its premium forms and instructions. Changes have also been made to reflect adoption of the Bipartisan Budget Act of 2013 and a minor due-date simplification that PBGC introduced on its own initiative (also discussed below).

[1] See http://www.pbgc.gov/documents/plan-for-regulatory-review.pdf.

Because the proposed change in the large-plan flat-rate due date was time-sensitive (and received only positive comments from the public), PBGC expedited a final rule limited to that change (and related changes in penalty provisions). That final rule was published January 3, 2014 (at 79 FR 347).

Current and Historical Context

There are two kinds of annual premiums.[2] The flat-rate premium is based on the number of plan participants, determined as of the participant count date. The participant count date is generally the last day of the plan year preceding the premium payment year; in some cases, however (such as for plans that are new or are involved in certain mergers or spinoffs), the participant count date is the first day of the premium payment year. The variable-rate premium (which applies only to single-employer plans) is based on a plan's unfunded vested benefits (UVBs) — the excess of its premium funding target over its assets. The premium funding target and asset values are determined as of the plan's UVB valuation date, which is the same as the valuation date used for funding purposes. In general, the UVB valuation date is the beginning of the plan year, but some small plans (with fewer than 100 participants) may have UVB valuation dates as late as the end of the year.

Section 4007 of ERISA authorizes PBGC to set premium due dates and assess penalties for failure to pay premiums timely. Beginning in 1999,[3] PBGC set the variable-rate premium due date for plans of all sizes as 9½ calendar months after the beginning of the premium payment year (October 15 for calendar-year plans). This was done so that the due date would correspond with the extended due date for the annual report for the prior year that is filed on Form 5500.

[2] There is also a termination premium, which is unaffected by this final rule.
[3] See PBGC final rule at 63 FR 68684 (Dec. 14, 1998).

Coordination of the premium and Form 5500 due dates promotes consistency and simplicity and avoids confusion and administrative burden. In 2008, however, to conform to changes made by the Pension Protection Act of 2006 (PPA 2006), small-plan due dates were extended to 16 months after the beginning of the premium payment year (April 30 of the following year for calendar-year plans).

Flat-rate premiums for large plans (those with 500 or more participants) were previously due two calendar months after the beginning of the premium payment year (the end of February for calendar-year plans). PBGC recently eliminated that early due date, and large plans' flat-rate premiums are now due at the same time as variable-rate premiums.

Under ERISA section 4007, premiums accrue until plan assets are distributed in a standard termination or a failing plan is taken over by a trustee. A plan undergoing a standard termination is exempt from the variable-rate premium for any plan year after the year in which the plan's termination date falls.[4]

Late payment penalties accrue at the rate of 1 percent or 5 percent per month of the unpaid amount, depending on whether the underpayment is "self-corrected" or not. Self-correction refers to payment of the delinquent amount before PBGC gives written notice of a possible delinquency. Penalties are capped by statute at 100 percent of the unpaid amount.

The changes to the premium regulations affecting due dates, variable-rate premiums, and penalties are discussed below in that order.

[4] See *Exemption for Standard Terminations*, below.

New Due Date Rules

Uniform Due Dates for Plans of All Sizes

PBGC is setting the premium due date for small plans as 9½ months after the beginning of the premium payment year (subject to a one-year transition rule, discussed below). This date corresponds with the extended due date for the annual report for the prior year that is filed on Form 5500. (For calendar-year plans, the due date will be October 15.) Having recently made the same change for large plans' flat-rate premium due date, PBGC has now eliminated the system of three premium due dates tied to plan size and premium type and replaced it with a uniform due date system for both flat- and variable-rate premiums of plans of all sizes.

For small plans, the new unified due date raises a timing issue. Unlike large plans, which by statute must value benefits at the beginning of the year, small plans are permitted by statute to value benefits as late as the end of the year and thus might be unable to calculate variable-rate premiums by a due date within the year using current-year data. (For example, a small calendar-year plan that valued benefits as of December 31 could not determine the premium by the preceding October 15.) PBGC's solution to this timing problem is for small plans to determine the variable-rate premium using data, assumptions, and methodology for the year before the premium payment year. (This solution also accommodates situations where (although timely action might be possible) sponsors prefer to put off giving plan actuaries information for plan valuations until after other close-of-the-year matters are dealt with.) A more detailed discussion of this provision is set forth below under the heading *"Look-Back" Rule for Small Plans*, below.

These changes mean that plan consultants can do all premium and Form 5500 filing chores at one time, once a year. PBGC will receive all premium filings for each plan year at one time, specific to that year, and will be able to process a plan's entire annual premium in a single

operation. Going from three due dates to one will be simpler for all concerned — even for mid-size plans, whose due date is not changing. Simpler rules mean shorter and simpler filing instructions — instructions that PBGC must update annually and that plan administrators of plans of all sizes must read, understand, and follow. Less complexity means less chance for mistakes and the time and expense of correcting them. Moving to one uniform due date will also simplify PBGC's premium processing systems and save PBGC money on future periodic changes to those systems (because it is less expensive to modify simpler systems).

In short, PBGC believes that this change will produce a significant reduction in administrative burden for both plans and PBGC. It will also shift the earnings on premium payments between plans and PBGC for the time between the old and new due dates, but overall, plans will gain.[5]

However, shifting immediately from the old to the new due date schedule would result in two premium due dates for small plans in the transition year: using a calendar-year plan as an example, the 2013 premium would be due at the end of April 2014, and the 2014 premium would be due in mid-October 2014.[6] This "doubling up" of premiums for one year prompted one commenter to express concern about potential cash flow problems for some small plan sponsors and to recommend that PBGC permit payment of the transition-year premium in three annual installments. Another commenter requested transition rules generally.

Although PBGC is not persuaded that the due date change poses a significant cash flow problem for most small plan sponsors (in part because premiums can be paid from plan assets), the fact that a comment raised this issue indicates that it may exist in some cases. But PBGC

[5] See *Uniform Due Dates* under **Executive Orders 12866 and 13563**, below, for detailed discussion of costs and benefits.

[6] In the transition year for the old due date system, small plans made no premium payments.

believes that a regime of installment payments is more complex than is necessary to deal with the problem. Instead, PBGC is addressing this concern by extending the transition year due date by four months (from October 15, 2014, to February 15, 2015, for calendar-year plans) for small plans that would otherwise have two premium due dates in the transition year. With this one-time extension, a small plan's transition-year premium and its premiums for the preceding and following plan years can be spaced about equally over a 17½-month period (from April 30, 2014, to October 15, 2015, for calendar-year plans), with about eight or nine months between each two payments.[7]

In addition, a 60-day penalty waiver is available in cases of financial hardship,[8] which could extend the 17½-month period to 19½ months. And case-by-case relief from late-payment penalties is also available. In combination with the transition-year due date extension, PBGC believes these provisions adequate to relieve any cash-flow problems caused by transition-year due-date bunching.

Terminating Plans' Due Date

The foregoing discussion focuses on the normal due dates for annual premiums. There are also special due date rules for new and newly covered plans and for plans that change plan year. But there has been no special due date provision for terminating plans — and yet such plans have posed a special problem, because their final premium due date might come months after all benefits were distributed and their books were closed. Although the standard termination rules require that provision be made for PBGC premiums,[9] PBGC's experience has

[7] A calendar-year filer that wanted to pay the second premium halfway between the due dates for the first and third premiums would pay it in late January 2015. The extension to mid-February provides some leeway.

[8] The waiver is available if timely payment of a premium would cause substantial hardship but payment can be made within 60 days. See section 4007(b) of ERISA and § 4007.8(b) of the premium payment regulation.

[9] See 29 CFR 4041.28(b).

been that once the sometimes-difficult process of distributing benefits was over — and with the premium due date often months in the future — plan administrators might simply forget about premiums and consider their work done. Months later, when PBGC contacted them after they failed to make the final premium filing, it was typically an inconvenience, and sometimes an annoyance, to go back to (or reconstruct) the records to calculate and pay premiums — and interest and penalties, because the due date had been missed.

With a view to ensuring that final-year premiums are routinely paid for plans winding up standard terminations, PBGC is changing the due date for such plans to bring it within the standard termination timeline.[10] The final event in the standard termination timeline is the filing of the post-distribution certification under § 4041.29 of PBGC's regulation on Termination of Single-Employer Plans (29 CFR part 4041). The plan administrator of a terminating plan must file the certification (on PBGC Form 501) within 30 days after the last benefit distribution date, but no late filing penalty is assessed if the filing is no later than 90 days after the distribution deadline under § 4041.28(a) of the termination regulation (the "penalty-free zone"). The proposed rule provided that the premium due date for a terminating plan's final year would be the earliest of (1) the normal premium due date, (2) the end of the penalty-free zone, or (3) the date when the post-distribution certification is actually filed. In the interest of simplicity, the final rule eliminates the second of these three dates and sets the due date for such final filings as the earlier of (1) the normal premium due date and (2) the date when the post-distribution certification is actually filed.

Thus plans will in effect have at least 90 days after distributions are complete to make the final year premium filing. And since in addition the normal unified premium due date is nine-

[10] See p. 3 of the Standard Termination Filing Instructions, http://www.pbgc.gov/documents/500_instructions.pdf.

and-a-half months after the plan year begins, only plans closing out in the first six-and-a-half months of the final year will face an accelerated premium deadline. For plans closing out in the last five-and-a-half months of the final year, the normal premium due date will come before the end of the penalty-free zone.

The 90 days (or more) between the completion of final distributions and the accelerated premium deadline will also give a plan at least that much time to determine the flat-rate premium (which is based on the participant count at the end of the prior year). For a terminating plan, counting participants should be relatively easy. Because it is in the process of providing benefits for (or for the survivors of) each participant, a terminating plan must necessarily have a roster of all participants. By simply subtracting from the roster the participants who received distributions before the participant count date, the plan can determine the participant count.

Computing a variable-rate premium in three months might be more challenging, but under this final rule it will not be necessary. If the termination date for a standard termination is before the beginning of the final plan year, the regulation already provides an exemption from the variable-rate premium for the final year. PBGC is expanding this exemption to apply to a plan's final year, even if the termination date comes during that year.[11] Thus, the final-year premium will be flat-rate only. This change will provide relief for the significant number of plans that close out in the same year in which their termination dates fall (as indicated by PBGC data on the number of plans that pay variable-rate premiums for the final year).

Advancing the premium due date for some terminating plans will shift earnings on the premiums from those plans to PBGC. But some of those plans should enjoy reduced administrative expenses (and possibly save on late charges) because the advanced deadline will

[11] See *Final-Year Variable-Rate Premium Exemption*, below.

prompt them to prepare premium filings while files are open for paying benefits. And some plans will avoid paying a final-year variable-rate premium under PBGC's expansion of the exemption for plans doing standard terminations.[12] On balance, PBGC expects there to be no significant net cost to plans and significant administrative benefits for PBGC.

One commenter recommended that the new terminating plan due date be extended by 30 days so that the final-year premium filing would not have to be made at the same time as the post-distribution certification (Form 501), citing the time necessary to prepare Form 501. PBGC believes that the simplicity of making the final flat-rate-only premium filing, as discussed above, suggests that plan administrators will typically be able to avoid simultaneous filing of the premium and post-distribution certification forms by simply filing the premium form before the deadline. If circumstances make that difficult, the seven-day penalty waiver (see *Codification of Seven-Day Penalty Waiver Rule*, below) will provide relief from late payment penalties. If, in an unusual situation, preparation of the premium filing takes more than a week, case-by-case relief from late-payment penalties is also available. (See *Expansion of Penalty Waiver Authority*, below).

New Plan Due Date Modifications

As noted above, the premium payment regulation already includes a special due date provision for new and newly covered plans. PBGC is making two technical modifications to this provision in support of the primary changes in this rulemaking.

The first modification is to restore — for newly covered plans — the alternative due date of 90 days after title IV coverage begins. This alternative was available before the PPA 2006

[12] See *Final-Year Due Date* under **Executive Orders 12866 and 13563**, below, for detailed discussion of costs and benefits.

amendments to the premium regulations, but those amendments set newly covered plans' normal due date four months after the end of the premium payment year — and thus more than 90 days after the latest possible coverage date. This made the alternative due date superfluous, and it was removed. Now that PBGC is returning the normal due date to 2½ months before the end of the plan year, it will again be possible for a plan's coverage date to be too late in the premium payment year to make filing by the normal due date feasible. Hence the restoration of this alternative due date.

The second modification is to provide a due date extension for a subset of plans that are excluded from the normal rule that small plans base the variable-rate premium on prior-year data.[13] This subset consists of new small plans resulting from non-*de minimis* consolidations and spinoffs. These plans will have to pay a variable-rate premium based on current-year data.[14] But being small, a plan in this subset might have a UVB valuation date too late in the premium payment year to enable the plan to meet the normal filing deadline. This second modification to the new-plan due date provision extends the due date for such plans until 90 days after the UVB valuation date, to give them time to calculate the variable-rate premium.[15]

One commenter recommended that PBGC adopt a very different due date rule for new plans and some newly covered plans. The suggestion was basically to provide for filing by the following year's normal due date in situations where one of the 90-day extension rules would otherwise apply. The commenter indicated that the suggested change would not apply to newly covered plans that had previously gone in and out of coverage, but even without this

[13] See *"Look-Back" Rule for Small Plans*, below.
[14] See *First-Year Variable-Rate Premium Exemption*, below.
[15] To give any plan with a deferred due date adequate time to reconcile an estimated variable-rate premium, the reconciliation date keys off the due date rather than the premium payment year commencement date. For a normal due date, the reconciliation date remains the same.

complication, PBGC is not persuaded that the change would be an improvement. The commenter argued that the existing rule is likely to result in missed filings, but the 90-day extension has been in the regulation for years, and no significant problems with it have come to PBGC's attention. Thus PBGC's concern would be that changing this long-standing pattern of due date extensions would be more likely to cause than cure problems. Furthermore, the commenter's recommendation for the new and newly covered plan due date would put plans in the position of owing two years' premiums on the same day, a result that the same commenter was concerned with in connection with the transition to the new unified due date for small plans (see *Uniform Due Dates for Plans of All Sizes*, above). Accordingly, PBGC is not adopting this suggestion.

Variable-Rate Premium Changes

"Look-Back" Rule for Small Plans

As noted in the discussion of the unified due date above, some small plans value benefits too late in the premium payment year to be able to compute variable-rate premiums by the new uniform due date, which is 2½ months before the end of the premium payment year. (As also noted, some small-plan sponsors prefer to defer plan valuation matters until after year-end.) To solve this problem, small plans will determine UVBs, on which variable-rate premiums are based, by looking back to data for the prior year.[16] Because a new plan does not have a prior year to look back to, new small plans will generally be exempt from the variable-rate premium. This new variable-rate premium exemption is discussed in more detail under *First-Year Variable-Rate Premium Exemption* below.

[16] This revives a concept that was in the premium regulations before PPA 2006: the alternative calculation method, which permitted plans to determine UVBs by "rolling forward" prior-year data using a set of complex formulae. No "rolling forward" or other modification of prior-year data is involved in the approach that PBGC is now taking.

The term "UVB valuation year" is used in the text of the regulation to mean the year that the plan administrator looks to for the UVBs used to calculate the variable-rate premium for the premium payment year. As a general rule, the UVB valuation year is the plan year preceding the premium payment year for small plans, and is the premium payment year for other plans. (Using the term "UVB valuation year" avoids the need to have the regulation describe two versions of all the UVB determination rules — one version for small plans and a second version for the others.)

This "look-back" rule applies only to the variable-rate premium, not to the flat-rate premium. The participant count on which the flat-rate premium is based is determined not as of the UVB valuation date but as of the participant count date. This date is still the same as it was before PPA 2006, when small plans' premium due date was the historical date that this final rule reinstates for them (October 15 for calendar-year plans). From the perspective of the flat-rate premium, the final rule returns small plans to their situation before PPA 2006, and no special accommodation is needed.

Plans Subject to Look-Back Rule

In general, the look-back rule applies to any plan with a participant count for the premium payment year of up to 100, or a funding valuation date that is not at the beginning of the premium payment year. Thus the "small plans" to which the look-back rule applies are a slightly different group, compared to the "small plans" whose premium due date under the PPA 2006 amendment is four months after the end of the plan year. The difference in approach reflects the difference in the implications of plan size under the old and new premium payment regulations. Heretofore, all plans had the same UVB valuation year, and plan size determined

due date; under the amended regulation, all plans have the same due date, and plan size generally determines UVB valuation year (*i.e.*, whether the look-back rule applies).

Until now, the regulation based plan size on the participant count for the year before the premium payment year, so that plans could determine well in advance whether they were large and thus required to pay the flat-rate premium early in the year. New plans (which have no prior year) were treated as small, which meant that they paid their first-year premiums according to the small-plan payment schedule, regardless of size. Newly covered plans were grouped with new plans. If a new or newly covered plan in fact covered more than 100 participants, it enjoyed the luxury of the delayed small-plan due date for its first year, but the most PBGC could be said to have "lost" was 6½ months' interest on the premium.

Under the new rules, in contrast, if a new plan covering more than 100 participants were treated as small, PBGC would lose not just interest but (because of the new variable-rate premium exemption for new small plans) the whole variable-rate premium. For some new plans — particularly those created by consolidation or spinoff — this could be a very substantial sum. To avoid this unintended consequence of the look-back rule, which is meant for plans that are genuinely small, the small-plan category is based on the participant count for the premium payment year rather than the preceding year. This change is possible because PBGC's elimination of the early flat-rate premium due date for large plans has eliminated the pressure to determine plan size early in the premium payment year. By the time a plan needs to know whether it is small (and thus subject to the look-back rule), it will have had plenty of time to determine its current-year participant count.

Changing from the prior year's to the current year's participant count brings PBGC's definition of "small plan" into closer alignment with the category of plans eligible by statute to

use non-first-day-of-the-year valuation dates.[17] The somewhat complex statutory provision is based on participant-count data from the prior year,[18] and PBGC's participant count date for the current year is generally the last day of the prior year. To improve the correspondence with the statutory provision, PBGC is changing the small-plan numerical size range from fewer than 100 participants to 100 or fewer participants (the numerical size range of plans permitted by statute to use non-first-day-of-the-plan-year valuation dates).

As a general matter, PBGC wants every plan that in fact has a non-first-day-of-the-plan-year valuation date to be included in the definition of "small plan" that the look-back rule applies to. But because of the complexity of the statutory category of plans eligible to use non-first-of-the-year valuation dates, PBGC has not matched its "small plan" definition closely to every aspect of that statutory category. Instead, PBGC is combining a simple "small plan" concept with a "catch-all" clause.[19] The look-back rule thus applies to any plan that has a participant count of 100 or fewer for the premium payment year or that in fact has a funding valuation date for the premium payment year that is not the first day of the year.[20]

One commenter argued that small plans with first-day-of-the-plan-year valuation dates should be allowed to opt out of the look-back rule. The commenter noted that such plans would

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[17] The old small-plan category corresponds only approximately with the category of plans permitted by statute to use non-first-day-of-the-plan-year valuation dates. See preamble to PBGC's final PPA 2006 premium rule, 73 FR 15065 at 15069 (Mar. 21, 2008).

[18] ERISA section 303(g)(2)(B) provides that "if, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans which are single-employer plans and are maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account." ERISA section 303(g)(2)(C) provides additional rules dealing with predecessor employers and providing that a plan may qualify as "small" for its first year based on reasonable expectations about its participant count during that year.

[19] PBGC also considered having the look-back rule apply only to plans that actually have non-first-day-of-the-plan-year valuation dates, or only to plans eligible to elect such dates under the statute. PBGC rejected the former course because it believes that small plans generally will prefer the look-back rule. PBGC rejected the latter course because of the complexity of the statutory description of plans eligible to make the valuation date election.

[20] As discussed above, new plans resulting from non-*de minimis* consolidations and spinoffs are excluded from the look-back provision.

have plenty of time to compute the variable-rate premium based on a UVB valuation date in the premium payment year. Because the same can be said of a plan whose valuation date is the second day of the plan year, or indeed any day up to shortly before the due date (depending on the plan actuary's diligence), equity would seem to suggest that the proposed scope of the option would be too narrow and that the proposal should be evaluated on the assumption that it would apply to a much larger category of plans.

The commenter supported the proposal to permit opt-outs by observing that year-old data would not include prior-year contributions made to improve plans' funded status. PBGC is aware that some small-plan sponsors make additional contributions to reduce the variable-rate premium and that under the look-back rule, reductions would come a year later than if the look-back rule did not apply. Other correspondence and comments made at meetings have noted the importance of this opportunity for some small-plan sponsors (especially in view of the recent increase in the variable-rate premium[21]). While PBGC doesn't know how many such plan sponsors there are, evidence suggests that there may be enough to warrant the introduction of some flexibility in the application of the look-back rule.

Accordingly, to accommodate these concerns, the final rule contains a special exception allowing for a procedure to be provided in PBGC's premium instructions whereby a small plan may opt out of the look-back rule and instead base the variable-rate premium on current-year UVBs. Details will be incorporated in the premium instructions and may be modified over time in response to experience or suggestions from the public.[22]

[21] See ERISA section 4006(a)(8) as added by the Moving Ahead for Progress in the 21st Century Act (Pub. L. No. 112-141) and amended by the Bipartisan Budget Act of 2013 (Pub. L. No. 113-67).
[22] See p. 5 of PBGC's Plan for Regulatory Review.

Effects of Due Date and Look-Back Rules

PBGC's look-back rule has the advantage that it permits use of a more convenient premium due date, and it avoids the use of complicated mathematical manipulations aimed at making the prior-year figures more reflective of current conditions. For small plans, the combination of the new due date and the look-back rule means not only that the premium due date aligns with the Form 5500 due date (as typically extended), but that the due dates that align correspond to the same valuation. The following table illustrates, for filings due October 15, 2016,[23] how the alignment of valuations and due dates for small plans differ from the alignment for other plans.

	Premium Payment Year	**UVB Valuation Year**	**5500 Valuation Year**
Small Plans	2016	2015	2015
Other Plans	2016	2016	2015

Thus, not only do small plans enjoy the convenience of a convergence between the premium and Form 5500 due dates, but the due dates that converge are tied to the same valuation. This accommodates the desire of many small plan sponsors to defer the plan valuation until after the beginning of the year following the valuation date, when profits and taxes can be computed.

For small plans, the combination of the new due date and the look-back rule has basically the same result as if the old small-plan due date (four months after the end of the premium payment year) were extended for 5½ months without a look-back. For example, consider the following table comparing the final rule with a 5½-month due date extension (without a look-back) for a calendar-year plan:

[23] Future years are used in this and the following table to avoid confusion relating to the small-plan due-date phase-in provision.

	Premium payment year	UVB valuation year	Due date
Final rule	2016	2015	October 15, 2016
Due date extension without look-back	2015	2015	October 15, 2016

In both cases, the premium due October 15, 2016, is based on UVBs determined for 2015. The difference is that under the amended regulation, the premium is being paid for 2016, whereas if the due date had been extended 5½ months, the premium would be for 2015.

PBGC in fact considered the alternative of extending the due date 5½ months for small plans. But premium filings contain, in addition to premium data, other data that PBGC uses to help determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. It is important that these data be as current as possible. Furthermore, PBGC decided it was administratively simpler to have all premium filings for a year be due in that year — avoiding (for example) the need to determine whether a filing made October 15, 2016, was for 2016 or 2015.

The comparison of the advanced and deferred due date approaches shows why it is not clear how to analyze the financial impact of the final rule. On the one hand, the change can be viewed as a simple acceleration of the premium due date, with small plans losing 6½ months' interest on their annual premium payments. On the other hand, it can be viewed as a deferral of the due date (with small plans gaining 5½ months' interest on their premiums each year) preceded by a one-time "extra" premium in the transition year. For purposes of the analyses in this preamble of the effects of the changes for small plans, PBGC views the due date as being accelerated rather than deferred.

Under the look-back rule, small plans pay variable-rate premiums based on year-old data. Plans may view this either positively or negatively, depending on whether UVBs are trending up or down; using year-old data to compute variable-rate premiums shifts by one year the effect of changes in those data, which are typically modest but may at times be dramatic. And for the first year to which the look-back rule applies, small plans' variable-rate premiums are based on the same UVBs as for the year before, which each small plan may consider either beneficial or detrimental depending on its circumstances.

First-Year Variable-Rate Premium Exemption

The look-back rule faces the difficulty, noted above, that a new plan does not have a prior year to look back to. The typical new plan has no vested benefits, and so would owe no variable-rate premium with or without the look-back rule. But some new plans do have UVBs — for example, newly created plans that grant past-service credits. This circumstance creates a dilemma: a new small plan cannot look back to prior-year UVBs (because it has no prior year), but it may be unable to base its first year's premium on its first year's UVBs (because its valuation date may be too late in the year). To resolve this problem, PBGC is providing an exemption from the variable-rate premium for most small plans that are new or newly covered.[24] PBGC considers it reasonable to forgo variable-rate premiums from a few new small plans in the interest of greatly simplifying its premium due date structure.[25]

[24] Newly covered plans are often not subject to the funding rules, on which the premium rules are based, for the year that would be their look-back year. It is possible for a newly covered plan to have been in existence as a covered plan for a portion of the preceding year. Such a plan would have a look-back year and would not need an exemption from the variable-rate premium. In the interest of simplicity, PBGC's first-year variable-rate premium exemption ignores this rare possible situation.

[25] Between 2008 and 2011, about 65 new small plans per year paid total average variable-rate premiums of a little over $82,000 — less than 2 percent of total average annual new-plan variable-rate premiums.

However, PBGC considers plans created by consolidation or spinoff to be new plans. To avoid creating an incentive to sponsors of underfunded small plans to turn them (in effect) into new plans by spinoff or consolidation, simply to avoid paying variable-rate premiums, PBGC is excluding from this variable-rate premium exemption any new small plan that results from a non-*de minimis* consolidation or spinoff. These consolidated or spunoff plans are not subject to the look-back rule, but instead base their variable-rate premiums on current-year data, with an extended due date available (as discussed above) to provide time to calculate the premium where the UVB valuation date is late in the premium payment year.

Final-Year Variable-Rate Premium Exemption

Although the premium rates regulation exempts a plan in a standard termination from the variable-rate premium for any plan year beginning after the plan's termination date,[26] it is possible to carry out a standard termination so that the termination date and final distribution come within the same plan year. In that case, the plan is subject to the variable-rate premium — based on underfunding of vested benefits — for the very year in which it demonstrates, by closing out, that its assets are sufficient to satisfy not merely all vested benefits but all non-vested benefits as well.

As mentioned above, PBGC is expanding the exemption from the variable-rate premium to include the year in which a plan closes out, regardless of when the termination date is. Like the existing exemption, the new exemption is conditioned on completion of a standard termination. If the exemption is claimed in a premium filing made before (but in anticipation of) close-out, and close-out does not in fact occur by the end of the plan year, the exemption is lost, and the variable-rate premium is owed for that year (with applicable late charges).

[26] See *Exemption for Standard Terminations*, below.

As previously noted, variable-rate premium amounts not owed because of this change in the variable-rate premium exemption will significantly offset costs attributable to the revised final-year due date rule for plans in standard terminations, to which this change is related.[27]

Premium Funding Target for Plans in At-Risk Status for Funding Purposes

ERISA section 4006(a)(3)(E) makes the funding target in ERISA section 303(d) (with modifications) the basis for the premium funding target. The definition of "funding target" in section 303(d) in turn incorporates the provisions of ERISA section 303(i)(1), dealing with "at-risk" plans. (A plan is in "at-risk" status if it fails certain funding-status tests.) ERISA section 303(i)(5) provides for phasing in changes between normal and at-risk funding targets over five years and thus ameliorates the effects of section 303(i)(1). Although neither section 303(d) nor section 303(i)(1) refers explicitly to section 303(i)(5), PBGC believes that section 303(i)(5) clearly applies to the determination of the premium funding target. PBGC is adding a provision to the premium rates regulation clarifying this point.

ERISA section 303(i)(1)(A)(i) requires the use of special actuarial assumptions in calculating an at-risk plan's funding target, and section 303(i)(1)(A)(ii) requires that a "loading factor" be included in the funding target of an at-risk plan that has been at-risk for two of the past four plan years. The loading factor, described in section 303(i)(1)(C), is the sum of (i) an additional amount equal to $700 times the number of plan participants and (ii) an additional amount equal to 4 percent of the funding target determined as if the plan were not in at-risk status.

[27] See *Final-Year Due Date* under **Executive Orders 12866 and 13563**, below, for detailed discussion of costs and benefits.

In response to inquiries from pension practitioners, PBGC is amending the premium rates regulation to clarify the application of the loading factor to the calculation of the premium funding target for plans in at-risk status.

The statutory variable-rate premium provision refers explicitly to the defined term "funding target," which for at-risk plans clearly includes the section 303(i)(1) modifications. PBGC thus considers it clear that all of the at-risk modifications must be reflected in the premium funding target. And considering that the funding target and the premium funding target are so closely analogous, it seems natural that for premium purposes, the 4 percent increment referred to in section 303(i)(1)(C)(ii) should be taken to mean 4 percent of the premium funding target determined as if the plan were not in at-risk status.

But for premium purposes, the term "participant" in the loading factor provision is ambiguous. Because the premium funding target reflects only vested benefits, while the funding target reflects all accrued benefits, there is a suggestion that the term "participant" should in the premium context be understood to refer to vested participants. But many participants are partially vested (as in plans with graded vesting) or are vested in one benefit but not another (for example, vested in a lump-sum death benefit but not in a retirement annuity) and thus are not clearly either vested or non-vested. Furthermore (putting vesting aside), the premium regulations (§ 4006.6 of the premium rates regulation) and the Internal Revenue Service's regulation on special rules for plans in at-risk status (26 CFR 1.430(i)-1(c)(2)(ii)(A)) count participants differently.

PBGC is resolving the statutory ambiguity by providing that the participant count to use in calculating the loading factor to be reflected in the premium funding target is the same participant count used to compute the load for funding purposes. This solution has the advantage

that it avoids introducing new participant-counting rules and does not impose on filers the burden of determining two different participant counts for two similar purposes.

One commenter argued that the loading factor should not be included in the premium funding target. The commenter noted that ERISA section 4006 could have referred to both ERISA sections 303(d) and 303(i), but refers only to section 303(d). However, as the commenter notes, section 303(d) refers to section 303(i). Thus section 4006, by referring to section 303(d), is referring to section 303(i) as well.

The commenter also supported the argument against incorporation of the loading factor by appealing to the difference in the purposes of sections 303 and 4006, the former dealing with plan funding and taking unvested benefits into account, the latter dealing with PBGC premiums and not taking unvested benefits into account. PBGC acknowledges these differences, but points out that the two sections are linked, in that section 4006 refers to section 303 for the methodology for calculating premiums. In fact, section 4006(a)(3)(E)(iii)(I) specifies how the premium methodology differs from the funding methodology. Two differences are noted: disregarding unvested benefits and using different interest assumptions. The load is not mentioned. PBGC thus believes that the statutory language adequately supports the applicability of the loading factor to the calculation of premiums.

Finally, the commenter claimed that participants in at-risk plans are better off if funds are devoted to benefits rather than premiums. But even if each dollar spent on pension insurance premiums is a dollar not spent on benefits, pension insurance is for the protection of those very benefits. PBGC insurance would appear to be even more valuable for participants in at-risk plans than in plans not in at-risk status.

Finding none of the commenter's reasoning persuasive, PBGC continues to hew to the position that the loading factor applies to the premium funding target.

Penalties

Lowering the Self-Correction Penalty Cap

The difference between the normal penalty rate of 5 percent per month and the self-correction rate of 1 percent per month provides an incentive to self-correct and reflects PBGC's judgment that those that come forward voluntarily to correct underpayments deserve more lenient treatment than those that PBGC ferrets out through its premium enforcement programs. But because of a penalty cap of 100 percent of the underpayment, regardless of the rate it accrues at, a plan that self-corrects after 100 months pays the same penalty as if it had been tracked down by PBGC. PBGC occasionally encounters situations in which — typically when there is a change in plan sponsor or plan actuary — a plan with a long history of underpaying or not paying premiums "comes in from the cold." PBGC believes that in fairness to such filers (and to persuade others to emulate them), the maximum penalty for self-correctors should be substantially less than that for those that do not self-correct.[28]

To preserve the self-correction penalty differential for long-overdue premiums, PBGC is capping the self-correction penalty at 50 percent of the unpaid amount. While this will reduce PBGC's penalty income in these cases, acceptance of the reduction is consistent with the view of penalties as a means to encourage compliance, rather than as a source of revenue.

[28] PBGC took a step in this direction with its policy notice of February 9, 2012 (see discussion under **Background** above). However, the waiver of all penalties announced in that notice applied only for a limited time and only to plans that had never paid premiums.

Expansion of Penalty Waiver Authority

The premium payment regulation and its appendix include many specific penalty waiver provisions that provide guidance to the public about the circumstances in which PBGC considers waivers appropriate — circumstances such as reasonable cause and mistake of law. To deal with unanticipated situations that nevertheless seem to warrant penalty relief, § 4007.8(d) refers to the policy guidelines in the appendix, and § 21(b)(5) of the appendix says that PBGC may waive all or part of a premium penalty if it determines that it is appropriate to do so, and that PBGC intends to exercise this waiver authority only in narrow circumstances.

In reviewing the circumstances where it has exercised its waiver authority, PBGC has concluded that the term "narrow" may not capture well the scope of that exercise and may thus be misleading. To avoid an implication that PBGC considers its waiver authority more narrowly circumscribed than in fact it does, the sentence about narrow circumstances is being removed from the appendix.

Codification of Seven-Day Penalty Waiver Rule

On September 15, 2011 (at 76 FR 57082), PBGC published a policy notice announcing (among other things) that for plan years beginning after 2010, it would waive premium payment penalties assessed solely because premium payments were late by not more than seven calendar days.

In applying this policy, PBGC assumes that each premium payment is made seven calendar days before it is actually made. All other rules are then 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 is waived.

PBGC is codifying this policy in the premium payment regulation.

One commenter complained that by the time PBGC notifies a late filer that an expected filing has not been received, the seven-day grace period has expired, and the filer becomes liable for a five percent penalty. The commenter requested that tardy filers in such circumstances be given an additional 15 days to pay and incur a one-percent penalty or that PBGC notify plans immediately when expected filings are not received, to give them the full benefit of the seven-day grace period within which to file.

Plan administrators are expected to know the law and to be capable of setting up tickler files and computerized reminders for legal obligations they may otherwise forget to fulfill. Nonetheless, PBGC does offer a reminder service. Reminders are sent shortly after the beginning of each month to practitioners who have signed up for reminders for that month. Plan administrators may sign up for reminders at http://www.pbgc.gov/prac/pg/other/practitioner-filing-reminders.html.

PBGC believes no modification of its premium regulations is called for to accommodate this comment.

Small-Plan Penalty Relief For Variable-Rate Premium Estimates

The premium payment regulation provides an option for paying an estimate of the variable-rate premium at the due date and "truing up" within 6½ months without penalty. The availability of this option has been restricted to mid-size and large plans. With the elimination of different due dates based on plan size, the option is being made available to plans of any size. PBGC expects that very few small plans will take advantage of the option, since in virtually all cases, the variable-rate premium will be known by the uniform due date. But the only comment PBGC received on this issue was in favor of making the option available to small plans.

Other Changes

Variable-Rate Premium Cap

Before amendment to conform to statutory changes made by PPA 2006, PBGC's premium regulations used the same date for counting participants for purposes of the flat-rate premium and for determining UVBs for purposes of the variable-rate premium. This date was (generally) "the last day of the plan year preceding the premium payment year."

When PBGC amended the premium regulations to conform to PPA 2006, the amendments provided that in general, UVBs were to be determined as of a different date from the date used to count participants. Thus references in the regulations to "the last day of the plan year preceding the premium payment year" in some cases were changed to refer to "the participant count date" and in other cases were changed to refer to "the UVB valuation date."

The regulatory provision dealing with the variable-rate premium cap for plans of small employers includes two references to "the last day of the plan year preceding the premium payment year" that should have been amended to refer to "the participant count date" but were overlooked. PBGC is correcting the variable-rate premium cap provision to remedy this oversight.

Exemption for Standard Terminations

When PBGC added to the premium regulations the exemption from the variable-rate premium for plans terminating in standard terminations, it stated that the exemption would apply to "a standard termination with a proposed termination date during a plan year preceding the premium payment year."[29] This reflects the provision in Rev. Rul. 79-237 (1979-2 C.B. 190) that minimum funding standards apply only until the end of the plan year that includes the

[29] See preamble to final rule, 54 FR 28950 (July 10, 1989).

termination date. In the text of the regulation, this requirement was expressed by requiring that the proposed termination date be on or before "the last day of the plan year preceding the premium payment year" — the same words used to identify the date as of which participants were to be counted for purposes of the flat-rate premium and the date as of which UVBs were to be determined for purposes of the variable-rate premium.

When PBGC amended the premium regulations to conform to statutory changes made by PPA 2006, as described above, the phrase "the last day of the plan year preceding the premium payment year" in the standard termination exemption from the variable-rate premium should have been left unchanged. Instead, it was inadvertently amended to read "the UVB valuation date." PBGC is correcting the exemption to require that the proposed termination date be "before the beginning of the premium payment year," which also makes the provision clearer and simpler.[30]

Liability for premiums in distress and involuntary terminations

The premium payment regulation provides that a single-employer plan does not have an obligation to pay premiums if the plan is the subject of distress or involuntary termination proceedings, with a view to conserving plan assets in such situations. The premium payment obligation then falls solely on the plan sponsor's controlled group. Heretofore, the regulation focused on the plan year for which a premium is due; the plan's obligation was tolled with respect to premiums for the year in which the termination was initiated and future years.

PBGC has encountered cases in which plan administrators have used plan assets to pay premiums for which the plans had no obligation because termination proceedings began later in

[30] As discussed above, PBGC is broadening the scope of this exemption to include the year in which a standard termination is completed, regardless of the timing of the termination date.

the plan year, after payment was made. To address this problem, PBGC is revising the regulation so that a plan's obligation to pay premiums ceases when termination proceedings begin — an event of which the plan administrator will have notice — at which time the premium payment obligation falls solely on the plan sponsor's controlled group.

This change does not affect the amount of premiums due. It simply reduces administrative burden by making it easier for a plan administrator to determine whether the plan has an obligation to make a premium payment.

Definition of newly covered plan

The current definition of newly covered plan excludes new plans. In rare cases, a new plan might not initially be covered by title IV of ERISA and might then become covered later in its first year of existence. PBGC is revising the definition to remove the exclusion of new plans so that in the rare case described, the plan will be a newly covered plan (as well as a new plan) and thus entitled to prorate its premium based on its coverage date (as newly covered plans are permitted to do) rather than its effective date (as new plans are permitted to do).

Changes Related to MAP-21 and BBA 2013

On July 6, 2012, and December 26, 2013 (respectively), the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. No. 112-141) and the Bipartisan Budget Act of 2013 (BBA 2013) (Pub. L. No. 113-67). MAP-21 and BBA 2013 included provisions about PBGC premiums that, without the need for implementing action by PBGC, have already become effective.[31] PBGC is amending the premium rates regulation in accordance with MAP-21 and BBA 2013.

[31] Technical Update 12-1, http://www.pbgc.gov/res/other-guidance/tu/tu12-1.html provides guidance on the effect of MAP-21 on PBGC premiums.

Under sections 40221 and 40222 of MAP-21, effective for plan years beginning after 2012, each flat or variable premium rate has a different annual inflation adjustment formula, and the variable-rate premium is limited by a cap (the "MAP-21 cap") with its own annual inflation adjustment. BBA 2013 added more adjustment provisions. Because of the multiplicity and complexity of the adjustment formulas, PBGC has concluded that it is not useful to repeat the statutory premium rate rules in the premium rates regulation. Instead, PBGC is replacing existing premium rate provisions with statutory references and will simply announce each year the new rates generated by the statutory rate formulas.

Effective for plan years beginning after 2011, section 40211 of MAP-21 establishes a "segment rate stabilization" corridor for certain interest assumptions used for funding purposes but provides (in section 40211(b)(3)(C)) for disregarding rate stabilization in determining PBGC variable-rate premiums. PBGC is revising the description of the alternative premium funding target to make clear that it is determined using discount rates unconstrained by the segment rate stabilization rules of MAP-21.

Editorial Changes

PBGC is revising the language that describes the "reconciliation" date — associated with the penalty waiver for underestimation of the variable-rate premium — to clarify that the waiver does not require a particular state of mind (of the plan administrator, sponsor, actuary, or other person) regarding the correctness or "finality" of the estimate. This clarification is not substantive but merely reflects the fact that (as noted in the 2008 preamble to the PPA 2006

amendment to the regulation) the waiver is provided "in recognition of the possibility that circumstances might make a final UVB determination by the due date *difficult* or impossible".[32]

PBGC is also making some other non-substantive editorial changes, including provision of an additional example, deletion of anachronistic text, and addition of a definitional cross-reference.

Conforming Changes to Other Regulations

PBGC's regulation on Restoration of Terminating and Terminated Plans (29 CFR part 4047) has a cross-reference to § 4006.4(c) of the premium rates regulation, which used to describe the alternative calculation method for determining the variable-rate premium[33] but no longer does so. To avoid confusion, PBGC is removing the obsolete cross-reference.

PBGC is deleting from its regulation on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000) a provision that parallels anachronistic text that is being deleted from the premium rates regulation.

Comments Unrelated to Proposed Regulatory Changes

De Minimis *Plan Transactions*

One commenter proposed a change to the "merger-spinoff rule." That provision applies where there is a plan merger or spinoff at the very beginning of the premium payment year (the "stroke of midnight" between the prior year and the premium payment year). The provision shifts the participant count date from the day before the premium payment year begins to the first day of the premium payment year for certain plans involved in such mergers or spinoffs. The participant count date shifts for the transferee plan in a non-*de minimis* merger and for the

[32] See 73 FR 15069 (emphasis supplied).
[33] The alternative calculation method is also described in the premium filing instructions for years to which it applies.

transferor plan in a non-*de minimis* spinoff. Participants for whom the transferor plan in a merger will pay no premiums get picked up in the transferee plan's participant count, and participants for whom the transferee plan in a spinoff will pay premiums get dropped from the transferor plan's participant count. In general, a transaction is *de minimis* if the liabilities of one of the two plans involved in the transaction are less than three percent of the other plan's assets.

The commenter suggested that the exception for *de minimis* transactions be eliminated. PBGC believes consideration of this suggestion should be deferred. The suggestion deals with a feature of the premium rates regulation not directly focused on by the proposed rule. While the suggestion would tend to lower premiums for transferor plans in *de minimis* spinoffs, it would tend to raise premiums for transferee plans in *de minimis* mergers. For both types of transaction, it would mean counting participants on a different date, which might be inconvenient. And PBGC notes that *de minimis* transactions are also disregarded in determining whether a plan is a continuation plan for purposes of applying the due date and look-back rules. There is a question whether *de minimis* transactions should be taken account of for that purpose too or whether *de minimis* transactions should be treated in different ways for the two different purposes. Thus PBGC is taking no action on this suggestion now.

Post-Filing Events

PBGC's premium filing instructions require that a plan making its final premium filing report the reason why the filing is the plan's final filing. But when the event that leads to the cessation of the filing requirement — such as a plan merger or consolidation — occurs after the premium filing is made, the instructions say no amended filing is required. To avoid the need for correspondence to clarify why a plan has stopped filing, the instructions recommend contacting PBGC in such cases unless a termination, merger, or consolidation is involved.

One commenter complained that PBGC requires amended filings in final-filing circumstances where its premium instructions say amended filings are not required. (PBGC assumes the comment reflects informal guidance provided by PBGC's premium information call center.)

PBGC's position on amended filings in such cases is as stated in its filing instructions. Amended filings are not required for post-filing events that lead to cessation of the premium filing requirement, although voluntary informal reporting is encouraged.

Where informal guidance from a PBGC source seems to conflict with other PBGC guidance (such as premium filing instructions), PBGC encourages filers to contact PBGC's Problem Resolution Officer (Practitioners) as described in item 7 of appendix 2 to PBGC's premium filing instructions, available on PBGC's web site (www.pbgc.gov).

This issue appears not to implicate anything in PBGC's premium regulations.

Penalty Relief for Premium Estimates

Two comments requested that PBGC modify the premium forms and instructions to permit a plan to take advantage of the penalty waiver for underestimation of the variable-rate premium without the need to declare the initial filing an estimate by checking a box. Since the introduction of this waiver, the instructions have required that a plan that checks the box make a reconciliation filing even when the estimated variable-rate premium turns out to be correct, and plans that fail to make the required second filing have been contacted by PBGC to enforce the requirement. Eliminating the check box would obviate the burden of making a second filing when there is no change in the premium and would conserve PBGC resources by eliminating the need for correspondence with such plans.

Although PBGC is always interested in simplifying the premium filing process, it is not taking action on this suggestion at this time. PBGC is not convinced that it has an adequate basis for concluding that the burden of the checkbox procedure outweighs the utility of the checkbox. For example, for 2012, only about 70 plans checked the estimated-filing checkbox; about 40 filed timely reconciliations and 30 did not. About another 30 plans made amended filings by the reconciliation deadline and might have qualified for penalty relief if they had checked the box to indicate that their initial filings were estimated. One commenter's assertion that plans routinely check the estimated-filing checkbox to preserve the option to amend without penalty seems unsupported by these data. Nor do the data bear out the hypothesis that many plans fail to qualify for the penalty waiver simply because they neglect to check the box. In short, so few plans seem to be affected by the checkbox requirement that PBGC believes other options, such as providing more guidance or cautions in PBGC's electronic premium filing interface, could ameliorate the commenters' concerns. PBGC thinks it prudent to explore such other options and to gather and analyze further data before deciding whether to take the checkbox off the electronic premium filing form.

PBGC welcomes further public comment on this suggestion.

Applicability

Except as indicated below, the amendments in this final rule are applicable for 2014 and later plan years.

The change in the due date and the exemption from the variable-rate premium for a plan closing out in a standard termination are applicable to plans that complete distribution of assets in satisfaction of all plan benefits under the single-employer termination regulation on or after the effective date of this final rule.

The change in the date when a plan ceases to be liable for premiums in a distress or involuntary termination is applicable to terminations with respect to which the plan administrator issues the first notice of intent to terminate, or the PBGC issues a notice of determination, on or after the effective date of this final rule.

MAP-21 became effective on July 6, 2012. BBA 2013 is effective for plan years beginning after 2013. The changes to premium rates in this final rule apply to plan years beginning after 2012 (to the extent attributable to MAP-21) or after 2013 (to the extent attributable to BBA 2013). The clarification to the definition of the alternative premium funding target after MAP-21 applies to plan years beginning after 2011.

Executive Orders 12866 and 13563

PBGC has determined, in consultation with the Office of Management and Budget, that this rulemaking is not a "significant regulatory action" under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review issued in accordance with Executive Order 13563.

In accordance with OMB Circular A−4, PBGC has examined the economic and policy implications of this final rule and has concluded that the action's benefits justify its costs. That conclusion is based on the following analysis of the impact of the due date changes in this rule. (The other changes have essentially no cost-benefit impact.)

Uniform Due Dates

PBGC estimates that the reduction in administrative burden attributable to adoption of the new unified due date translates into average annual savings of 1.2 hours for each small plan. (PBGC arrived at this estimate on the basis of inquiries made to pension practitioners.) The dollar equivalent of this saving for the roughly 15,000 small plans is about $400 per plan.[34]

Adoption of the uniform due date also shifts the earnings on premium payments between plans and PBGC for the time between the old and new due dates. Because earning rates differ between PBGC and plans, the losses and gains will not balance out exactly. But the earnings shift for small plans will be virtually negligible. The analysis is not straightforward because of the concomitant shift from current-year to prior-year data. See the discussion under the heading *Combined Effects of Due Date and Look-Back Proposals*, above. But based on 2011 data, and assuming aggregate small-plan premiums of about $36 million, a 6½-month advance in the small-plan due date, and a plan earnings rate of 6 percent, small plans in the aggregate will lose about $1.2 million a year — on average, about $85 per plan. A plan's lost interest earnings will be proportional to its premium; the premium may vary widely among plans, and thus the loss may do the same.

Accordingly, PBGC foresees an average net benefit (in dollar terms) from adoption of the new uniform due date of about $315 for each small plan — about $400 in administrative cost savings offset by about $85 in lost interest earnings.

PBGC's gain will be about one-third the amount lost by plans. PBGC estimates its rate of return, from investment in U.S. Government securities, at about 2 percent. PBGC estimates plans' rate of return at 6 percent. The following table shows the estimated average interest

[34] PBGC assumes for this purpose that enrolled actuaries charge about $350 per hour.

earnings calculated with four rates: two percent (our best estimate for PBGC's rate of return), six percent (our best estimate for plans' rate of return), and three and seven percent (the discount rates recommended by OMB Circular A-4).

Approximate average interest earnings per small plan at —			
2 percent	3 percent	6 percent	7 percent
$30	$40	$85	$95

Final-Year Due Date

Advancing the premium due date for some terminating plans will also shift earnings on the premiums from plans to PBGC. Since plans that do standard terminations are almost all small,[35] the amounts involved are also small.

On average (over the period 2001-2010), about 1,300 plans terminate each year. About half of them will have their final-year due dates advanced by an average of about 100 days; for the other half, the due date will not be advanced. Thus on average, this rule requires payment of the premium about 50 days early. The average single-employer flat-rate premium is about $950 for small plans and about $176,000 for larger plans.[36] At a rate of 6 percent, 50 days' interest on an average small-plan flat-rate premium of $950 is about $8. For larger plans, the average figure using the same methodology is about $1,450. But so few larger plans do standard terminations that the weighted average earnings loss for plans of all sizes will be only about $110 per plan, or an aggregate estimated earnings loss of $143,000.

On the other hand, there should be some savings to plans arising from calculating and paying the final-year premium while plan books and records are still open and in use for paying benefits — as opposed to later, when they would have to be found and reopened. If one-tenth of

[35] For 2011, only about 7 percent of standard terminations involved plans with more than 100 participants.
[36] This discussion and the discussion of variable-rate premium savings below are based on (increased) 2014 premium rates applied to 2010 data on plans, participants, and unfunded vested benefits.

final-year filers (130 plans) each save one hour of actuarial time at an average of $350 per hour, the total savings will be over $45,500 (or, if averaged over all terminating plans, about $35 per plan).

Further, historical data indicate that plans doing standard terminations could be expected to pay an aggregate of about $117,000 in variable-rate premiums in their final year. This represents an estimate of the savings to plans under the expansion of the standard termination variable-rate premium exemption. The savings will of course be realized only by the small minority of terminating plans that would owe variable-rate premium in their final year in the absence of this final rule. Averaged over all plans closing out in a year, however, the savings will be about $90 per plan.

Accordingly, PBGC foresees no significant economic impact from the due date change for terminating plans because the loss of earnings on flat-rate premiums paid earlier (about $110 per plan) will be offset by the gain from variable-rate premiums not paid (about $90 per plan) and cost reductions from improvement in administrative procedures (about $35 per plan).

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations and governmental jurisdictions.

Small entities

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion used to determine what plans would be subject to the look-back rule under the proposal, and is consistent with certain requirements in title I of ERISA[37] and the Internal Revenue Code,[38] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[39] Using this proposed definition, about 64 percent (16,700 of 26,100) of plans covered by title IV of ERISA in 2010 were small plans.[40]

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the proposal on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. In its proposed rule, therefore, PBGC requested comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities. No comments were received.

[37] See, *e.g.*, ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.
[38] See, *e.g.*, Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.
[39] See, *e.g.*, DOL's final rule on Prohibited Transaction Exemption Procedures, 76 Fed. Reg. 66,637, 66,644 (Oct. 27, 2011).
[40] See PBGC 2010 pension insurance data table S-31, http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.

Certification

On the basis of its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply. This certification is based on PBGC's estimate (discussed above) that the change to uniform due dates will create an average annual net economic benefit for each small plan of about $315. This is not a significant impact.

Paperwork Reduction Act

PBGC is submitting the information requirements under this final rule for approval by the Office of Management and Budget under the Paperwork Reduction Act (OMB control number 1212-0009; expires February 29, 2016). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC is making only small changes in the data filers are required to submit. A plan's filing will be required to state whether the plan is a new small plan created by non-*de minimis* consolidation or spinoff (to which special rules apply) and to indicate if an exemption from the variable-rate premium is claimed under one of the new exemption rules. The participant count will have to be broken down into active, terminated, and retired categories. Changes to the filing instructions clarify how to calculate premiums, set forth the new due date rules, and deal with other routine matters such as updating examples and premium rates.

PBGC needs the information in a premium filing to identify the plan for which the premium is paid to PBGC, to verify the amount of the premium, to help PBGC determine the

magnitude of its exposure in the event of plan termination, to help PBGC track the creation of new plans and the transfer of plan assets and liabilities among plans, and to keep PBGC's inventory of insured plans up to date. PBGC receives premium filings from about 25,700 respondents each year and estimates that the total annual burden of the collection of information will be about 8,000 hours and $53,255,000.

In comparison with the burden that OMB had approved for this information collection before PBGC's recent final rule eliminating the early due date for large plans' flat-rate premiums, this burden estimate reflects both a decrease in burden attributable to changes in the premium due dates (under both the large-plan final rule and this final rule) and an increase in burden attributable to a re-estimate of the existing premium filing burden. The increase in burden due to re-estimation is about 31,300 hours, and the decrease due to the due date changes is about 35,000 hours (about 17,000 hours for large plans and about 18,000 hours for small plans), a net decrease of about 3,700 hours from the burden approved before the large-plan final rule (about 163,600 hours). PBGC assumes that about 95 percent of the work is contracted out at $350 per hour, so the 35,000-hour decrease attributable to the two final rules is equivalent to about 1,750 hours of in-house labor and about $11,600,000 of contractor costs.

The burden for which PBGC sought OMB approval in connection with the recent final rule eliminating the early due date for large plans' flat-rate premiums was about 178,000 hours (about 8,900 in-house hours plus about $59,250,000 in contractor costs for the remaining 169,100 hours). This burden estimate reflected both the increase due to re-estimation and the decrease due to the large-plan flat-rate due date change.

In comparison with the 178,000-hour burden estimate, the new burden estimate reflects a decrease of about 18,000 hours, attributable to the due date change for small plans. Since PBGC

assumes that about 95 percent of the work is contracted out at $350 per hour, this 18,000-hour decrease is equivalent to about 900 hours of in-house labor and about $6 million of contractor costs.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4006

Employee benefit plans, Pension insurance.

29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4047

Employee benefit plans, Pension insurance.

In consideration of the foregoing, PBGC amends 29 CFR parts 4000, 4006, 4007, and 4047 as follows:

PART 4000 — FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

§ 4000.3 [Amended]

2. In § 4000.3(b):

a. Paragraph (b)(1)(i) is removed.

b. Paragraphs (b)(1)(ii), (b) (1)(iii), and (b)(1)(iv) are redesignated as paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) respectively.

PART 4006 — PREMIUM RATES

3. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

4. In § 4006.2:

a. The introductory text is amended by removing the words "and single-employer plan" and adding in their place the words "single-employer plan, and termination date".

b. The definition of *participant count* is amended by removing the words "for a plan year" and by removing the words "for the plan year".

c. The definition of *participant count date* is amended by removing the words "for a plan year".

d. The definition of *UVB valuation date* is amended by removing the words "for a plan year"; and by removing the words "plan year determined" and adding in their place the words "UVB valuation year, determined".

e. The definition of *newly-covered plan* is revised, and new definitions of *continuation plan*, *small plan*, and *UVB valuation year* are added, in alphabetical order, to read as follows:

§ 4006.2 Definitions.

* * * * *

Continuation plan means a new plan resulting from a consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(*l*) of the Code.

* * * * *

Newly covered plan means a plan that becomes covered by title IV of ERISA during the premium payment year and that existed as an uncovered plan immediately before the first date in the premium payment year on which it was a covered plan.

* * * * *

Small plan means a plan —

(1) Whose participant count is not more than 100, or

(2) Whose funding valuation date for the premium payment year, determined in accordance with ERISA section 303(g)(2), is not the first day of the premium payment year.

* * * * *

UVB valuation year of a plan means —

(1) In general, —

(i) The plan year preceding the premium payment year, if the plan is a small plan other than a continuation plan, or

(ii) The premium payment year, in any other case; or

(2) For a small plan that so opts subject to PBGC premium instructions, the premium payment year.

5. In § 4006.3:

a. Paragraphs (c) and (d) are removed.

b. A sentence is added to the end of the introductory text, and paragraphs (a) and (b) are revised, to read as follows:

§ 4006.3 Premium rate.

* * * Premium rates (and the MAP-21 cap rate referred to in paragraph (b)(2) of this section) are subject to change each year under inflation indexing provisions in section 4006 of ERISA.

(a) *Flat-rate premium.* The flat-rate premium for a plan is equal to the applicable flat premium rate multiplied by the plan's participant count. The applicable flat premium rate is the amount prescribed for the calendar year in which the premium payment year begins by the applicable provisions of —

(1) ERISA section 4006(a)(3)(A), (F), and (G) for a single-employer plan, or

(2) ERISA section 4006(a)(3)(A), (H), and (J) for a multiemployer plan.

(b) *Variable-rate premium.*

(1) *In general.* Subject to the cap provisions in paragraphs (b)(2) and (b)(3) of this section, the variable-rate premium for a single-employer plan is equal to a specified dollar amount for each $1,000 (or fraction thereof) of the plan's unfunded vested benefits as determined under § 4006.4 for the UVB valuation year. The specified dollar amount is the applicable variable premium rate prescribed by the applicable provisions of ERISA section 4006(a)(8) for the calendar year in which the premium payment year begins.

(2) *MAP-21 cap.* The variable-rate premium for a plan is not more than the applicable MAP-21 cap rate multiplied by the plan's participant count. The applicable MAP-21 cap rate is the amount prescribed by the applicable provisions of ERISA section 4006(a)(3)(E)(i)(II), (E)(i)(III), (K), and (L) for the calendar year in which the premium payment year begins.

(3) *Small-employer cap.* (i) *In general.* If a plan is described in paragraph (b)(3)(ii) of this section for the premium payment year, the variable-rate premium is not more than $5

multiplied by the square of the participant count. For example, if the participant count is 20, the variable-rate premium is not more than $2,000 ($5 x 20^2 = $5 x 400 = $2,000).

(ii) *Plans eligible for cap.* A plan is described in paragraph (b)(3)(ii) of this section for the premium payment year if the aggregate number of employees of all employers in the plan's controlled group on the first day of the premium payment year is 25 or fewer.

(iii) *Meaning of "employee."* For purposes of paragraph (b)(3)(ii) of this section, the aggregate number of employees is determined in the same manner as under section 410(b)(1) of the Code, taking into account the provisions of section 414(m) and (n) of the Code, but without regard to section 410(b)(3), (4), and (5) of the Code.

6. In § 4006.4:

a. Paragraph (a) is amended by removing the words "for the premium payment year" where they appear five times in the paragraph and adding in their place the first four times (but not the fifth time) the words "for the UVB valuation year".

b. Paragraph (b)(2) introductory text is amended by removing the words "premium payment year" and adding in their place the words "UVB valuation year".

c. Paragraph (b)(2)(ii) is amended by removing the words "premium payment year" where they appear twice in the paragraph and adding in their place (in both places) the words "UVB valuation year".

d. New paragraph (b)(3) is added to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

* * * * *

(b) * * *

(3) *"At-risk" plans; transition rules; loading factor.* The transition rules in ERISA section 303(i)(5) apply to the determination of the premium funding target of a plan in at-risk status for funding purposes. If a plan in at-risk status is also described in ERISA section 303(i)(1)(A)(ii) for the UVB valuation year, its premium funding target reflects a loading factor pursuant to ERISA section 303(i)(1)(C) equal to the sum of —

(i) *Per-participant portion of loading factor.* The amount determined for funding purposes under ERISA section 303(i)(1)(C)(i) for the UVB valuation year, and

(ii) *Four percent portion of loading factor.* Four percent of the premium funding target determined as if the plan were not in at-risk status.

* * * * *

7. In § 4006.5:

a. Paragraph (a) introductory text is amended by removing the reference "paragraphs (a)(1) - (a)(3) of this section" and adding in its place the reference "paragraphs (a)(1) - (a)(4) of this section".

b. Paragraph (a)(3) introductory text is amended by removing the words "described in this paragraph if" and adding in their place the words "described in this paragraph if it makes a final distribution of assets in a standard termination during the premium payment year or if".

c. Paragraph (a)(3)(ii) is amended by removing the words "on or before the UVB valuation date" and adding in their place the words "before the beginning of the premium payment year".

d. Paragraph (e)(2)(ii) is amended by removing the words "plan year" and adding in their place the words "premium payment year".

e. Paragraph (f)(1) is amended by removing the words "newly-covered" (with a hyphen) and adding in their place the words "newly covered" (without a hyphen).

f. Paragraph (a)(4) is added, and paragraphs (c), (d), (e)(1), and (g) are revised, to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(a) * * *

(4) *Certain small new and newly covered plans.* A plan is described in this paragraph if —

(i) It is a small plan other than a continuation plan, and

(ii) It is a new plan or a newly covered plan.

* * * * *

(c) *Participant count date; in general.* Except as provided in paragraphs (d) and (e) of this section, the participant count date of a plan is the last day of the plan year preceding the premium payment year.

(d) *Participant count date; new and newly covered plans.* The participant count date of a new plan or a newly covered plan is the first day of the premium payment year. For this purpose, a new plan's premium payment year begins on the plan's effective date.

(e) *Participant count date; certain mergers and spinoffs.* (1) The participant count date of a plan described in paragraph (e)(2) of this section is the first day of the premium payment year.

* * * * *

(g) *Alternative premium funding target.* A plan's alternative premium funding target is determined in the same way as its standard premium funding target except that the discount rates described in ERISA section 4006(a)(3)(E)(iv) are not used. Instead, the alternative premium

funding target is determined using the discount rates that would have been used to determine the funding target for the plan under ERISA section 303 for the purpose of determining the plan's minimum contribution under ERISA section 303 for the UVB valuation year if the segment rate stabilization provisions of ERISA section 303(h)(2)(iv) were disregarded. A plan may elect to compute unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2), and may revoke such an election, in accordance with the provisions of this paragraph (g). A plan must compute its unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2) if an election under this paragraph (g) to use the alternative premium funding target is in effect for the premium payment year.

(1) An election under this paragraph (g) to use the alternative premium funding target for a plan must specify the premium payment year to which it first applies and must be filed by the plan's variable-rate premium due date for that premium payment year. The premium payment year to which the election first applies must begin at least five years after the beginning of the premium payment year to which a revocation of a prior election first applied. The election will be effective —

(i) For the premium payment year for which made and for all plan years that begin less than five years thereafter, and

(ii) For all succeeding plan years until the premium payment year to which a revocation of the election first applies.

(2) A revocation of an election under this paragraph (g) to use the alternative premium funding target for a plan must specify the premium payment year to which it first applies and must be filed by the plan's variable-rate premium due date for that premium payment year. The

premium payment year to which the revocation first applies must begin at least five years after the beginning of the premium payment year to which the election first applied.

§ 4006.7 [Amended]

8. In § 4006.7, paragraph (b) is amended by removing the words "under section 4048 of ERISA".

PART 4007 — PAYMENT OF PREMIUMS

9. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(A), 1306, 1307.

§ 4007.2 [Amended]

10. In § 4007.2:

a. Paragraph (a) is amended by removing the words "and single-employer plan" and adding in their place the words "single-employer plan, and termination date".

b. Paragraph (b) is amended by removing the words "new plan" and adding in their place the words "continuation plan, new plan"; and by removing the words "and short plan year" and adding in their place the words "short plan year, small plan, and UVB valuation date".

11. In § 4007.3:

a. Paragraph (b) is amended by removing the words "the PBGC" and adding in their place the word "PBGC"; and by removing the second sentence (which begins "The requirement . . ." and ends ". . . after 2006").

b. Paragraph (a) is revised to read as follows:

§ 4007.3 Filing requirement; method of filing.

(a) *In general.* The estimation, determination, declaration, and payment of premiums must be made in accordance with the premium instructions on PBGC's Web site

(www.pbgc.gov). Subject to the provisions of § 4007.13, the plan administrator of each covered plan is responsible for filing prescribed premium information and payments. Each required premium payment and related information, certified as provided in the premium instructions, must be filed by the applicable due date specified in this part in the manner and format prescribed in the instructions.

* * * * *

12. In § 4007.8:

a. Paragraph (a) introductory text is amended by removing the words "the PBGC" and adding in their place the word "PBGC"; and by removing the second sentence (which begins "The charge . . ." and ends ". . . unpaid premium").

b. Paragraphs (f), (g), (h), and (i) are removed, and paragraph (j) is redesignated as paragraph (g).

c. Paragraphs (a)(1) and (a)(2) and the introductory text of redesignated paragraph (g) are revised, and new paragraph (f) is added, to read as follows:

§ 4007.8 Late payment penalty charges.

(a) * * *

(1) For any amount of unpaid premium that is paid on or before the date PBGC issues a written notice to any person liable for the premium that there is or may be a premium delinquency (for example, a premium bill, a letter initiating a premium compliance review, a notice of filing error in premium determination, or a letter questioning a failure to make a premium filing), 1 percent per month, to a maximum penalty charge of 50 percent of the unpaid premium; or

(2) For any amount of unpaid premium that is paid after that date, 5 percent per month, to a maximum penalty charge of 100 percent of the unpaid premium.

* * * * *

(f) *Filings not more than 7 days late.* PBGC will waive premium payment penalties that arise solely because premium payments are late by not more than seven calendar days, as described in this paragraph (f). In applying this waiver, PBGC will assume that each premium payment with respect to a plan year 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 for that plan year, then any penalty that would apply on the basis of the actual payment date(s) will be waived.

(g) *Variable-rate premium penalty relief.* PBGC will waive the penalty on any underpayment of the variable-rate premium for the period that ends on the earlier of the date the reconciliation filing is due or the date the reconciliation filing is made if, by the date the variable-rate premium for the premium payment year is due under § 4007.11(a)(1), —

* * * * *

13. Section 4007.11 is revised to read as follows:

§ 4007.11 Due dates.

(a) *In general.* In general:

(1) The flat-rate and variable-rate premium filing due date is the fifteenth day of the tenth calendar month that begins on or after the first day of the premium payment year.

(2) If the variable-rate premium paid by the premium filing due date is estimated as described in § 4007.8(g)(1)(ii), a reconciliation filing and any required variable-rate premium

payment must be made by the end of the sixth calendar month that begins on or after the premium filing due date.

(3) *Small plan transition rule.* Notwithstanding paragraph (a)(1) of this section, if a plan had fewer than 100 participants for whom flat-rate premiums were payable for the plan year preceding the last plan year that began before 2014, then the plan's due date for the first plan year beginning after 2013 is the fifteenth day of the fourteenth calendar month that begins on or after the first day of that plan year.

(b) *Plans that change plan years.* For a plan that changes its plan year, the flat-rate and variable-rate premium filing due date for the short plan year is as specified in paragraph (a) of this section. For the plan year that follows a short plan year, the due date is the later of —

(1) The due date specified in paragraph (a) of this section, or

(2) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *New and newly covered plans.* For a new plan or newly covered plan, the flat-rate and variable-rate premium filing due date for the first plan year of coverage is the latest of —

(1) The due date specified in paragraph (a) of this section, or

(2) 90 days after the date of the plan's adoption, or

(3) 90 days after the date on which the plan became covered by title IV of ERISA, or

(4) In the case of a small plan that is a continuation plan, 90 days after the plan's UVB valuation date.

(d) *Terminating plans.* For a plan that terminates in a standard termination, the flat-rate and variable-rate premium filing due date for the plan year in which all plan assets are distributed pursuant to the plan's termination is the earlier of —

(1) The due date specified in paragraph (a) of this section, or

(2) The date when the post-distribution certification under § 4041.29 of this chapter is filed.

(e) *Continuing obligation to file.* The obligation to make flat-rate and variable-rate premium filings and payments under this part continues through the plan year in which all plan assets are distributed pursuant to a plan's termination or in which a trustee is appointed under section 4042 of ERISA, whichever occurs earlier.

14. Section 4007.12 is amended by revising paragraph (b) to read as follows:

§ 4007.12 Liability for single-employer premiums.

* * * * *

(b) After a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) the first notice of intent to terminate in a distress termination under section 4041(c) of ERISA or PBGC issues a notice of determination under section 4042(a) of ERISA, the obligation to pay the premiums (and any interest or penalties thereon) imposed by ERISA and this part for a single-employer plan shall be an obligation solely of the contributing sponsor and the members of its controlled group, if any.

§ 4007.13 [Amended]

15. Section 4007.13 is amended by removing the words "under section 4048 of ERISA" where they appear once in paragraph (a)(1) introductory text, once in paragraph (a)(2) introductory text, once in paragraph (d)(1), once in paragraph (e)(3) introductory text, once in paragraph (e)(4) introductory text, once in paragraph (e)(4)(i), and once in paragraph (f) introductory text.

APPENDIX TO PART 4007 [Amended]

16. In the Appendix to part 4007:

a. Section 21(b)(1) is amended by removing the words "for waivers if certain 'safe harbor' tests are met, and"; and by removing the words "30 days after the date of the bill" and adding in their place the words "30 days after the date of the bill, and for waivers in certain cases where you pay not more than a week late or where you estimate the variable-rate premium and then timely correct any underpayment".

b. Section 21(b)(5) is amended by removing the second sentence (which begins "We intend . . ." and ends ". . . narrow circumstances").

PART 4047 — RESTORATION OF TERMINATING AND TERMINATED PLANS

17. The authority citation for part 4047 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1347.

§ 4047.4 [Amended]

18. In § 4047.4, paragraph (c) is amended by removing the words "in § 4006.4(c) of this chapter".

Issued in Washington, D.C., this 5th day of March, 2014.

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Joshua Gotbaum
Director
Pension Benefit Guaranty Corporation

[FR Doc. 2014-05212 Filed 03/10/2014 at 8:45 am; Publication Date: 03/11/2014]