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## PBGC Announces Annual Premium Penalty Relief

Today, the PBGC announced premium penalty relief in connection with the President's Improving Regulation and Regulatory Review directive. 76 Fed. Reg. 57082 (Sept. 15, 2011). The relief provides a seven-day cushion for timely premium payments. It also addresses concerns that have been raised with respect to penalties attributable to the method used to calculate variable rate premium payments.

Generally, for plan years beginning after 2010, PBGC will apply an automatic seven-day grace period for late-paid annual PBGC premiums. While interest on late premiums will continue to apply, the one percent per month penalty for self-reported delinquencies or the five percent per month penalty for delinquencies discovered by PBGC will not apply if the premium payment is made within seven days after the due date. Because the penalty applies for each month or part of a month, absent this rule, a premium payment that is only one day late triggers a full month penalty.

PBGC's penalty relief provisions also address issues that have arisen since the 2008 plan year with respect to election of the alternative premium funding target to calculate the variable rate premium. The electronic premium form requires premium payers to check box 5 to elect the alternative method, as well as box 7 of the form. Where premium payers did not correctly check box 5, PBGC interpreted the filing as failing to elect the alternative method, even if box 7 was checked and the premium submitted corresponded to the amount due using the alternative method. PBGC provided limited relief for this problem in Technical Update 2010-2 issued on June 16, 2010.

Under the new relief provisions, for plan years beginning after 2009, where the plan used the alternative method and did not make a valid election for the applicable plan year or a prior plan year, or where the plan used the standard method but inadvertently elected the alternative method in box 5, PBGC will determine the method used based solely on the information reported on line 7d(1) of Part III of the electronic premium form.

If the election to use the alternative method was invalid solely because the filing was submitted late, PBGC will accept the filing as timely if the filing is not an amendment of a timely filing to use the standard method and the filing is submitted by the earlier of the 90th day after the filing due date and the 30th day after PBGC provides notice that no filing has been received.

Finally, for 2008 and 2009 plan years, as a result of "box 5 errors," some plans were required to amend the premium filing and to recalculate the variable rate premium. Where these

recalculations resulted in additional premiums, the additional premiums were late and triggered late payment penalties. PBGC will waive these penalties for the 2008 and 2009 plan years.

PBGC has said that it is contacting premium payers that are eligible for relief based on election of the standard or alternate methods for calculating the variable rate premium.

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