



for your information®

Volume 34 | Issue 79 | October 11, 2011

PBGC Issues Guidance Extending Relief for Late Filers and Mistaken Elections

In September 2011 the PBGC published a Notice explaining that for plan years after 2010 it would automatically waive premium payment penalties for premium payments that are not more than seven calendar days late. In that same guidance, the PBGC expanded its Technical Update 10-2, relating to intent to elect to use either the standard or variable premium calculation method, to waive certain penalties and broaden mistaken election relief.

Background

Under regulations from the Pension Benefit Guarantee Corporation (PBGC), for plan years beginning after 2007, a plan may elect to use the alternative premium funding target (APFT or alternative method) to calculate its variable rate premium (VRP). To make the APFT election for the VRP, the plan must check Box 5 in Part II (Alternative Premium Funding Target Election) of the comprehensive premium filing for that plan year. This election will remain in effect for five years. If an APFT election is not made, a plan must use the standard premium funding target (standard method).

Because of guidance from the Internal Revenue Service (IRS), for 2009, electing the alternative method was particularly advantageous for many plans that in the past may have elected the standard method. Given the timing of the IRS guidance and the fact that in the past many plans had used the standard election, some plans did not check Box 5, even though the intent was to make the APFT election.

In June 2010, the PBGC issued Technical Update 10-2, which provided relief to certain plans that had not checked Box 5, but who had intended to use the APFT. A plan was eligible for relief if:

- The comprehensive premium filing was made on time;
- The APFT method was used to determine the plan's VRP; and
- "Alternative" was checked in line 7(d)(1) of Part III of the comprehensive premium filing.

In addition to these requirements, the plan administrator was required to file a notice with the PBGC containing certain information and attestations.

Although many plan sponsors were able to take advantage of Technical Update 10-2, many trade associations requested that the relief be expanded. As a result of this and its own regulatory review, the PBGC issued a Notice relating to late filings and expanding the relief available under Technical Release 10-2.

PBGC Notice

Seven Day Rule

In a [Notice](#) published on September 15, 2011, the PBGC states that for 2011 and later plan years, it will waive premium penalties (but not interest) if the filing is not more than seven calendar days late. The PBGC noted that this relief does not apply to late payment interest charges, to penalties for failure to timely file required premium information, or to penalties for late payment of termination premiums.

BUCK COMMENT. *In the guidance, the PBGC states that filers may seek reconsideration of late payment penalties that are assessed in circumstances where the new relief would not apply. It appears that a filer could seek reconsideration for prior years or in circumstances where the filing was more than seven days late.*

Alternative Premium Funding Target Elections for Plan Years After 2009

The Notice provides that, for plan years after 2009, relief is available if:

- A plan used the alternative method to determine VRP without filing a valid election for the applicable plan year or prior plan year; or
- A plan used the standard method, but it inadvertently made an election to use the alternative method.

The PBGC indicates that in either case, it will base its determination on which method actually was used solely on the information reported in line 7(d)(1) of Part III (Premium Information).

If an election to use the alternative method is invalid because the filing was submitted after the due date, relief is only available if the plan is not seeking to amend a timely filing where the plan used the standard method and the filing is submitted by the earlier of:

- 90 days after the filing due date; or
- 30 days after the date that the PBGC notifies the plan that no filing was received.

BUCK COMMENT. *It appears that this relief would not allow a plan that used the standard method to calculate VRP to subsequently change to the alternative method, regardless of the plan's intent. However, for plan years after 2009, such errors should be at a minimum because of the upgrades and cross-checks to the PBGC's electronic filing system.*

The PBGC will contact plans entitled to this relief, and plans that do not qualify may seek reconsideration based on the facts and circumstances.

Premium Penalty Relief for 2008 and 2009 Plan Years

Because of the circumstances surrounding the 2008 and 2009 plan years, the PBGC provided some relief under Technical Update 10-2 for certain box 5 errors. However, not all plans were eligible for the relief. Plans not eligible for relief under Technical Update 10-2 were required to recalculate their premiums using the standard method rather than the alternative method, often resulting in additional premiums. Because these premiums were paid after the due date, they were assessed a late payment charge (penalties and interest) on the additional premiums.

In its Notice, the PBGC states that it will waive premium penalties in connection with box 5 errors for 2008 and 2009. If a plan is entitled to this relief and already paid the late payment penalty, the penalty amount will be converted to a credit that can offset future premiums. Finally, if a plan has not amended its filing and paid the additional premium, the PBGC only will waive the penalty if the filing is amended and the additional premiums are paid within 30 days of the PBGC notifying the plan.

BUCK COMMENT. *This relief does not allow a plan to change its election, regardless of the intent. In some cases, the additional premiums actually were more than the penalty or late charge.*

Conclusion

Because of the improvements to the PBGC's electronic filing system since the 2008 and 2009 filings, future errors should be at a minimum. However, if your plan has an issue with 2010 filings or with previous years' filings, Buck's consultants are available to assist you in determining whether your plan is entitled to the latest relief offered by the PBGC.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.