655.10(b), including, among other things, whether the OES mean is the appropriate basis for determining the prevailing wage; whether wages based on the Davis-Bacon Act (DBA), 40 U.S.C. 276a *et seq.,* 29 CFR part 1, or the McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 *et seq.,* should be used to determine the prevailing wage, and if so to what extent; and whether to permit the continued use of employer-submitted surveys and ways to strengthen their methodology, if permitted. The comment period closed on June 10, 2013, and the Departments are in the process of reviewing those comments and determining whether further revision to 20 CFR 655.10(b) is warranted in light of public comment.

The confluence of the recurrent Congressional prohibition against implementation of the 2011 Wage Rule, which the Department anticipates will continue, and the Department's current review and consideration of suggestions made in the comments associated with the IFR, which revised wage provisions of the H–2B regulations that were also the subject of the 2011 Wage Rule, require the indefinite delay of the effective date of the 2011 Wage Rule. Were the 2011 Wage Rule to become effective, it would supplant the revisions made to 20 CFR 655.10(b) in the IFR, which were necessary in light of the court's order in *CATA* v. *Solis.* In that event, the Department would likely continue to be unable to implement the 2011 Wage Rule, based on the continuation of the Congressional prohibition on its implementation. However, should Congress lift the prohibition against implementation of the 2011 Wage Rule, the Department would need time to assess the current regulatory framework, to consider any changed circumstances, novel concerns or new information received, and to minimize disruptions.

Until such time as Congress no longer prohibits the Department from implementing the 2011 Wage Rule, the effective date of the 2011 Wage Rule should be delayed. In the event that Congress no longer prohibits implementation of the 2011 Wage Rule, the Department would publish a document in the **Federal Register** within 45 days apprising the public of the status of 20 CFR 655.10 and the effective date of the 2011 Wage Rule. The Department invites comment on the proposed indefinite delay of the effective date of the 2011 Wage Rule.

Signed: at Washington, DC, this 18 of July, 2013.

Eric Seleznow,

Acting Assistant Secretary for Employment and Training.

[FR Doc. 2013–17676 Filed 7–18–13; 4:15 pm]

BILLING CODE 4510–FP–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4000, 4006, 4007, and 4047

RIN 1212–AB26

Premium Rates; Payment of Premiums; Reducing Regulatory Burden

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Corporation (PBGC) proposes to make its premium rules more effective and less burdensome. Based on its regulatory review under Executive Order 13563 (Improving Regulation and Regulatory Review), PBGC proposes to amend its regulations on Premium Rates and Payment of Premiums to simplify due dates, coordinate the due date for terminating plans with the termination process, make conforming and clarifying changes to the variable-rate premium rules, provide for relief from penalties, and make other changes. Large plans would no longer have to pay flat-rate premiums early; small plans would get more time to value benefits. These amendments would be effective starting 2014. PBGC also proposes to amend its regulations in accordance with the Moving Ahead for Progress in the 21st Century Act.

DATES: Comments must be submitted on or before September 23, 2013.

ADDRESSES: Comments, identified by Regulation Identifier Number (RIN) 1212–AB26, may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the Web site instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.*
- *Fax:* 202–326–4112.
- *Mail or Hand Delivery:* Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026.

All submissions must include the Regulation Identifier Number for this rulemaking (RIN 1212–AB26). Comments received, including personal information provided, will be posted to *www.pbgc.gov.* Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005–4026, or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Assistant General Counsel for Regulatory Affairs (*klion.catherine@pbgc.gov*), or Deborah C. Murphy, Senior Counsel (*murphy.deborah@pbgc.gov*), Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington DC 20005–4026; 202–326–4024. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Executive Summary—Purpose of the Regulatory Action

This rulemaking is needed to make PBGC's premium rules more effective and less burdensome. The proposed rule simplifies and streamlines due dates, coordinates the due date for terminating plans with the termination process, makes conforming changes to the variable-rate premium rules, clarifies the computation of the premium funding target, reduces the maximum penalty for delinquent filers that self-correct, and expands premium penalty relief.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4007 of ERISA, which gives PBGC authority to set premium due dates and to assess late payment penalties.

Executive Summary—Major Provisions of the Regulatory Action

Due Date Changes

Premium due dates currently depend on plan size. Large plans pay the flat-rate premium early in the premium payment year and the variable-rate premium later in the year. Mid-size plans pay both the flat- and variable-rate premiums by that same later due date. Small plans pay the flat- and variable-rate premiums in the following year. PBGC proposes to simplify the due-date rules by providing that all annual premiums for plans of all sizes will be due on the same day in the premium payment year—the historical variable-rate premium due date. The following table shows how 2014 due dates would change for calendar-year plans.

Plan size	Current regulation		Proposal
	Flat-rate premium	Variable-rate premium	Entire premium
Large	2/28/2014	10/15/2014	10/15/2014
Mid-size	10/15/2014	10/15/2014	10/15/2014
Small	4/30/2015	4/30/2015	10/15/2014

For a plan terminating in a standard termination, the final premium may come due months after the plan closes its books and thus be forgotten. Correcting such defaults is inconvenient for both plans and PBGC. To forestall such problems, PBGC proposes to set the final premium due date no later than the last day the post-distribution certification can be submitted without penalty. Conforming changes to other due date rules are also proposed.

Variable-Rate Premium Changes

Some small plans determine funding level too late in the year to be able to use current-year figures for the variable-rate premium by the new uniform due date. To address this problem, PBGC proposes that small plans generally use prior-year figures for the variable-rate premium.

To facilitate the due date changes, no variable-rate premium would generally be owed for a plan's first year of coverage or for the year in which a plan completed a standard termination.

In response to inquiries from pension practitioners, PBGC proposes to clarify the computation of the premium funding target for plans in ''at-risk'' status for funding purposes.

Penalty Changes

PBGC assesses late premium payment penalties at 1 percent per month for filers that self-correct and 5 percent per month for those that do not. The differential is to encourage and reward self-correction. But both penalty schedules have the same cap—100 percent of the underpayment—and once the cap is reached, the differential disappears. To preserve the self-correction incentive and reward for long-overdue premiums, PBGC proposes to reduce the 1-percent penalty cap from 100 percent to 50 percent.

PBGC also proposes to codify in its regulations the penalty relief policy for payments made not more than seven days late that it established in a **Federal Register** notice in September 2011 and to give itself more flexibility in exercising its authority to waive premium penalties.

Other Changes

PBGC also proposes to amend its regulations to accord with the Moving Ahead for Progress in the 21st Century Act and to avoid retroactivity of PBGC's rule on plan liability for premiums in distress and involuntary terminations.

Background

PBGC administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA sections 4006 and 4007, plans covered by the program must pay premiums to PBGC. PBGC's premium regulations—on Premium Rates (29 CFR part 4006) and on Payment of Premiums (29 CFR part 4007)—implement ERISA sections 4006 and 4007.

On January 18, 2011, the President issued Executive Order 13563, ''Improving Regulation and Regulatory Review,'' to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. In response to and in support of the Executive Order, PBGC on August 23, 2011, promulgated its Plan for Regulatory Review,[1] noting several regulatory areas—including premiums—for immediate review. Small-plan premium due date issues, and penalties for premium filings made just past the deadline, were identified in the regulatory review plan as being among the promising candidates for action.

On September 15, 2011,[2] and February 9, 2012,[3] PBGC published policy notices implementing some of the premium initiatives discussed in the regulatory review plan. In the September 15 notice, PBGC announced (among other things) that—based on its review and on comments from premium payers and pension professionals—it would waive premium late-payment penalties that are assessed solely because premium payments are late by not more than seven calendar days. The February 9 notice created a limited-time penalty relief program for plans that had never paid required premiums.

PBGC has continued its review of its premium regulations and has identified other ways to simplify and clarify the regulations, reduce burden, provide penalty relief, and generally make the regulations work better. This proposed rule would amend the premium regulations to implement those improvements (and to codify the seven-day policy announced in the September 15 notice). Public comment on this proposal will help PBGC determine whether its regulation review process is moving in the right direction. PBGC will continue to review its regulations with a view to developing more ideas for improvement.

Introduction

The premium regulations were amended, for plan years beginning after 2007, to conform to changes in the statute made by the Pension Protection Act of 2006 (PPA 2006). The amendments changed how premiums are computed and paid.

There are two kinds of annual premiums.[4] The flat-rate premium is based on the number of plan participants, determined as of the participant count date. The participant count date is generally the last day of the plan year preceding the premium payment year; in some cases, however (such as for plans that are new or are involved in certain mergers or spinoffs), the participant count date is the first day of the premium payment year. The variable-rate premium (which applies only to single-employer plans) is based on a plan's unfunded vested benefits (UVBs)—the excess of its premium funding target over its assets. The premium funding target and asset values are determined as of the plan's UVB valuation date for the premium payment

[1] See *http://www.pbgc.gov/documents/plan-for-regulatory-review.pdf.*

[2] See 76 FR 57082, *http://www.pbgc.gov/Documents/2011-23692.pdf.*

[3] See 77 FR 6675, *http://www.pbgc.gov/Documents/2012-3054.pdf.*

[4] There is also a termination premium, which would be unaffected by this proposed rule.

year, which is the same as the valuation date used for funding purposes for that year. In general, the UVB valuation date is the beginning of the premium payment year, but some small plans (with fewer than 100 participants) may have UVB valuation dates as late as the end of the year.

Under ERISA section 4007, premiums accrue until plan assets are distributed in a standard termination or a failing plan is taken over by a trustee. A plan undergoing a standard termination is exempt from the variable-rate premium for any plan year after the year in which the plan's termination date falls.[5] This proposed rule reflects the provision in Rev. Rul. 79–237 (1979–2 C.B. 190) that minimum funding standards apply only until the end of the plan year that includes the termination date.

Section 4007 authorizes PBGC to set premium due dates and assess penalties for failure to pay premiums timely. Before 2008, all variable-rate premiums were due 9½ calendar months after the beginning of the premium payment year (October 15 for calendar-year plans). Most flat-rate premiums were also due on that date. However, flat-rate premiums for large plans (those with 500 or more participants) were due two calendar months after the beginning of the premium payment year (the end of February for calendar-year plans).[6] Most large plans estimate this premium because they find it impractical to count participants that quickly after the participant count date.

The PPA 2006 amendments to the premium regulations changed the variable-rate premium due date for small plans (those with fewer than 100 participants) to four months after the end of the premium payment year to accommodate their statutory option under PPA 2006 to value benefits as late as the end of the year. The participant count date, on which the flat-rate premium is based, remained the same for small plans as for other plans, so that small plans needed no extra time to determine the flat-rate premium. Nonetheless, for simplicity, small plans' flat-rate premium due date was made the same as the variable-rate due date.

Late payment penalties accrue at the rate of 1 percent or 5 percent per month of the unpaid amount, depending on whether the underpayment is ''self-corrected'' or not. Self-correction refers to payment of the delinquent amount before PBGC gives written notice of a possible delinquency. Penalties are capped by statute at 100 percent of the unpaid amount. Recognizing that most large plans pay an estimate of the flat-rate premium at the early due date and ''true up'' when they pay the variable-rate premium later in the year, the premium payment regulation provides an elaborate system of safe harbors from late-payment penalties for estimated large-plan flat-rate premiums.

Due Date Proposals

Uniform Due Dates for Plans of All Sizes

The historical variable-rate premium due date—9½ months after the beginning of the premium payment year—was established by PBGC in 1998[7] to correspond with the extended due date for the annual report for the prior year that is filed on Form 5500. Coordination of the premium and Form 5500 due dates promotes consistency and simplicity and avoids confusion and administrative burden. PBGC now proposes to eliminate the current system of three premium due dates that depend on plan size and premium type and return to that historical due date for both flat- and variable-rate premiums of plans of all sizes. For calendar-year plans, the due date would be October 15.

Eliminating large plans' special flat-rate premium due date would eliminate the need for the complex penalty safe harbor rules that now apply to underestimates of the flat-rate premium.[8] And for many large plans, it would cut the number of filings by two, rather than just one. That is because underestimating the flat-rate premium gives rise not only to penalties (which can be waived) but also to interest (which cannot be waived). Thus, after paying an estimate of the flat-rate premium, and then paying the balance due, a large plan must make yet another payment, of the interest on the amount by which its initial estimated payment fell short of the correct amount. Eliminating the need for flat-rate premium estimates would eliminate interest payments on shortfalls in those estimates.

For small plans, the unified due date proposal raises a timing issue. As noted above, the current small-plan due date comes after the premium payment year is over because some small plans value benefits at the end of the year and thus cannot calculate variable-rate premiums by a due date that falls within the year. (For example, a small calendar-year plan that values benefits as of December 31 cannot determine the premium by the preceding October 15, the historical due date that this proposal would return to.) PBGC's proposed solution to this timing problem is for small plans to determine the variable-rate premium using data from the year before the premium payment year. This solution is discussed in more detail under the heading *''Look-Back'' Rule for Small Plans,* below.

The premium payment regulation provides an option for paying an estimate of the variable-rate premium at the due date and ''truing up'' within 6½ months without penalty. The availability of this option is currently restricted to mid-size and large plans. With the elimination of different due dates based on plan size, the option would be available to plans of any size. PBGC expects that very few small plans will take advantage of the option, since in virtually all cases, the variable-rate premium will be known by the uniform due date. PBGC requests comments on whether extending this option to small plans would on balance be beneficial or create undue opportunity for error and attendant inconvenience. For example, a filer that inadvertently designated a filing as estimated would be contacted by PBGC if a timely reconciliation filing was not made.

The change to a uniform due date would mean that plan consultants could do all premium and Form 5500 filing chores at one time, once a year. PBGC would receive all premium filings for each plan year at one time, specific to that year, and would be able to process a plan's entire annual premium in a single operation. Going from three due dates to one would be simpler for all concerned—even for mid-size plans, whose due date would not change. Simpler rules mean shorter and simpler filing instructions—instructions that PBGC must update annually and that plan administrators of plans of all sizes must read, understand, and follow. Less complexity means less chance for mistakes and the time and expense of correcting them. Moving to one uniform due date would also simplify PBGC's premium processing systems and save PBGC money on future periodic changes to those systems (because it is less expensive to modify simpler systems).

In short, PBGC believes that this change would produce a significant reduction in administrative burden for both plans and PBGC. It would also shift the earnings on premium payments between plans and PBGC for the time

[5] See *Exemption for Standard Terminations,* below.

[6] This requirement was adopted in response to a recommendation in the 1984 report of the Grace Commission (the President's Private Sector Survey on Cost Control). See PBGC final rule at 50 FR 12533 (Mar. 29, 1985).

[7] See 63 FR 68684 (Dec. 14, 1998).

[8] See discussion under the heading *Flat-rate safe harbors,* below.

between the old and new due dates, but overall, plans would gain.[9]

Terminating Plans' Due Date

The foregoing discussion focuses on the normal due dates for annual premiums. There are also special due date rules for new and newly covered plans and for plans that change plan year. But there is no special due date provision for terminating plans—and yet such plans pose a special problem, because their final premium due date may come months after all benefits have been distributed and their books have been closed. Although the standard termination rules require that provision be made for PBGC premiums,[10] PBGC's experience is that once the sometimes-difficult process of distributing benefits is over—and with the premium due date often months in the future—plan administrators may simply forget about premiums and consider their work done. Months later, when PBGC contacts them after they fail to file, it is typically an inconvenience, and sometimes an annoyance, to go back to (or reconstruct) the records to calculate and pay premiums—and interest and penalties, because the due date has been missed.

With a view to ensuring that final-year premiums are routinely paid for plans undergoing standard terminations, PBGC proposes to change the due date to bring it within the standard termination timeline.[11] The final event in the standard termination timeline is the filing of the post-distribution certification under § 4041.29 of PBGC's regulation on Plan Terminations (29 CFR part 4041). The plan administrator of a terminating plan must file the certification (on PBGC Form 501) within 30 days after the last benefit distribution date, but no late filing penalty is assessed if the filing is within 90 days after the distribution deadline under § 4041.28(a) of the termination regulation. The proposed rule provides that the premium due date for a terminating plan's final year would be the earliest of (1) the normal premium due date, (2) the last date by which the post-distribution certification can be filed without penalty, or (3) the date when the post-distribution certification is actually filed.

Because the final year premium filing would not be required any earlier than 90 days after distributions were complete, and the normal premium due date (under the unified due date proposal) would be nine-and-a-half months after the plan year begins, only plans closing out in the first six-and-a-half months of the final year would face an accelerated premium deadline. For plans closing out in the last five-and-a-half months of the final year, the normal premium due date would come before the last date by which the post-distribution certification could be filed without penalty.

The 90 days (or more) between the completion of final distributions and the accelerated premium deadline would also give a plan at least that much time to determine the flat-rate premium (which is based on the participant count at the end of the prior year). For a terminating plan, counting participants should be relatively easy. Because it is in the process of providing benefits for (or for the survivors of) each participant, a terminating plan must necessarily have a roster of all participants. By simply subtracting from the roster the participants who received distributions before the participant count date, the plan can determine the participant count.

Computing a variable-rate premium in three months might be more challenging, but under this proposal it would not be necessary. If the termination date for a standard termination is before the beginning of the final plan year, the existing regulation provides an exemption from the variable-rate premium for the final year. PBGC is proposing to expand this exemption to apply to a plan's final year, even if the termination date comes during that year.[12] Thus, the final-year premium would be flat-rate only. This change would provide relief for the significant number of plans that close out in the same year in which their termination dates fall (as indicated by PBGC data on the number of plans that pay variable-rate premiums for the final year).

Advancing the premium due date for some terminating plans would shift earnings on the premiums from those plans to PBGC. But some of those plans should enjoy reduced administrative expenses (and possibly save on late charges) because the advanced deadline will prompt them to prepare premium filings while files are open for paying benefits. And some plans would avoid paying a final-year variable-rate premium under PBGC's proposed expansion of the exemption for plans doing standard terminations.[13]

On balance, PBGC believes that there should be no net cost to plans and significant administrative benefits for PBGC. PBGC invites suggestions from the public about other approaches to the problem of terminating plans' final-year premiums that this change is aimed at.

New Plan Due Date Modifications

As noted above, the existing premium payment regulation includes a special due date provision for new and newly covered plans. PBGC proposes to make two technical modifications to this provision in support of the primary changes it is proposing in this rule.

The first modification would be to restore—for newly covered plans—the alternative due date of 90 days after title IV coverage begins. This alternative was available before the PPA 2006 amendments to the premium regulations, but those amendments set newly covered plans' normal due date four months after the end of the premium payment year—and thus more than 90 days after the latest possible coverage date. This made the alternative due date superfluous, and it was removed. Now that PBGC is proposing to return the normal due date to 2½ months before the end of the plan year, it will again be possible for a plan's coverage date to be too late in the premium payment year to make filing by the normal due date feasible. Hence the restoration of this alternative due date.

The second modification would provide an alternative due date for a subset of plans that would be excluded from the normal rule—discussed briefly above and in detail below[14]—that small plans would base the variable-rate premium on prior-year data. This subset would consist of new small plans resulting from non-*de minimis* consolidations and spinoffs. These plans would have to pay a variable-rate premium based on current-year data.[15] But being small, a plan in this subset might have a UVB valuation date too late in the premium payment year to enable the plan to meet the normal filing deadline. The alternative due date provided by this second modification to the new-plan due date provision would be 90 days after the UVB valuation date, to give any such plan time to calculate

[9] See *Uniform Due Dates* under Executive Orders 12866 and 13563, below, for detailed discussion of costs and benefits.

[10] See 29 CFR 4041.28(b).

[11] See p. 3 of the Standard Termination Filing Instructions, *http://www.pbgc.gov/documents/500_instructions.pdf.*

[12] See *Final-Year Variable-Rate Premium Exemption,* below.

[13] See *Final-Year Due Date* under Executive Orders 12866 and 13563, below, for detailed discussion of costs and benefits.

[14] See *"Look-Back" Rule for Small Plans,* below.

[15] See *First-Year Variable-Rate Premium Exemption,* below.

the variable-rate premium.[16] While the circumstances in which this due date extension would apply may arise infrequently, PBGC invites comment as to whether the extension would be adequate in situations where it did apply.

Variable-Rate Premium Proposals

''Look-Back'' Rule for Small Plans

As noted in the discussion of the unified due date proposal above, some small plans value benefits too late in the premium payment year to be able to compute variable-rate premiums by the proposed new uniform due date, which is 2½ months before the end of the premium payment year. To solve this problem, PBGC proposes to have small plans determine UVBs, on which variable-rate premiums are based, by looking back to data for the prior year.[17] Because a new plan does not have a prior year to look back to, PBGC proposes to provide an exemption from the variable-rate premium for new small plans. This new variable-rate premium exemption is discussed in more detail under *First-Year Variable-Rate Premium Exemption* below.

The term ''UVB valuation year'' would be used in the text of the regulation to mean the year that the plan administrator looks to for the UVBs used to calculate the variable-rate premium for the premium payment year. As a general rule, the UVB valuation year would be the plan year preceding the premium payment year for small plans, and would be the premium payment year for other plans. (Using the term ''UVB valuation year'' avoids the need to have the regulation describe two versions of all the UVB determination rules—one version for small plans and a second version for the others.)

This ''look-back'' rule would apply only to the variable-rate premium, not to the flat-rate premium. The participant count on which the flat-rate premium is based is determined not as of the UVB valuation date but as of the participant count date. This date is still the same as it was before PPA 2006, when small plans' premium due date was the historical date that this proposed rule would reinstate for them (October 15 for calendar-year plans). From the perspective of the flat-rate premium, the proposal returns small plans to their situation before PPA 2006, and no special accommodation is needed.

Plans Subject to Look-Back Rule

In general, PBGC proposes to have the look-back rule apply to any plan with a participant count for the premium payment year of up to 100, or a funding valuation date that is not at the beginning of the premium payment year. Thus the ''small plans'' to which the proposed look-back rule would apply would be a slightly different group, compared to the ''small plans'' whose premium due date is currently four months after the end of the plan year. The difference in approach reflects the difference in the implications of plan size under the current and proposed premium payment regulations. In the current regulation, all plans have the same UVB valuation year, and plan size determines due date; under the proposed rule, all plans would have the same due date, and plan size would generally determine UVB valuation year (*i.e.,* whether the look-back rule applies).

The current regulation bases plan size on the participant count for the year before the premium payment year, so that plans can determine well in advance whether they are large and thus required to pay the flat-rate premium early in the year. New plans (which have no prior year) are treated as small, which means that they pay their first-year premiums according to the small-plan payment schedule, regardless of size. Newly covered plans are grouped with new plans. If a new or newly covered plan in fact covers more than 100 participants, it enjoys the luxury of the delayed small-plan due date for its first year, but the most PBGC can be said to have ''lost'' is 6½ months' interest on the premium.

Under the look-back proposal, in contrast, if a new plan covering more than 100 participants were treated as small, PBGC would lose not just interest but the whole variable-rate premium. For some new plans—particularly those created by consolidation or spinoff—this could be a very substantial sum. To avoid this unintended consequence of the look-back rule, which is meant for plans that are genuinely small, PBGC proposes to base the small-plan category on the participant count for the premium payment year rather than the preceding year. This change would be possible because eliminating the early flat-rate premium due date for large plans would eliminate the pressure to determine plan size early in the premium payment year. By the time a plan needed to know whether it was small (and thus subject to the look-back rule), it would have had plenty of time to determine its participant count.

Changing from the prior year's to the current year's participant count would bring PBGC's definition of ''small plan'' into closer alignment with the statutory category of plans eligible to use non-first-day-of-the-year valuation dates.[18] The somewhat complex statutory definition counts participants in the prior year,[19] and PBGC's participant count date for the current year is generally the last day of the prior year. To improve the correspondence with the statutory provision, PBGC proposes to change from its current small-plan numerical size range (fewer than 100 participants) to the numerical size range in the statute (100 or fewer participants).

PBGC wants every plan that in fact has a non-first-day-of-the-plan-year valuation date to be included in the definition of ''small plan'' that the look-back rule applies to. But because of the complexity of the statutory category of plans eligible to use non-first-of-the-year valuation dates, PBGC is reluctant to match its ''small plan'' definition closely to every aspect of that statutory category. PBGC's proposed solution is to combine a simple ''small plan'' concept with a ''catch-all'' clause. Accordingly, PBGC proposes to apply the look-back rule to any plan that has a participant count of 100 or fewer for the premium payment year or that in fact has a funding valuation date for the premium payment year that is not the first day of the year.[20]

PBGC also considered having the look-back rule apply only to plans that

[16] To give any plan with a deferred due date adequate time to reconcile an estimated variable-rate premium, the reconciliation date would key off the due date rather than the premium payment year commencement date. For a normal due date, the reconciliation date would remain the same.

[17] This proposal revives a concept that was in the premium regulations before PPA 2006: the alternative calculation method, which permitted plans to determine UVBs by ''rolling forward'' prior-year data using a set of complex formulae. No ''rolling forward'' or other modification of prior-year data are involved in the approach that PBGC now proposes.

[18] The currently defined small plan category corresponds only approximately with the category of plans permitted by statute to use non-first-day-of-the-plan-year valuation dates. See preamble to PBGC's final PPA 2006 premium rule, 73 FR 15065 at 15069 (Mar. 21, 2008).

[19] ERISA section 303(g)(2)(B) provides that ''if, on each day during the preceding plan year, a plan had 100 or fewer participants, the plan may designate any day during the plan year as its valuation date for such plan year and succeeding plan years. For purposes of this subparagraph, all defined benefit plans which are single-employer plans and are maintained by the same employer (or any member of such employer's controlled group) shall be treated as 1 plan, but only participants with respect to such employer or member shall be taken into account.'' ERISA section 303(g)(2)(C) provides additional rules dealing with predecessor employers and providing that a plan may qualify as ''small'' for its first year based on reasonable expectations about its participant count during that year.

[20] As discussed above, new plans resulting from non-*de minimis* consolidations and spinoffs would be excluded from the look-back provision.

actually have non-first-day-of-the-plan-year valuation dates, or only to plans eligible to elect such dates under the statute. PBGC rejected the former course because it believes that all small plans will prefer the look-back rule and rejected the latter course because of the complexity of the statutory description of plans eligible to make the valuation date election. PBGC invites public comment on whether there is an alternative to the proposed approach that would be preferable.

Effects of Due Date and Look-Back Proposals

PBGC's look-back proposal has the advantage that it would permit use of a much more convenient premium due date, and it avoids the use of complicated mathematical manipulations aimed at making the prior-year figures more reflective of current conditions. For small plans, the combination of the new due date and the look-back rule would mean not only that the premium due date would align with the Form 5500 due date (as typically extended), but that the due dates that would align would correspond to the same valuation. The following table illustrates, for filings due October 15, 2014, how the alignment of valuations and due dates for small plans would differ from the alignment for other plans.

	Premium payment year	UVB valuation year	5500 valuation year
Small plans	2014	2013	2013
Other Plans	2014	2014	2013

Thus, not only would small plans enjoy the convenience of a convergence between the premium and Form 5500 due dates, but the due dates that converged would be tied to the same valuation. This would accommodate the desire of many small plan sponsors to defer the plan valuation until after the beginning of the year following the valuation date, when profits and taxes can be computed.

For small plans, this combined due-date and look-back proposal has basically the same result as if the current small-plan due date (four months after the end of the premium payment year) were extended for 5½ months without a look-back. For example, consider the following table comparing PBGC's combined proposal with a 5½-month due date extension (without a look-back) for a calendar-year plan:

	Premium payment year	UVB valuation year	Due date
PBGC's proposal	2014	2013	October 15, 2014.
Due date extension without look-back	2013	2013	October 15, 2014.

In both cases, the premium due October 15, 2014, is based on UVBs determined for 2013. The difference is that under PBGC's proposal, the premium is being paid for 2014, whereas if the due date has been extended 5½ months, the premium is being paid for 2013.

PBGC in fact considered the alternative of extending the due date 5½ months for small plans. But premium filings contain, in addition to premium data, other data that PBGC uses to help determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. It is important that these data be as current as possible. Furthermore, PBGC decided it was administratively simpler to have all premium filings for a year be due in that year—avoiding (for example) the need to determine whether a filing made October 15, 2014, was for 2014 or 2013.

The comparison of the advanced and deferred due date approaches shows why it is not clear how to analyze the financial impact of PBGC's proposal. On the one hand, the change can be viewed as a simple acceleration of the premium due date, with small plans losing 6½ months' interest on their annual premium payments. On the other hand, it can be viewed as a deferral of the due date (with small plans gaining 5½ months' interest on their premiums each year) preceded by a one-time ''extra'' premium in the transition year.[21] For purposes of the analyses in this preamble of the effects of the changes for small plans, PBGC views the due date as being accelerated rather than deferred.

Under the look-back proposal, small plans would pay variable-rate premiums based on year-old data. Plans might view this either positively or negatively, depending on whether UVBs were trending up or down; using year-old data to compute variable-rate premiums shifts by one year the effect of changes in those data, which are typically modest but may at times be dramatic. And for the first year to which the look-back rule applies, small plans' variable-rate premiums would be based on the same UVBs as for the year before, which each small plan might consider either beneficial or detrimental depending on its circumstances. PBGC invites comment on whether this approach is a matter of concern and suggestions for mitigating any such concern.

In response to a request for suggestions from the public in connection with its review of its regulations,[22] PBGC received a letter from an organization representing retirement plan professionals (involved primarily with small plans) requesting that the small-plan due date be changed, suggesting that it would be efficient to coordinate with the Form 5500 due date, and reiterating previous requests that small plans be given more time to complete valuations. Judging from this and other comments and questions to PBGC from pension practitioners, PBGC anticipates that the small-plan community will welcome this proposal. PBGC invites comments from small plans and their sponsors and consultants on the proposed change and

[21] In the transition year (using a calendar-year plan as an example), PBGC's proposal would result in two premium payments: one at the end of April for the prior year, and one in mid-October for the current year. (In the transition year for the existing due date system, small plans made no premium payments.) Under a simple due date extension, there would not be two due dates within the same year.

[22] See 76 FR 18134 (Apr. 1, 2011), *http://www.pbgc.gov/documents/2011–7805.pdf.*

whether there are other approaches that might be more effective.

First-Year Variable-Rate Premium Exemption

The look-back rule faces the difficulty, noted above, that a new plan does not have a prior year to look back to. The typical new plan has no vested benefits, and so would owe no variable-rate premium with or without the look-back rule. But some new plans do have UVBs—for example, newly created plans that grant past-service credits. This circumstance creates a dilemma: it may be impossible for a small plan to base its first year's premium on its first year's UVBs (because its valuation date may be too late in the year), but neither can it look back to prior-year UVBs (because it has no prior year). To resolve this problem, PBGC proposes to provide an exemption from the variable-rate premium for small plans that are new or newly covered.[23] PBGC considers it reasonable to forgo variable-rate premiums from a few new small plans in the interest of greatly simplifying its premium due date structure.[24]

However, PBGC considers plans created by consolidation or spinoff to be new plans. To avoid creating an incentive to sponsors of underfunded small plans to turn them (in effect) into new plans by spinoff or consolidation, simply to avoid paying variable-rate premiums, PBGC proposes to exclude from this variable-rate premium exemption any new small plan that results from a non-*de minimis* consolidation or spinoff. These consolidated or spunoff plans would not be subject to the look-back rule, but would instead base their variable-rate premiums on current-year data, with an alternative due date available (as discussed above) to provide time to calculate the premium where the UVB valuation date was late in the premium payment year.

Final-Year Variable-Rate Premium Exemption

Although the existing regulation exempts a plan in a standard termination from the variable-rate premium for any plan year beginning after the plan's termination date,[25] it is possible to carry out a standard termination so that the termination date and final distribution come within the same plan year. In that case, the plan is subject to the variable-rate premium—based on underfunding of vested benefits—for the very year in which it demonstrates, by closing out, that its assets are sufficient to satisfy not merely all vested benefits but all non-vested benefits as well.

As mentioned above, PBGC proposes to expand the existing regulation's exemption from the variable-rate premium to include the year in which a plan closes out, regardless of when the termination date is. Like the existing exemption, the new exemption would be conditioned on completion of a standard termination. If the exemption were claimed in a premium filing made before (but in anticipation of) close-out, and close-out did not in fact occur by the end of the plan year, the exemption would be lost, and the variable-rate premium would be owed for that year (with late charges).

As noted above, variable-rate premium amounts not owed because of this change in the variable-rate premium exemption would significantly offset costs attributable to the revised final-year due date rule for plans in standard terminations, to which this change is related.[26]

Premium Funding Target for Plans in At-Risk Status for Funding Purposes

ERISA section 4006(a)(3)(E) makes the funding target in ERISA section 303(d) (with modifications) the basis for the premium funding target. The definition of ''funding target'' in section 303(d) in turn incorporates the provisions of ERISA section 303(i)(1), dealing with ''at-risk'' plans. (A plan is in ''at-risk'' status if it fails certain funding-status tests.) ERISA section 303(i)(5) provides for transitioning between normal and at-risk funding targets and thus ameliorates the effects of section 303(i)(1). Although neither section 303(d) nor section 303(i)(1) refers explicitly to section 303(i)(5), PBGC believes that section 303(i)(5) clearly applies to the determination of the premium funding target. PBGC proposes to add a provision to the premium rates regulation clarifying this point.

ERISA section 303(i)(1)(A)(i) requires the use of special actuarial assumptions in calculating an at-risk plan's funding target, and section 303(i)(1)(A)(ii) requires that a ''loading factor'' be included in the funding target of an at-risk plan that has been at-risk for two of the past four plan years. The loading factor, described in section 303(i)(1)(C), is the sum of (i) an additional amount equal to $700 times the number of plan participants and (ii) an additional amount equal to 4 percent of the funding target determined as if the plan were not in at-risk status.

In response to inquiries from pension practitioners, PBGC proposes to amend the premium rates regulation to clarify the application of the loading factor to the calculation of the premium funding target for plans in at-risk status.

The statutory variable-rate premium provision refers explicitly to the defined term ''funding target,'' which for at-risk plans clearly includes the section 303(i)(1) modifications. PBGC thus considers it clear that all of the at-risk modifications must be reflected in the premium funding target. And considering that the funding target and the premium funding target are so closely analogous, it seems natural that for premium purposes, the 4 percent increment referred to in section 303(i)(1)(C)(ii) should be taken to mean 4 percent of the premium funding target determined as if the plan were not in at-risk status.

But for premium purposes, the term ''participant'' in the loading factor provision is ambiguous. Because the premium funding target reflects only vested benefits, while the funding target reflects all accrued benefits, there is a suggestion that the term ''participant'' should in the premium context be understood to refer to vested participants. But many participants are partially vested (as in plans with graded vesting) or are vested in one benefit but not another (for example, vested in a lump-sum death benefit but not in a retirement annuity) and thus are not clearly either vested or non-vested. Furthermore (putting vesting aside), the premium regulations (§ 4006.6 of the premium rates regulation) and the Internal Revenue Service's regulation on special rules for plans in at-risk status (26 CFR 1.430(i)–1(c)(2)(ii)(A)) count participants differently.

PBGC proposes to resolve the statutory ambiguity by providing that the participant count to use in calculating the loading factor to be reflected in the premium funding target is the same participant count used to compute the load for funding purposes. This solution has the advantage that it avoids introducing new participant-counting rules and does not impose on

[23] Newly covered plans are often not subject to the funding rules, on which the premium rules are based, for the year that would be their look-back year. It is possible for a newly covered plan to have been in existence as a covered plan for a portion of the preceding year. Such a plan would have a look-back year and would not need an exemption from the variable-rate premium. In the interest of simplicity, PBGC's proposed first-year variable-rate premium exemption would ignore this rare possible situation.

[24] Between 2008 and 2011, about 65 new small plans per year paid total average variable-rate premiums of a little over $82,000—less than 2 percent of total average annual new-plan variable-rate premiums.

[25] See *Exemption for Standard Terminations,* below.

[26] See *Final-Year Due Date* under Executive Orders 12866 and 13563, below, for detailed discussion of costs and benefits.

filers the burden of determining two different participant counts for two similar purposes. PBGC solicits suggestions from the public for alternative approaches to calculating the participant-based portion of the loading factor.

Penalties

Lowering the Self-Correction Penalty Cap

The difference between the normal penalty rate of 5 percent per month and the self-correction rate of 1 percent per month provides an incentive to self-correct and reflects PBGC's judgment that those that come forward voluntarily to correct underpayments deserve more lenient treatment than those that PBGC ferrets out through its premium enforcement programs. But because the penalty is capped at 100 percent of the underpayment regardless of the rate it accrues at, a plan that self-corrects after 100 months pays the same penalty as if it had been tracked down by PBGC. PBGC occasionally encounters situations in which—typically when there is a change in plan sponsor or plan actuary—a plan with a long history of underpaying or not paying premiums ''comes in from the cold.'' PBGC believes that in fairness to such filers (and to persuade others to emulate them), the maximum penalty for self-correctors should be substantially less than that for those that do not self-correct.[27]

To preserve the self-correction penalty differential for long-overdue premiums, PBGC proposes to cap the self-correction penalty at 50 percent of the unpaid amount. While this will reduce PBGC's penalty income in these cases, acceptance of the reduction is consistent with the view of penalties as a means to encourage compliance, rather than as a source of revenue. PBGC invites public comment on other ways to encourage, and appropriately recognize, self-correction of long-ago failures to pay premiums.

Expansion of Penalty Waiver Authority

The premium payment regulation and its appendix include many specific penalty waiver provisions that provide guidance to the public about the circumstances in which PBGC considers waivers appropriate—circumstances such as reasonable cause and mistake of law. To deal with unanticipated situations that nevertheless seem to warrant penalty relief, § 4007.8(d) refers to the policy guidelines in the appendix, and § 21(b)(5) of the appendix says that PBGC may waive all or part of a premium penalty if it determines that it is appropriate to do so, and that PBGC intends to exercise this waiver authority only in narrow circumstances.

In reviewing the circumstances where it has exercised its waiver authority, PBGC has concluded that the term ''narrow'' may not capture well the scope of that exercise and may thus be misleading. To avoid an implication that PBGC considers its waiver authority more narrowly circumscribed than in fact it does, PBGC proposes to remove the sentence about narrow circumstances from the appendix.

Codification of Seven-Day Penalty Waiver Rule

On September 15, 2011 (at 76 FR 57082), PBGC published a policy notice announcing (among other things) that for plan years beginning after 2010, it would waive premium payment penalties assessed solely because premium payments were late by not more than seven calendar days.

In applying this policy, PBGC assumes that each premium payment is made seven calendar days before it is actually made. All other rules are then applied as usual. If the result of this procedure is that no penalty would arise, then any penalty assessed on the basis of the actual payment dates is waived.

PBGC proposes to codify this policy in the premium payment regulation.

Removal of Unneeded Flat-Rate Safe Harbors

As discussed above, the premium payment regulation includes several somewhat complex ''safe harbor'' provisions to relieve penalties for large plans' late payment of the correct flat-rate premium that is due early in the premium payment year, two months after the participant count date.

If, as PBGC is proposing, the large-plan flat-rate due date is moved back to later in the premium payment year, when other premiums are due, the penalty safe harbors for under-estimates of large plans' flat-rate premiums will no longer be necessary. Accordingly, PBGC is proposing to eliminate the flat-rate safe harbor provisions from the premium payment regulation.

Other Changes

Variable-Rate Premium Cap

Before amendment to conform to statutory changes made by PPA 2006, PBGC's premium regulations used the same date for counting participants for purposes of the flat-rate premium and for determining UVBs for purposes of the variable-rate premium. This date was (generally) ''the last day of the plan year preceding the premium payment year.''

When PBGC amended the premium regulations to conform to PPA 2006, the amendments provided that in general, UVBs were to be determined as of a different date from the date used to count participants. Thus references in the regulations to ''the last day of the plan year preceding the premium payment year'' in some cases were changed to refer to ''the participant count date'' and in other cases were changed to refer to ''the UVB valuation date.''

The regulatory provision dealing with the variable-rate premium cap for plans of small employers includes two references to ''the last day of the plan year preceding the premium payment year'' that should have been amended to refer to ''the participant count date'' but were overlooked. This proposed rule would correct the variable-rate premium cap provision to remedy this oversight.

Exemption for Standard Terminations

When PBGC added to the premium regulations the exemption from the variable-rate premium for plans terminating in standard terminations, it stated that the exemption would apply to ''a standard termination with a proposed termination date during a plan year preceding the premium payment year.'' (See preamble to final rule, 54 FR 28950 (July 10, 1989).) In the text of the regulation, this requirement was expressed by requiring that the proposed termination date be on or before ''the last day of the plan year preceding the premium payment year''—the same words used to identify the date as of which participants were to be counted for purposes of the flat-rate premium and the date as of which UVBs were to be determined for purposes of the variable-rate premium.

When PBGC amended the premium regulations to conform to statutory changes made by PPA 2006, as described above, the phrase ''the last day of the plan year preceding the premium payment year'' in the standard termination exemption from the variable-rate premium should have been left unchanged. Instead, it was inadvertently amended to read ''the UVB valuation date.'' This proposed rule would correct the exemption to require that the proposed termination date be ''before the beginning of the premium payment year,'' which will

[27] PBGC took a step in this direction with its policy notice of February 9, 2012 (see discussion under Background above). However, the waiver of all penalties announced in that notice applied only for a limited time and only to plans that had never paid premiums.

also make the provision clearer and simpler.[28]

Liability for Premiums in Distress and Involuntary Terminations

The premium payment regulation provides that a single-employer plan does not have an obligation to pay premiums if the plan is the subject of distress or involuntary termination proceedings, with a view to conserving plan assets in such situations. The premium payment obligation then falls solely on the plan sponsor's controlled group. The current regulation (§ 4007.12(b)) focuses on the plan year for which a premium is due; the plan's obligation is tolled with respect to premiums for the year in which the termination is initiated and future years.

PBGC has encountered cases in which plan administrators have used plan assets to pay premiums for which the plans had no obligation because termination proceedings began later in the plan year, after payment was made. To address this problem, PBGC proposes to revise § 4007.12(b) so that a plan's obligation to pay premiums ceases when termination proceedings begin—an event of which the plan administrator will have notice—at which time the premium payment obligation falls solely on the plan sponsor's controlled group.

This change would not affect the amount of premiums due. It would reduce administrative burden by making it easier for a plan administrator to determine whether the plan has an obligation to make a premium payment.

Definition of newly covered plan—The current definition of newly covered plan excludes new plans. In rare cases, a new plan might not initially be covered by title IV of ERISA and might then become covered later in its first year of existence. PBGC proposes to revise the definition to remove the exclusion of new plans so that in the case described, the plan would be a newly covered plan (as well as a new plan) and thus entitled to prorate its premium based on its coverage date (as newly covered plans are permitted to do) rather than its effective date (as new plans are permitted to do).

Changes Related to MAP–21

On July 6, 2012, the President signed into law the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141). MAP–21 included provisions about PBGC premiums that, without the need for implementing action by PBGC, have already become effective.[29] PBGC proposes to amend the premium rates regulation in accordance with MAP–21.

Under sections 40221 and 40222 of MAP–21, effective for plan years beginning after 2012, each flat or variable premium rate has a different annual inflation adjustment formula, and the variable-rate premium is limited by a cap with its own annual inflation adjustment. Because of the multiplicity and complexity of the inflation adjustment formulas, PBGC has concluded that it would not be useful to repeat the statutory premium rate rules in the premium rates regulation. PBGC proposes instead to replace existing premium rate provisions with statutory references and simply announce each year the new rates generated by the statutory rate formulas.

Effective for plan years beginning after 2011, section 40211 of MAP–21 establishes a ''segment rate stabilization'' corridor for certain interest assumptions used for funding purposes but provides (in section 40211(b)(3)(C)) for disregarding rate stabilization in determining PBGC variable-rate premiums. PBGC proposes to revise the description of the alternative premium funding target to make clear that it is determined using discount rates unconstrained by the segment rate stabilization rules of MAP 21.

Editorial Changes

PBGC proposes to revise the language that describes the ''reconciliation'' date—associated with the penalty waiver for underestimation of the variable-rate premium—to clarify that the waiver does not require a particular state of mind (of the plan administrator, sponsor, actuary, or other person) regarding the correctness or ''finality'' of the estimate. This clarification is not substantive but merely reflects the fact that (as noted in the preamble to the existing regulation) the waiver is provided ''in recognition of the possibility that circumstances might make a final UVB determination by the due date *difficult* or impossible'' (73 FR 15069 (emphasis supplied)).

The proposed rule would also make some other non-substantive editorial changes, including provision of an additional example, deletion of anachronistic text, and addition of a definitional cross-reference.

Conforming Changes to Other Regulations

PBGC's regulation on Restoration of Terminating and Terminated Plans (29 CFR part 4047) has a cross-reference to § 4006.4(c) of the premium rates regulation, which used to describe the alternative calculation method for determining the variable-rate premium[30] but no longer does so. To avoid confusion, PBGC is removing the obsolete cross-reference.

The proposed rule would delete from PBGC's regulation on Filing, Issuance, Computation of Time, and Record Retention (29 CFR part 4000) a provision that parallels anachronistic text that is being deleted from the premium rates regulation.

Applicability

Except as explained below, PBGC proposes to make the amendments in this proposed rule applicable for 2014 and later plan years.

PBGC proposes to make the change to the liability for premiums in distress and involuntary terminations applicable to terminations with respect to which the plan administrator issues the first notice of intent to terminate or the PBGC issues a notice of determination on or after the effective date of the final rule.

MAP–21 became effective on July 6, 2012. The MAP–21 changes to premium rates are applicable for 2013 and later plan years. The clarification to the definition of the alternative premium funding target after MAP–21 is applicable for 2012 and later plan years.

Executive Orders 12866 and 13563

PBGC has determined, in consultation with the Office of Management and Budget, that this rulemaking is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget has therefore reviewed this notice under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This

[28] As discussed above, PBGC proposes to broaden the scope of this exemption to include the year in which a standard termination is completed, regardless of the timing of the termination date.

[29] Technical Update 12–1, *http://www.pbgc.gov/res/other-guidance/tu/tu12-1.html* provides guidance on the effect of MAP–21 on PBGC premiums.

[30] The alternative calculation method is also described in the premium filing instructions for years to which it applies.

proposed rule is associated with retrospective review and analysis in PBGC's Plan for Regulatory Review issued in accordance with Executive Order 13563.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed for any economically significant regulatory action, which, under Section 3(f)(1) of Executive Order 12866, is one that ''is likely to result in a rule that may . . . [h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.''

PBGC premium payments are included as receipts in the Federal budget, and the large-plan flat-rate premium deferral will cause a one-time shift of about $1 billion (attributable primarily to calendar year plans) from one fiscal year to the next. Although no premium revenue will be lost, there will be the appearance of a one-time loss for the year when the due dates change, and PBGC has therefore determined that this proposed rule is economically significant under the criteria in Executive Order 12866. In accordance with OMB Circular A–4, PBGC has examined the economic and policy implications of this proposed rule and has concluded that the action's benefits justify its costs. That conclusion is based on the following analysis of the impact of the proposed due date changes.[31] (The other proposed changes are not economically significant.)

Uniform Due Dates

PBGC estimates that the reduction in administrative burden attributable to adoption of its unified due date proposal translates into average annual savings of 3 hours for each large plan and 1 hour and 10 minutes for each small plan. (PBGC arrived at these estimates on the basis of inquiries made to pension practitioners.) The dollar equivalent of this saving is about $1,050 for a large plan and about $400 for a small plan.[32]

The uniform due date proposal would also shift the earnings on premium payments between plans and PBGC for the time between the old and new due dates. Because earning rates differ between PBGC and plans,[33] the losses and gains would not balance out exactly. But the amounts would be relatively small, and overall, plans would gain.

The most significant earnings shift would be that filers would gain 7½ months' interest on large plans' flat-rate premiums. Based on 2010 data, PBGC estimates that the average gain per large plan might be nearly $8,000 per year. (PBGC's loss would be about one-third as much.)[34] To put this figure in perspective, large plans account for almost all of PBGC's flat-rate premium income—about $1.19 billion (out of a total of about $1.24 billion) for 2010.

The earnings shift for small plans would be virtually negligible. The analysis is not as straightforward because of the concomitant shift from current-year to prior-year data. See the discussion under the heading *Combined Effects of Due Date and Look-Back Proposals,* above. But based again on 2010 data, and assuming a 6½-month advance in the small-plan due date and a plan earnings rate of 6 percent, small plans in the aggregate would lose about $830,000 a year—on average, about $50 per plan. (PBGC's gain would be about one-third the amount lost by plans.)[35] A plan's lost interest earnings would be proportional to its premium; the premium may vary widely among plans, and thus the loss may do the same.

Accordingly, PBGC foresees an average net benefit (in dollar terms) from its uniform due date proposal of about $9,050 for each large plan and about $350 for each small plan.

Final-Year Due Date

Advancing the premium due date for some terminating plans would also shift earnings on the premiums from plans to PBGC. Since plans that do standard terminations are almost all small, the amounts involved are also small. For the 2010 plan year, the average small single-employer plan paid a flat-rate premium of less than $700. On average (over the period 2001–2010), fewer than 1,350 plans terminate each year. About 730 plans would have their final-year due dates advanced by an average of 3¼ months; for the rest (about 620), the due date would not be advanced. Thus on average, the proposal would require payment of the premium about 53 days early. At a rate of 6 percent, 53 days' interest on an average flat-rate premium of $700 is about $6. For larger plans, the average figure using the same methodology would be almost $1,100. But so few larger plans do standard terminations[36] that the average earnings loss for plans of all sizes would be only about $80 per plan, with a total estimated loss of $110,000.

On the other hand, there should be some savings to plans arising from payment of the final-year premium while plan books and records are still open and in use for paying benefits—as opposed to later, when they would have to be found and reopened. If one-tenth of final-year filers (135 plans) each saved one hour of actuarial time at an average of $350 per hour, the total savings would be over $47,000 (or, if averaged over all plans, about $35 per plan).

Further, PBGC data for the 2011 plan year show an aggregate of about $75,000 in variable-rate premiums paid by plans that completed standard terminations during the year. This represents an estimate of the savings to plans under

---

[31] The analysis is based on the following premium data for the 2010 plan year:

Multi:
Small:
Number of plans 29
Flat-rate premium 15,865
Mid-size:
Number of plans 280
Flat-rate premium 751,292
Large:
Number of plans 1,134
Flat-rate premium 91,950,881
Single:
Small:
Number of plans 16,027
Flat-rate premium 11,157,676
Variable-rate premium 14,384,475
Mid-size:
Number of plans 4,459
Flat-rate premium 37,039,342
Variable-rate premium 48,133,809
Large:
Number of plans 4,577
Flat-rate premium 1,098,754,335
Variable-rate premium 1,074,057,949

[32] PBGC assumes for this purpose that enrolled actuaries charge about $350 per hour.

[33] PBGC estimates its rate of return, from investment in U.S. Government securities, at about 2 percent. PBGC estimates plans' rate of return at 6 percent.

[34] The following table shows potential changes in interest earnings calculated with four rates: two percent (our best estimate for PBGC's rate of return), six percent (our best estimate for plans' rate of return), and three and seven percent (the discount rates recommended by OMB Circular A–4).

Possible (2010 data) approximate average gain or loss per large plan at—

2 percent	$2,600.
3 percent	$4,000.
6 percent	$8,000.
7 percent	$9,000.

[35] The following table shows potential changes in interest earnings calculated with four rates: two percent (our best estimate for PBGC's rate of return), six percent (our best estimate for plans' rate of return), and three and seven percent (the discount rates recommended by OMB Circular A–4).

Possible (2010 data) approximate average gain or loss per small plan at—

2 percent	$17.
3 percent	$25.
6 percent	$50.
7 percent	$60.

[36] For 2011, only about 7 percent of standard terminations involved plans with more than 100 participants.

the proposed expansion of the standard termination variable-rate premium exemption. The savings would of course be realized only by the small minority of terminating plans that would owe variable-rate premium in their final year in the absence of this proposal. Averaged over all plans closing out in a year, however, the savings would be about $55 per plan.

Regulatory Flexibility Act

The Regulatory Flexibility Act imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the Regulatory Flexibility Act requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the proposed rule describing the impact of the rule on small entities and seeking public comment on the impact. Small entities include small businesses, organizations and governmental jurisdictions.

Small Entities

For purposes of the Regulatory Flexibility Act requirements with respect to this proposed rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion used to determine what plans would be subject to the look-back rule under the proposal, and is consistent with certain requirements in title I of ERISA [37] and the Internal Revenue Code,[38] as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.[39] Using this proposed definition, about 64 percent (16,700 of 26,100) of plans covered by title IV of ERISA in 2010 were small plans.[40]

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the proposal on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requests comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities.

Certification

On the basis of its proposed definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), sections 603 and 604 do not apply. This certification is based on PBGC's estimate (discussed above) that the proposed change to uniform due dates would create an average annual net economic benefit for each small plan of about $350. This is not a significant impact. PBGC invites public comment on this assessment.

Paperwork Reduction Act

PBGC is submitting the information requirements under this proposed rule to the Office of Management and Budget for review and approval under the Paperwork Reduction Act. The collection of information under the premium payment regulation is currently approved under OMB control number 1212–0009 (expires December 31, 2013). Copies of PBGC's request may be obtained free of charge by contacting the Disclosure Division of the Office of the General Counsel of PBGC, 1200 K Street NW., Washington, DC 20005, 202–326–4040. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC is proposing only small changes in the data filers are required to submit. A plan's filing would be required to state whether the plan was a new small plan created by non-*de minimis* consolidation or spinoff (to which special rules apply) and to indicate if an exemption from the variable-rate premium was claimed under one of the proposed new exemption rules. Other changes would be to the filing instructions, clarifying how to calculate premiums and setting forth the new due date rules.

PBGC needs the information in a premium filing to identify the plan for which the premium is paid to PBGC, to verify the amount of the premium, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help PBGC track the creation of new plans and the transfer of plan assets and liabilities among plans, and to keep PBGC's inventory of insured plans up to date. PBGC receives premium filings from about 25,700 respondents each year and estimates that under this proposal, the total annual burden of the collection of information will be about 8,000 hours and $53,255,000.[41]

Comments on the paperwork provisions under this proposed rule should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to (202) 395–6974. Although comments may be submitted through September 23, 2013, the Office of Management and Budget requests that comments be received on or before August 22, 2013 to ensure their consideration. Comments may address (among other things)—

- Whether the proposed collection of information is needed for the proper performance of PBGC's functions and will have practical utility;
- The accuracy of PBGC's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancement of the quality, utility, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

[37] See, *e.g.,* ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

[38] See, *e.g.,* Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[39] See, *e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,637, 66,644 (Oct. 27, 2011).

[40] See PBGC 2010 pension insurance data table S–31, *http://www.pbgc.gov/Documents/pension-insurance-data-tables-2010.pdf.*

[41] This burden estimate reflects both a decrease in burden attributable to changes in the premium due dates under this proposed rule and an increase in burden attributable to a re-estimate of the existing premium filing burden. The increase in burden due to re-estimation is about 31,300 hours, and the decrease due to the proposed due date changes is about 35,000 hours (about 17,000 hours for large plans and about 18,000 hours for small plans), a net decrease of about 3,700 hours from the currently approved burden (about 163,600). PBGC assumes that about 95 percent of the work is contracted out at $350 per hour, so the 35,000-hour decrease attributable to the proposed rule is equivalent to about 1,750 hours of in-house labor and about $11,600,000 of contractor costs.

List of Subjects

29 CFR Part 4000

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4006

Employee benefit plans, Pension insurance.

29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

29 CFR Part 4047

Employee benefit plans, Pension insurance.

In consideration of the foregoing, PBGC proposes to amend 29 CFR parts 4000, 4006, 4007, and 4047 as follows:

PART 4000—FILING, ISSUANCE, COMPUTATION OF TIME, AND RECORD RETENTION

■ 1. The authority citation for part 4000 continues to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3).

§ 4000.3 [Amended]

■ 2. In § 4000.3(b):

■ a. Paragraph (b)(1)(i) is removed.

■ b. Paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) are redesignated as paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii) respectively.

PART 4006—PREMIUM RATES

■ 3. The authority citation for part 4006 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

■ 4. In § 4006.2:

■ a. The introductory text is amended by removing the words ''and single-employer plan'' and adding in their place the words ''single-employer plan, and termination date''.

■ b. The definition of *participant count* is amended by removing the words ''for a plan year'' and by removing the words ''for the plan year''.

■ c. The definition of *participant count date* is amended by removing the words ''for a plan year''.

■ d. The definition of *UVB valuation date* is amended by removing the words ''for a plan year''; and by removing the words ''plan year determined'' and adding in their place the words ''UVB valuation year, determined''.

■ e. The definition of *newly-covered plan* is revised, and new definitions of *Continuation plan, Small plan,* and *UVB valuation year* are added, in alphabetical order, to read as follows:

§ 4006.2 Definitions.

* * * * *

Continuation plan means a new plan resulting from a consolidation or spinoff that is not *de minimis* pursuant to the regulations under section 414(*l*) of the Code.

* * * * *

Newly covered plan means a plan that becomes covered by title IV of ERISA during the premium payment year and that existed as an uncovered plan immediately before the first date in the premium payment year on which it was a covered plan.

* * * * *

Small plan means a plan—

(1) Whose participant count is not more than 100, or

(2) Whose funding valuation date for the premium payment year, determined in accordance with ERISA section 303(g)(2), is not the first day of the premium payment year.

* * * * *

UVB valuation year of a plan means—

(1) The plan year preceding the premium payment year, if the plan is a small plan other than a continuation plan, or

(2) The premium payment year, in any other case.

■ 5. In § 4006.3:

■ a. Paragraphs (c) and (d) are removed.

■ b. A sentence is added to the end of the introductory text, and paragraphs (a) and (b) are revised, to read as follows:

§ 4006.3 Premium rate.

* * * Premium rates (and the MAP–21 cap rate referred to in paragraph (b)(2) of this section) are subject to change each year under inflation indexing provisions in section 4006 of ERISA.

(a) *Flat-rate premium.* The flat-rate premium for a plan is equal to the applicable flat premium rate multiplied by the plan's participant count. The applicable flat premium rate is the amount prescribed for the calendar year in which the premium payment year begins by—

(1) ERISA section 4006(a)(3)(A)(i) and (F) for a single-employer plan, or

(2) ERISA section 4006(a)(3)(A)(v) and (I) for a multiemployer plan.

(b) *Variable-rate premium.*

(1) *In general.* Subject to the cap provisions in paragraphs (b)(2) and (b)(3) of this section, the variable-rate premium for a single-employer plan is equal to a specified dollar amount for each $1,000 (or fraction thereof) of the plan's unfunded vested benefits as determined under § 4006.4 for the UVB valuation year. The specified dollar amount is the applicable variable premium rate prescribed by ERISA section 4006(a)(8) for the calendar year in which the premium payment year begins.

(2) *MAP–21 cap.* The variable-rate premium for a plan is not more than the applicable MAP–21 cap rate multiplied by the plan's participant count. The applicable MAP–21 cap rate is the amount prescribed by ERISA section 4006(a)(3)(E)(i)(II) and (J) for the calendar year in which the premium payment year begins.

(3) *Small-employer cap.*

(i) *In general.* If a plan is described in paragraph (b)(3)(ii) of this section for the premium payment year, the variable-rate premium is not more than $5 multiplied by the square of the participant count. For example, if the participant count is 20, the variable-rate premium is not more than $2,000 ($\$5 \times 20^2 = \$5 \times 400 = \$2{,}000$).

(ii) *Plans eligible for cap.* A plan is described in paragraph (b)(3)(ii) of this section for the premium payment year if the aggregate number of employees of all employers in the plan's controlled group on the first day of the premium payment year is 25 or fewer.

(iii) *Meaning of ''employee.''* For purposes of paragraph (b)(3)(ii) of this section, the aggregate number of employees is determined in the same manner as under section 410(b)(1) of the Code, taking into account the provisions of section 414(m) and (n) of the Code, but without regard to section 410(b)(3), (4), and (5) of the Code.

■ 6. In § 4006.4:

■ a. Paragraph (a) is amended by removing the words ''for the premium payment year'' where they appear five times in the paragraph and adding in their place the first four times (but not the fifth time) the words ''for the UVB valuation year''.

■ b. Paragraph (b)(2) introductory text is amended by removing the words ''premium payment year'' and adding in their place the words ''UVB valuation year''.

■ c. Paragraph (b)(2)(ii) is amended by removing the words ''premium payment year'' where they appear twice in the paragraph and adding in their place (in both places) the words ''UVB valuation year''.

■ d. New paragraph (b)(3) is added to read as follows:

§ 4006.4 Determination of unfunded vested benefits.

* * * * *

(b) *Premium funding target.*

* * * * *

(3) *''At-risk'' plans; transition rules; loading factor.* The transition rules in ERISA section 303(i)(5) apply to the

determination of the premium funding target of a plan in at-risk status for funding purposes. If a plan in at-risk status is also described in ERISA section 303(i)(1)(A)(ii) for the UVB valuation year, its premium funding target reflects a loading factor pursuant to ERISA section 303(i)(1)(C) equal to the sum of—

(i) *Per-participant portion of loading factor.* The amount determined for funding purposes under ERISA section 303(i)(1)(C)(i) for the UVB valuation year, and

(ii) *Four percent portion of loading factor.* Four percent of the premium funding target determined as if the plan were not in at-risk status.

* * * * *

■ 7. In § 4006.5:

■ a. Paragraph (a) introductory text is amended by removing the reference ''paragraphs (a)(1)–(a)(3) of this section'' and adding in its place the reference ''paragraphs (a)(1)–(a)(4) of this section''.

■ b. Paragraph (a)(3) introductory text is amended by removing the words ''described in this paragraph if'' and adding in their place the words ''described in this paragraph if it makes a final distribution of assets in a standard termination during the premium payment year or if''.

■ c. Paragraph (a)(3)(ii) is amended by removing the words ''on or before the UVB valuation date'' and adding in their place the words ''before the beginning of the premium payment year''.

■ d. Paragraph (e)(2)(ii) is amended by removing the words ''plan year'' and adding in their place the words ''premium payment year''.

■ e. Paragraph (f)(1) is amended by removing the words ''newly-covered'' (with a hyphen) and adding in their place the words ''newly covered'' (without a hyphen).

■ f. Paragraph (a)(4) is added, and paragraphs (c), (d), (e)(1), and (g) are revised, to read as follows:

§ 4006.5 Exemptions and special rules.

* * * * *

(a) *Variable-rate premium exemptions.* * * *

* * * * *

(4) *Certain small new and newly covered plans.* A plan is described in this paragraph if—

(i) It is a small plan other than a continuation plan, and

(ii) It is a new plan or a newly covered plan.

* * * * *

(c) *Participant count date; in general.* Except as provided in paragraphs (d) and (e) of this section, the participant count date of a plan is the last day of the plan year preceding the premium payment year.

(d) *Participant count date; new and newly covered plans.* The participant count date of a new plan or a newly covered plan is the first day of the premium payment year. For this purpose, a new plan's premium payment year begins on the plan's effective date.

(e) *Participant count date; certain mergers and spinoffs.*

(1) The participant count date of a plan described in paragraph (e)(2) of this section is the first day of the premium payment year.

* * * * *

(g) *Alternative premium funding target.* A plan's alternative premium funding target is determined in the same way as its standard premium funding target except that the discount rates described in ERISA section 4006(a)(3)(E)(iv) are not used. Instead, the alternative premium funding target is determined using the discount rates that would have been used to determine the funding target for the plan under ERISA section 303 for the purpose of determining the plan's minimum contribution under ERISA section 303 for the UVB valuation year if the segment rate stabilization provisions of ERISA section 303(h)(2)(iv) were disregarded. A plan may elect to compute unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2), and may revoke such an election, in accordance with the provisions of this paragraph (g). A plan must compute its unfunded vested benefits using the alternative premium funding target instead of the standard premium funding target described in § 4006.4(b)(2) if an election under this paragraph (g) to use the alternative premium funding target is in effect for the premium payment year.

(1) An election under this paragraph (g) to use the alternative premium funding target for a plan must specify the premium payment year to which it first applies and must be filed by the plan's variable-rate premium due date for that premium payment year. The premium payment year to which the election first applies must begin at least five years after the beginning of the premium payment year to which a revocation of a prior election first applied. The election will be effective—

(i) For the premium payment year for which made and for all plan years that begin less than five years thereafter, and

(ii) For all succeeding plan years until the premium payment year to which a revocation of the election first applies.

(2) A revocation of an election under this paragraph (g) to use the alternative premium funding target for a plan must specify the premium payment year to which it first applies and must be filed by the plan's variable-rate premium due date for that premium payment year. The premium payment year to which the revocation first applies must begin at least five years after the beginning of the premium payment year to which the election first applied.

§ 4006.7 [Amended]

■ 8. In § 4006.7, paragraph (b) is amended by removing the words ''under section 4048 of ERISA''.

PART 4007—PAYMENT OF PREMIUMS

■ 9. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(A), 1306, 1307.

§ 4007.2 [Amended]

■ 10. In § 4007.2:

■ a. Paragraph (a) is amended by removing the words ''and single-employer plan'' and adding in their place the words ''single-employer plan, and termination date''.

■ b. Paragraph (b) is amended by removing the words ''new plan'' and adding in their place the words ''continuation plan, new plan''; and by removing the words ''and short plan year'' and adding in their place the words ''short plan year, small plan, and UVB valuation date''.

■ 11. In § 4007.3:

■ a. Paragraph (b) is amended by removing the words ''the PBGC'' and adding in their place the word ''PBGC''; and by removing the second sentence (which begins ''The requirement . . .'' and ends ''. . . after 2006'').

■ b. Paragraph (a) is revised to read as follows:

§ 4007.3 Filing requirement; method of filing.

(a) *In general.* The estimation, determination, declaration, and payment of premiums must be made in accordance with the premium instructions on PBGC's Web site (*www.pbgc.gov*). Subject to the provisions of § 4007.13, the plan administrator of each covered plan is responsible for filing prescribed premium information and payments. Each required premium payment and related information, certified as provided in the premium instructions, must be filed by the applicable due date specified in this part in the manner and format prescribed in the instructions.

* * * * *

■ 12. In § 4007.8:

■ a. Paragraph (a) introductory text is amended by removing the words ''the PBGC'' and adding in their place the word ''PBGC''; and by removing the second sentence (which begins ''The charge . . .'' and ends ''. . . unpaid premium'').

■ b. Paragraphs (f), (g), (h), and (i) are removed, and paragraph (j) is redesignated as paragraph (g).

■ c. Paragraphs (a)(1) and (a)(2) and the introductory text of redesignated paragraph (g) are revised, and new paragraph (f) is added, to read as follows:

§ 4007.8 Late payment penalty charges.

(a) *Penalty charge.* * * *

(1) For any amount of unpaid premium that is paid on or before the date PBGC issues a written notice to any person liable for the premium that there is or may be a premium delinquency (for example, a premium bill, a letter initiating a premium compliance review, a notice of filing error in premium determination, or a letter questioning a failure to make a premium filing), 1 percent per month, to a maximum penalty charge of 50 percent of the unpaid premium; or

(2) For any amount of unpaid premium that is paid after that date, 5 percent per month, to a maximum penalty charge of 100 percent of the unpaid premium.

* * * * *

(f) *Filings not more than 7 days late.* PBGC will waive premium payment penalties that arise solely because premium payments are late by not more than seven calendar days, as described in this paragraph (f). In applying this waiver, PBGC will assume that each premium payment with respect to a plan year was made seven calendar days before it was actually made. All other rules will then be applied as usual. If the result of this procedure is that no penalty would arise for that plan year, then any penalty that would apply on the basis of the actual payment date(s) will be waived.

(g) *Variable-rate premium penalty relief.* PBGC will waive the penalty on any underpayment of the variable-rate premium for the period that ends on the earlier of the date the reconciliation filing is due or the date the reconciliation filing is made if, by the date the variable-rate premium for the premium payment year is due under § 4007.11(a)(1),—

* * * * *

■ 13. Section 4007.11 is revised to read as follows:

§ 4007.11 Due dates.

(a) *In general.* In general:

(1) The flat-rate and variable-rate premium filing due date is the fifteenth day of the tenth full calendar month that begins on or after the first day of the premium payment year.

(2) If the variable-rate premium paid by the premium filing due date is estimated as described in § 4007.8(g), a reconciliation filing and any required variable-rate premium payment must be made by the end of the sixth calendar month that begins on or after the premium filing due date.

(b) *Plans that change plan years.* For a plan that changes its plan year, the flat-rate and variable-rate premium filing due date for the short plan year is as specified in paragraph (a) of this section. For the plan year that follows a short plan year, the due date is the later of —

(1) The due date specified in paragraph (a) of this section, or

(2) 30 days after the date on which the amendment changing the plan year was adopted.

(c) *New and newly covered plans.* For a new plan or newly covered plan, the flat-rate and variable-rate premium filing due date for the first plan year of coverage is the latest of—

(1) The due date specified in paragraph (a) of this section, or

(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, or

(4) In the case of a small plan that is a continuation plan, 90 days after the plan's UVB valuation date.

(d) *Terminating plans.* For a plan that terminates in a standard termination, the flat-rate and variable-rate premium filing due date for the plan year in which all plan assets are distributed pursuant to the plan's termination is the earliest of —

(1) The due date specified in paragraph (a) of this section, or

(2) The latest date by which the post-distribution certification may be filed without penalty under § 4041.29 of this chapter, or

(3) The date when the post-distribution certification is filed.

(e) *Continuing obligation to file.* The obligation to make flat-rate and variable-rate premium filings and payments under this part 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.

■ 14. Section 4007.12 is amended by revising paragraph (b) to read as follows:

§ 4007.12 Liability for single-employer premiums.

* * * * *

(b) After a plan administrator issues (pursuant to section 4041(a)(2) of ERISA) the first notice of intent to terminate in a distress termination under section 4041(c) of ERISA or the PBGC issues a notice of determination under section 4042(a) of ERISA, 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.

§ 4007.13 [Amended]

■ 15. Section 4007.13 is amended by removing the words ''under section 4048 of ERISA'' where they appear once in paragraph (a)(1) introductory text, once in paragraph (a)(2) introductory text, once in paragraph (d)(1), once in paragraph (e)(3) introductory text, once in paragraph (e)(4) introductory text, once in paragraph (e)(4)(i), and once in paragraph (f) introductory text.

Appendix to Part 4007 [Amended]

■ 16. In the Appendix to part 4007:

■ a. Section 21(b)(1) is amended by removing the words ''for waivers if certain 'safe harbor' tests are met, and''; and by removing the words ''30 days after the date of the bill'' and adding in their place the words ''30 days after the date of the bill, and for waivers in certain cases where you pay not more than a week late or where you estimate the variable-rate premium and then timely correct any underpayment''.

■ b. Section 21(b)(5) is amended by removing the second sentence (which begins ''We intend . . .'' and ends ''. . . narrow circumstances'').

PART 4047—RESTORATION OF TERMINATING AND TERMINATED PLANS

■ 17. The authority citation for part 4047 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1347.

§ 4047.4 [Amended]

■ 18. In § 4047.4, paragraph (c) is amended by removing the words ''in § 4006.4(c) of this chapter''.

Issued in Washington, DC, this 16th day of July 2013.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2013–17561 Filed 7–22–13; 8:45 am]

BILLING CODE 7709–02–P