

§ 4007.9

the date of the bill, provided the premium underpayment is paid within 30 days after the date of the bill.

(f) *Safe-harbor relief for certain large plans.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if fewer than 500 participants are reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(g) *Safe-harbor relief for plans that make minimum estimated payment.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i), the plan administrator pays at least the lesser of—

(1) 90% of the flat-rate premium due for the premium payment year; or

(2) 100% of the flat-rate premium that would be due for the premium payment year if the number of participants for that year were the lesser of—

(i) The number of participants for whom premiums were required to be paid for the plan year preceding the premium payment year; or

(ii) The number of participants reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(h) *Reported participant count.* For purposes of paragraphs (f) and (g)(2)(ii) of this section, the number of participants reported for the plan year preceding the premium payment year is the number of participants last reported under this part to the PBGC (for the plan year preceding the premium payment year) by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i).

(i) *Safe harbor relief for certain plan amendments prospectively changing plan year.* This waiver applies in the case of a plan for which a reconciliation filing

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is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i),—

(1) The plan has been amended to change its plan year and the amendment as in effect on that date makes the premium payment year a short year that will end after that date; and

(2) The plan administrator pays at least the lesser of—

(i) The amount determined under § 4007.8(g) based on the actual length of the premium payment year, or

(ii) The amount determined under § 4007.8(g) based on the length that the premium payment year would have if the new plan year cycle began as anticipated by the amendment.

[64 FR 66385, Nov. 26, 1999, as amended at 65 FR 75164, Dec. 1, 2000]

§ 4007.9 Coverage for guaranteed basic benefits.

(a) The failure by a plan administrator to pay the premiums due under this part will not result in that plan's 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 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.