

## § 4007.10

## 29 CFR Ch. XL (7-1-04 Edition)

loss of coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA for plans not covered under title IV of ERISA.

### § 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments*—(1) *In general.* All plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based.

(2) *Electronic recordkeeping.* The plan administrator may use electronic media for maintenance and retention of records required by this part in accordance with the requirements of subpart E of part 4000 of this chapter.

(b) *PBGC audit.* Premium payments under this part are subject to audit by the PBGC. If, upon audit, the PBGC determines that a premium due under this part was underpaid, the late payment interest charges under § 4007.7 and the late payment penalty charges under § 4007.8 shall apply to the unpaid balance from the premium due date to the date of payment. In determining the premium due, if, in the judgment of the PBGC, the plan's records fail to establish the number of plan participants with respect to whom premiums were required for any premium payment year, the PBGC may rely on data it obtains from other sources (including the IRS and the Department of Labor) for presumptively establishing the number of plan participants for premium computation purposes.

(c) *Providing record information*—(1) *In general.* The plan administrator shall make the records retained pursuant to paragraph (a) of this section available to the PBGC upon request for inspection and photocopying (or, for electronic records, inspection, electronic copying, and printout) at the location where they are kept (or another, mutually agreeable, location) and shall submit information in such records to the PBGC within 45 days of the date of the PBGC's written request therefor, or by a different time specified therein.

(2) *Extension.* Except as provided in paragraph (c)(3) of this section, the plan administrator may automatically extend the period described in paragraph (c)(1) by submitting a certification to the PBGC prior to the expiration of that time period. The certification shall—

(i) Specify a date to which the time period described in paragraph (c)(1) is extended that is no more than 90 days from the date of the PBGC's written request for information; and

(ii) Contain a statement, certified to by the plan administrator under penalty of perjury (18 U.S.C. § 1001), that, despite reasonable efforts, the additional time is necessary to comply with the PBGC's request.

(3) *Shortening of time period.* The PBGC may in its discretion shorten the time period described in paragraph (c)(1) or (c)(2) of this section where it determines that collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized. If the PBGC shortens the time period described in paragraph (c)(1), no extension is available under paragraph (c)(2).

(d) *Address and timeliness.* Information required to be submitted under paragraph (c) of this section shall be submitted to the address specified in the PBGC's request. The timeliness of a submission shall be determined in accordance with §§ 4007.5 and 4007.6.

[61 FR 34020, July 1, 1996, as amended at 62 FR 36663, July 9, 1997; 68 FR 61352, Oct. 28, 2003]

### § 4007.11 Due dates.

(a) *In general.* The premium filing due date for small plans is prescribed in paragraph (a)(1) of this section and the

## Pension Benefit Guaranty Corporation

## § 4007.11

premium filing due dates for large plans are prescribed in paragraph (a)(2) of this section.

(1) *Plans with fewer than 500 participants.* If the plan has fewer than 500 participants, as determined under paragraph (b) of this section, the due date is the fifteenth day of the tenth full calendar month following the end of the plan year preceding the premium payment year.

(2) *Plans with 500 or more participants.* If the plan has 500 or more participants, as determined under paragraph (b) of this section—

(i) The due date for the flat-rate premium required by § 4006.3(a) is the last day of the second full calendar month following the close of the plan year preceding the premium payment year; and

(ii) The due date for the variable-rate premium required by § 4006.3(b) for single-employer plans is the fifteenth day of the tenth full calendar month following the end of the plan year preceding the premium payment year.

(iii) If the number of plan participants on the last day of the plan year preceding the premium payment year is not known by the date specified in paragraph (a)(2)(i) of this section, a reconciliation filing (on the form prescribed by this part) and any required premium payment or request for refund shall be made by the date specified in paragraph (a)(2)(ii) of this section.

(3) *Plans that change plan years.* For any plan that changes its plan year, the premium form or forms and payment or payments for the short plan year shall be filed by the applicable due date or dates specified in paragraphs (a)(1), (a)(2), or (c) of this section. For the plan year that follows a short plan year, the due date or dates for the premium forms and payments shall be, with respect to each such due date, the later of—

(i) The applicable due date or dates specified in paragraph (a)(1) or (a)(2) of this section; or

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

(b) *Participant count rule for purposes of determining filing due dates.* For purposes of determining under paragraph (a) of this section whether a plan has

fewer than 500 participants, or 500 or more participants, the plan administrator shall use—

(1) For a single-employer plan, the number of participants for whom premiums were payable for the plan year preceding the premium payment year, or

(2) For a multiemployer plan,—

(i) If the premium payment year is the plan's second plan year, the first day of the first plan year; or

(ii) If the premium payment year is the plan's third or a subsequent plan year, the last day of the second preceding plan year.

(c) *Due dates for new and newly covered plans.* Notwithstanding paragraph (a) of this section, the premium form and all premium payments due for the first plan year of coverage of any new plan or newly covered plan shall be filed on or before the latest of—

(1) The fifteenth day of the tenth full calendar month that began on or after the later of—

(i) The first day of the premium payment year; or

(ii) The day on which the plan became effective for benefit accruals for future service;

(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.

(d) *Continuing obligation to file.* The obligation to file the form or forms prescribed by this part and to pay any premiums due 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. The entire premium computed under this part is due, irrespective of whether the plan is entitled to a refund for a short plan year pursuant to § 4006.5(f).

(e) *Improper filings.* Any form not filed in accordance with this part, not filed in accordance with the instructions in the Premium Payment Package, not accompanied by the required premium payment, or otherwise incomplete, may, in the discretion of the PBGC, be returned with any payment

**§ 4007.12**

**29 CFR Ch. XL (7-1-04 Edition)**

accompanying the form to the plan administrator, and such payment shall be treated as not having been made.

[61 FR 34020, July 1, 1996, as amended at 63 FR 68685, Dec. 14, 1998]

**§ 4007.12 Liability for single-employer premiums.**

(a) The designation under this part of the plan administrator as the person required to file the applicable forms and to submit the premium payment for a single-employer plan is a procedural requirement only and does not alter the liability for premium payments imposed by section 4007 of ERISA. Pursuant to section 4007(e) of ERISA, both the plan administrator and the contributing sponsor of a single-employer plan are liable for premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the con-

trolled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

(b) For any plan year in which a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) notices of intent to terminate in a distress termination under section 4041(c) of ERISA or the PBGC initiates a termination proceeding under section 4042 of ERISA, and for each plan year thereafter, 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.

(Approved by the Office of Management and Budget under control number 1212-0009)