

PBGC ADOPTS UNIFORM PREMIUM DUE DATE

Mar 19, 2014

In the latest step of a rulemaking process begun in 2013, on March 11 the Pension Benefit Guaranty Corporation published a final rule which provides that both flat rate and variable rate premiums for small defined benefit plans will be due 9½ months after the beginning of the plan year for which they are payable. This change, which eliminates the system under which premium due dates varied based on the type of premium and the size of the plan, will accelerate the premium due date for small plans, which has been four months after the end of the premium payment year, by 6½ months. While the final rule is applicable for 2014 and later plan years, a transition rule provides a four month delay in the new due date for small plans for the first plan year beginning after 2013 in order to ease potential cash flow problems raised by commentators.

Example, a small calendar year plan pays its 2013 premiums on April 30, 2014. The plan's 2014 premiums are due on October 15, 2014; however, the plan will have until February 15, 2015 to pay those premiums under this transition rule.

PBGC estimates indicate that the accelerated due date will shift earnings on premium payments from small plans to the PBGC, but that on average small plans will gain due to reduced administrative expenses.

Since small plans may have a valuation date that is as late as the last day of the plan year, the final rule also changes the procedure for calculating small plans' variable rate premiums in order to avoid a timing issue where premiums might otherwise be due before or shortly after the valuation date for the premium payment year. Under a look-back rule, the unfunded vested benefits for the plan year preceding the premium payment year will generally be used to calculate variable rate premiums for small plans. However, small plans may elect to opt out of the look-back rule in accordance with procedures that will be included in future PBGC premium instructions. In addition, new and newly covered small plans, other than plans resulting from a non-*de minimis* consolidation or spinoff, will be exempt from variable rate premiums for their first year. The final rule also more closely aligns the category of small plans subject to the look-back rule with those eligible to designate a valuation date other than the first day of the plan year under the funding rules by defining a small plan as one with 100 or fewer participants on the last day of the plan year preceding the premium payment year. Prior to the final rule, small plan status was based on paying

flat rate premiums for fewer than 100 participants for the plan year preceding the premium payment year.

As previously announced by the PBGC, the final rule also includes provisions relating to:

- Coordination of the Due Date for Terminating Plans with the Termination Process. In order to promote the routine payment of final year premiums by plans terminated in a standard termination, the due date will be the earlier of (1) the normal due date, and (2) the date the post-distribution certification is filed. In addition, those plans which terminate and make a final distribution within the same plan year will be exempt from the variable rate premium for that year. In the case of distress or involuntary terminations, the liability for premiums will rest solely with the contributing sponsor and its controlled group after the termination process begins.
- Clarification of the Variable Rate Premium Rules. The phase in of at-risk funding targets applies in determining unfunded vested benefits, but the MAP-21 segment rate stabilization corridor does not apply in determining the alternative premium funding target that a plan may elect to use for that purpose.
- Relief from Late Payment Penalties. The penalty cap for late payments that are self-corrected is reduced from 100% of the unpaid premium to 50%, a pre-existing PBGC policy to waive penalties on premium payments that are no more than seven days late is codified and, in conjunction with acceleration of the premium due date for small plans, the penalty waiver applicable where estimated variable rate premiums are paid on the due date and trued-up within six months is extended to small plans.

Related Links

[PBGC Release](#)

[Draft Premium Payment Instructions](#)

MEET THE TEAM



Hal B. Morgan

St. Louis

hal.morgan@bclplaw.com

+1 314 259 2511

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.