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PENSION ANALYST

Important information—Plan Administration and Operation

Prudential
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# PBGC issues final rules on premium payments

## Who's affected

This information affects sponsors of qualified defined benefit plans that are subject to PBGC premium requirements, including cash balance plans and multiemployer plans. Governmental plans and plans sponsored by churches that do not elect to be covered by ERISA ("non-electing church plans") are not subject to these rules.

## Background and summary

Sponsors of qualified defined benefit plans that are subject to the ERISA plan termination insurance rules must file and pay annual plan termination insurance premiums to the Pension Benefit Guaranty Corporation (PBGC). Although single-employer, multiple employer and multiemployer plans must pay flat-rate per participant premiums, only single-employer and multiple employer plans must pay variable-rate premiums (VRP) if they are underfunded. As a result of the Bipartisan Budget Act of 2013, the VRP has increased from $9 in 2013 to $14 in 2014 for each $1,000 of unfunded vested benefits.

On July 23, 2013, the PBGC proposed regulations to simplify the premium due date rules by providing that all annual premiums for all plans, regardless of size, will be due on the same date. The proposed rules coordinated the due date for terminating plans with the termination process, provided relief from penalties for late payments, and made other changes including coordinating changes with the Moving Ahead for Progress in the 21st Century Act ("MAP-21"). As part of this simplification process, the proposed rules eliminated the separate due date for payment of flat-rate premiums for large plans.

On January 3, 2014, the PBGC issued final regulations that moved the flat-rate premium due date for large defined benefit plans to the same date as the VRP due date.

On March 11, 2014, the PBGC issued final regulations which address the remaining regulations proposed on July 23, 2013. These final regulations:

- Simplify premium due dates;
- Coordinate the premium due date for terminating plans with the termination process;
- Provide VRP relief for small plans;
- Expand premium penalty relief; and
- Clarify how the premium funding target is calculated for "at-risk" plans.

## Action and next steps

The final rules are effective April 10, 2014, and generally apply for plan years beginning on or after January 1, 2014. Plan sponsors and their advisors should familiarize themselves with the information contained in this publication and discuss any questions or concerns they may have with their plan's enrolled actuary.

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## New premium due dates

### Uniform due dates for all plans

In the past, premium due dates have depended on the size of the plan and the type of premium. For example, flat-rate premiums for plans with more than 500 participants in the preceding year, known as "large plans", were due two months after the beginning of the premium payment year, while variable-rate premiums (VRP) for large plans were due 9½ calendar months after the beginning of the premium payment year. Many large plans estimated the flat-rate premiums that were due by the end of February since it was often difficult to determine the number of participants so soon after the close of the prior plan year. On January 3, 2014, the PBGC issued final regulations that move the flat-rate premium due date for large plans to the same due date as the VRP due date. For example, the 2014 flat-rate premium for large calendar-year plans will now be due no later than October 15, 2014. This final rule simplifies plan administration by eliminating the estimated premium filing for large plans.

The PBGC regulations issued on March 11, 2014, complete the simplification process for due dates by making premiums for plans with fewer than 100 participants in the preceding year, known as "small plans", due at the same time as large and mid-size plans' premiums. The premium due date for small plans will be 9½ months after the beginning of the premium payment year, which is the plan year for which the premium is being paid. 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 is October 15).

The new due date raises a timing issue for small plans. Small plans, unlike large plans which must value benefits at the beginning of the year, may value benefits as late as the end of the year and may not be able to calculate their VRP. As a result, the final rules provide a transition period to give small plans more time to adjust to the new due dates. The due dates for all plans will not be completely uniform until 2015. See the chart at the end of this document for a sample of premium due dates over the next two years.

### Terminating plans' due dates

Under current rules, in a standard plan termination, the final premium might be due months after the plan has closed its books. This leads to many plan administrators forgetting about premiums after benefits have been distributed to affected participants. To address this situation, the PBGC is changing the due date for plans to bring it within the standard termination timeline. As a result, the due date for premiums is the earlier of:

- The normal premium due date; or
- The date when the post-distribution certification (PBGC Form 501-Post Distribution Certification for Standard Termination) is actually filed.

Therefore, plans have at least 90 days after distributions are made to make the final year premium filing. This means that since the uniform premium due date is 9½ months after the plan year begins, only plans which close out in the first 6½ months of the final year will have an accelerated premium deadline.

### New plan due dates

The final rules provide that for new and newly covered plans the flat-rate and VRP due dates for the first plan year of coverage is the latest of:

- The uniform due date described above; or
- 90 days after the date of the plan's adoption; or
- 90 days after the date on which the plan becomes covered by the PBGC.

The regulations also provide a due date extension for new small plans resulting from non-de minimis consolidations or spinoffs. These plans will have until the later of the regular due date or 90 days after the unfunded vested benefit valuation date to pay the VRP.

## Variable-rate premium changes

### Look-back rule for small plans

As noted above, certain small plans determine funding levels too late in the year to be able to use current-year information for determining the VRP by the new due date. However, the final rules provide small plans with flexibility in calculating the VRP. Small plans generally will now base their VRP on prior-year data. This look-back rule applies only to the VRP and not to the flat-rate premium. The look-back rule applies to any plan that has a:

- A participant count for the premium payment year of 100 or fewer; or
- A funding valuation date that is not at the beginning of the premium payment year.

The final rules contain an exception to allow for a procedure in the PBGC premium instructions whereby a small plan may opt out of the look-back rule and instead base the VRP on current year data. These details will be incorporated in the 2014 PBGC premium instructions

### First-year and final-year VRP exemption

The look-back rule does not apply to new plans since a new plan does not have a prior plan year. As a result, in the interest of simplifying their rules, the PBGC is providing an exemption from the VRP for most small plans that are new or newly covered.

Under current PBGC rules, a plan in a standard termination is exempt from the VRP for any plan year beginning after the plan's termination date. However it is possible in a standard termination that the termination date and final distribution are within the same plan year. In that case, the plan would have been subject to the VRP based on underfunding of vested benefits. The final rules expand the current exemption to include the year in which a plan closes out, regardless of when the termination date occurs. This new exemption is conditioned on completion of a standard termination. If the exemption is claimed and the close-out does not occur by the end of the plan year, the exemption is lost and the VRP is owed for that year, with applicable late charges.

## Premium funding target for "at risk" plans

The Pension Protection Act of 2006 (PPA) requires the application of special actuarial assumptions for certain underfunded plans. Generally, underfunded plans could be considered to be "at-risk" if their funded percentage is less than 80%. In the case of a plan that has been in at-risk status for at least two of the past four years, special actuarial assumptions must be used that require a "loading factor" in determining the funding target. This loading factor is equal to the sum of:

- $700 multiplied by the number of participants in the plan; plus
- 4% of the funding target determined without regard to the loading factor.

The final rules clarify the loading factor when calculating the premium funding target for at-risk plans. The participant count to be used in determining the loading factor for the premium funding target is the same participant count used to compute the funding target. This means that all participants, regardless of whether they are vested or not in any of their accrued benefits, would be part of the participant count for this loading factor.

## 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. Both penalty schedules have the same cap—100% of the underpayment. To preserve the self-correction incentive, PBGC is reducing the 1 percent penalty cap from 100% to 50 percent.

### Seven day rule

On September 15, 2011, the PBGC published a policy notice indicating that for 2011 and later plan years, PBGC would waive premium penalties assessed solely because payments are late by not more than seven calendar days. PBGC is now incorporating this policy into the final regulations. This means that PBGC will automatically waive premium payment penalties that are assessed solely because premium payments are late, as long as the payments are not more than seven calendar days late. In applying this waiver, PBGC assumes that each premium payment was made seven calendar days before it was actually made.

Although plan administrators are expected to know when premium payments are due, PBGC does offer a reminder service. Reminders are sent out shortly after the beginning of each month to plan administrators that have signed up for the reminders for that month. Plan administrators may sign up for the reminders at http://www.pbgc.gov/prac/pg/other/practitioner-filing-reminders.html

## Miscellaneous items

### Liability for premiums in distress and involuntary terminations

The PBGC has clarified the premium payment rules to provide that a plan's obligation to pay premiums ceases when termination proceedings begin, 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 only reduces the 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

There may be situations where a new plan may not be initially covered by the PBGC plan termination program and then become covered later in its first year. As a result, the PBGC has revised the definition of "newly covered plan" to provide for this type of situation and entitle a plan to prorate its premium based on its coverage date rather than the effective date of the plan. A "newly covered plan" means a plan that becomes covered by the PBGC plan termination program during the premium payment year and that existed as an uncovered plan before the first date in the premium payment year on which it was a covered plan.

## Next steps

Plan sponsors should become familiar with the guidance described in this publication so that their premium filings and payments reflect the correct amounts and are filed by the appropriate premium filing due date. The plan's enrolled actuary is in the best position to provide assistance regarding the PBGC's premium filing requirements. You should contact the plan's enrolled actuary to discuss these filing requirements. If Prudential Retirement provides the actuarial services for your plan, you may want to discuss any questions with your Prudential enrolled actuary.

## Summary of Premium Due Dates (Calendar-Year Plans)*

| Plan size | 2014 | | | 2015 | | |
|---|---|---|---|---|---|---|
| | Old rules | | New rules | Old rules | | New rules |
| | Flat-rate premium | Variable-rate premium | Entire Premium (Flat-rate and variable rate) | Flat-rate premium | Variable-rate premium | Entire premium (Flat-rate and variable rate) |
| **Large plan (500 or more participants)** | 2/28/2014 | 10/15/2014 | 10/15/2014 | 2/28/2015 | 10/15/2015 | 10/15/2015 |
| **Mid-size plan ( at least 100 but fewer than 500 participants)** | 10/15/2014 | 10/15/2014 | 10/15/2014 | 10/15/2015 | 10/15/2015 | 10/15/2015 |
| **Small plan (fewer than 100 participants)** | 4/30/2015 | 4/30/2015 | 2/15/2015 | 4/30/2016 | 4/30/2016 | 10/15/2015 |

*Any date falling on a Saturday, Sunday, or Federal Holiday is automatically extended to the next business day.

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