

## Late Payment Charges

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### General

If you file a premium payment after the due date, we will bill the plan for late charges. The late charges include both interest and penalty charges. The charges are based on the outstanding premium amount due on the due date. If your due date is extended because it falls on a weekend or federal holiday, and your premium payment is filed after the extended due date, interest and penalty will be computed from the actual (unextended) due date. PBGC also may assess penalties under ERISA section 4071 for failure to timely provide premium-related information.

### Late Payment Interest Charges

The late payment interest charge is set by ERISA, and we cannot waive it. Interest accrues at the rate imposed under section 6601(a) of the Code (the rate for late payment of taxes) and is compounded daily. These rates are published by IRS quarterly and are also posted on the [“Interest Rates and Factors”](#) section of the [Practitioners Page](#) of PBGC’s website.

### Late Payment Penalty Charges

The amount of the late payment penalty charge depends on whether the premium underpayment is “self-corrected” and how late the payment is.

If the late payment is made on or before the date when PBGC issues a written notification indicating that there is or may be a premium delinquency (for example, a statement of account (premium invoice), a past-due-filing notice, or a letter initiating an audit), the penalty rate is ~~1~~<sup>2</sup>~~1~~<sup>5</sup>% of the late premium payment per month capped at ~~25~~<sup>50</sup>% of the unpaid amount.

If the late payment is made after that date, the penalty rate is ~~2~~<sup>2</sup>~~5~~<sup>5</sup>% per month capped at ~~50~~<sup>100</sup>% of the unpaid amount.

~~In both cases, the penalty before reflecting the applicable cap is subject to a \$25 minimum.~~

### Minimizing Late Payment Charges

If you cannot make a filing by the due date because you are having difficulty determining some of the required information, you can minimize late payment charges by submitting payment (the amount due or an estimate) without submitting the certified filing. If you choose to do this, you must pay outside of My PAA, either via [www.Pay.gov](http://www.Pay.gov), or by check or wire transfer. You should then submit your certified filing as soon as possible. Additional information on payment options is included in [Appendix 3](#).

PBGC does not recommend this procedure. We may assess a penalty under ERISA section 4071 for failure to furnish premium-related information by the required due date, and making a premium payment without an accompanying premium information filing may cause significant delay in providing a statement of account for the plan. However, when the information filing is ultimately made, the payment will be credited as of the date it was filed and thus stop the accrual of late payment charges on the amount paid.

### Saturday, Sunday, and Federal Holidays

As explained in the “When to File” section, if your premium filing due date falls on a Saturday, Sunday or Federal Holiday, it is extended automatically to the next business day. However, if your premium payment is filed after the extended due date, interest and penalties will be computed from the actual (unextended) due date.

## Late Payment Charges

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*Example*—The Normal Due Date for a plan with a plan year beginning on February 1, 2016 would normally be November 15, 2016. Because that day is a Sunday, the due date is Monday, November 16, 2016. If the filing is made after November 16<sup>th</sup>, late payment charges, if applicable, will be computed from Sunday, November 15, 2016, not November 16<sup>th</sup>.

### Notices from PBGC

#### *Past Due Filing Notices*

If our records indicate that a premium filing is missing for a particular plan year, we will send a “Past Due Filing Notice” to the address reported on the most recent filing. If you receive a Past Due Filing Notice that appears to be in error, contact our customer service representatives (see [Appendix 2](#) for contact information). If a filing was in fact required, after we receive the late filing, we will send a statement of account assessing late payment charges.

#### *Statements of Account*

If your payment is late or less than the required amount, we will send a “Statement of Account” (SOA). The SOA is, in essence, an invoice for premium, penalty, and interest amounts owed to PBGC. To ensure that the amount due does not increase, the premium and interest must be paid within 30 days of the SOA's issue date. If you receive an SOA that appears to be in error, contact our customer service representative (see [Appendix 2](#) for contact information).

### Penalty Waivers

#### *Case-by-Case Waivers*

If you receive an SOA (see above) that includes a penalty charge, but you believe there is a reason why all or a portion of the penalty should be waived (e.g., reasonable cause), you may request a waiver. Information about what constitutes reasonable cause as well as information about other situations where a penalty waiver might be warranted can be found in § 21 of the appendix to PBGC's premium payment regulation, 29 CFR Part 4007, available on the “[Law and Regulations](#)” page of the [Practitioners Page](#) of PBGC's website.

The instructions and timeframe for requesting a waiver will be provided in the SOA. Be sure to follow the instructions carefully. Requests that are submitted past the allotted timeframe will not be granted.

#### *Hardship (i.e., “Statutory”) Waivers*

If, before the filing due date, you can show substantial hardship and that you will be able to pay the premium within 60 days after the filing due date, you may request that we waive the late payment penalty charge. If we grant your request, we will waive the late payment penalty charge for up to 60 days. To request a waiver, contact PBGC at least 30 days before the filing due date. Be sure to include specific information and documents to demonstrate both that it will be a substantial hardship to make the payment on or before the filing due date and that you will have the ability to make the payment within 60 days after the filing due date.

#### *Automatic Penalty Waiver for Premiums paid Within Seven Days of Due Date*

If the sole reason a late payment penalty charge applies is because a premium was paid after the due date, but within seven calendar days of the due date, the late payment penalty charge will automatically be waived.

## Late Payment Charges

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### Automatic Penalty Waiver for Certain Compliant Plans

PBGC will automatically waive 80% of the penalties assessed at the 2½% rate if the plan:

- Corrects the underpayment within 30 days of PBGC's initial notice, and
- Has a good premium compliance history.

For this purpose, a "good premium compliance history" generally means that the plan paid required premiums timely for the five plan years immediately preceding the premium payment year. In addition, if, during the 5-year period, the plan paid its premium late, but was not required to pay a late payment penalty (e.g., the penalty was waived), the plan is treated as paying timely for that year.

### *Automatic Penalty Waiver for Certain Late Variable-Rate Premiums*

As explained in the "When to File" section, in rare circumstances (e.g., a mid-year merger or change in actuary), the Premium Funding Target might not be calculated or finalized by the premium due date. PBGC allows plans in this situation to file timely and pay an estimated Variable-rate Premium by the due date and then submit an amended filing at a later date to reconcile the actual Variable-rate Premium with the estimate.

Because a plan's full Variable-rate Premium (not merely an estimate) is due by the due date, if the full amount is not paid by that date, the plan will be subject to late payment interest charges and may also be subject to late payment penalty charges.

If the actual Variable-rate Premium is greater than the estimate, penalties for late payment will be waived if:

- the reconciliation filing is made and any additional required Variable-rate Premium paid by the end of the sixth calendar month that begins on or after the premium due date (generally April 30th after year-end for calendar year plans), and
- by the premium due date, you report:
  - the fair market value of the plan's assets, and
  - an estimate of the Premium Funding Target that is certified by an enrolled actuary to be a reasonable estimate that:
    - takes into account the most current data available to the enrolled actuary;
    - has been determined in accordance with generally accepted actuarial principles and practices; and
    - uses the calculation methodology (alternative or standard) in effect for the plan year; and
- by the premium due date, you pay at least the amount of Variable-rate Premium determined from the value of assets and estimated Premium Funding Target so reported.

Note that this waiver applies only to estimated Premium Funding Targets, not estimated asset values. If the asset value reported in the reconciliation filing differs from what was reported in the original (i.e., estimated) filing, this automatic penalty relief will be lost. However, PBGC will consider a request for an appropriate penalty waiver in such a situation and, in acting on the request, will consider such facts and circumstances as the reason for the mistake, whether assets were over- or understated, and, if assets were overstated, the extent of the overstatement.

If you know the final Premium Funding Target by the time the Variable-rate Premium is due, you should pay the amount owed by that date. If you do so, you will avoid the interest charge and any penalty charge. If you report that you are making a filing based on an estimated Premium Funding Target, you will be required to make an amended filing reflecting the actual Premium Funding Target by the date the variable-rate reconciliation filing is due.

