



PENSION ANALYST COMPLIANCE BULLETIN



PBGC provides premium penalty relief

In response to an executive order directing federal agencies to review and improve their regulatory processes, the Pension Benefit Guaranty Corporation (PBGC) has issued a notice providing welcome relief from certain premium penalties. The notice also provides relief for certain situations involving alternative premium funding target elections.

PBGC is granting relief in several situations:

- For 2011 and later plan years, PBGC will waive premium penalties assessed solely because payments are late by not more than [seven calendar days](#).
- For 2010 and later plan years, PBGC is providing relief similar to, but more expansive than, the relief provided in [Technical Update-2](#). Technical Update-2 provided relief to plans that intended to elect to use the [alternative premium funding target](#) to calculate the variable rate premium but did not check the appropriate box (box 5) on the comprehensive premium filing.
- For 2008 and 2009 plan years, PBGC will waive premium penalties for late premiums in connection with certain box 5 errors.

Seven day rule

If a plan sponsor does not make its annual PBGC premium payment on time, late payment penalties and interest apply. PBGC regulations permit the waiver of late payment penalties, but late payment interest is required under ERISA and cannot be waived by the PBGC.

For plan years beginning after 2010, 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 situations where premium payments are more than seven days late, filers may seek reconsideration of late payment penalties assessed.

The PBGC will not automatically waive premium payment penalties for:

- Failing to timely file required premium information; or
- Late payment of termination premiums.

Alternative premium funding target elections

A plan sponsor may elect to use the [alternative premium funding target \(APFT\)](#) to calculate its variable rate premium (VRP) for plan years beginning after 2007. This election must be made by the VRP due date for the first plan year to which it applies by checking box 5 in Part II of the comprehensive premium filing for that plan year.

For 2008 and 2009, some plans used the APFT but neglected to check box 5. The PBGC provided relief to these plans in [Technical Update 10-2](#). Under this Technical Update, a plan that intended to elect to use the APFT but did not check box 5 is deemed to have made a valid election if certain conditions were met.

Relief for plan years beginning after 2009

For 2010 and later plan years, the PBGC has modified its [Online Premium Filing application \(MyPAA\)](#), to provide additional “error check” or “alert” notices to reduce box 5 errors.

In addition, PBGC is providing relief similar to Technical Update 10-2, but more expansive, for plan years beginning after 2009. Relief is available for plans that:

- Used the APFT to determine the VRP for the applicable plan year without filing a valid election; or
- Used the standard premium funding target (SPFT) but erroneously made an election to use the APFT by checking box 5.

In either situation, PBGC's official determination of which method was used to calculate the VRP will be based solely on the information reported in line 7d(1) in Part III of the comprehensive filing.

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

- The 90th day after the filing due date; or
- The 30th day after the date of any PBGC notification that no filing has been received. PBGC generally notifies plans within 30 days of the filing due date.

Premium penalty relief for 2008 and 2009 plan years

If a box 5 error was made in 2008 and 2009 and the plan was not eligible for the Technical Update 10-2 relief, the plan sponsor was required to amend the filing and recalculate the VRP using the standard method. In some cases, this resulted in additional premium. Because the additional premium was paid after the due date, late payment charges (penalties and interest) were assessed on the additional premium. In some situations, the late payment penalties were equal to 100% of the additional premium. The PBGC will now waive premium penalties (but not interest) in connection with these errors for 2008 and 2009 plan year. The PBGC will also waive premium penalties for plans that used the SPFT but erroneously checked box 5 and were required to recalculate the VRP using the alternative method.

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

Next steps

Plan sponsors should carefully review the information contained in this publication. If they have any questions regarding the premium penalty relief provided by PBGC, they should contact their plan's enrolled actuary.

Compliance Bulletin by Prudential Retirement

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