

## Treatment of Plan Liability for Premiums

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Title IV of ERISA requires all single-employer defined benefit pension plans that are covered by PBGC's guarantee to pay premiums to the PBGC. ERISA and PBGC regulations provide in general that these premiums, including any interest and penalties, are a liability of both the plan administrator and the contributing sponsor of the plan (including any members of its controlled group).

Section 4007.12(b) of PBGC's regulations provides that if the plan administrator files a Notice of Intent to Terminate in a distress termination under section 4041(c) of ERISA or the PBGC initiates termination proceedings under section 4042 of ERISA, the premiums due for that plan year and each plan year thereafter are no longer an obligation of the plan, but are an obligation solely of the contributing sponsor (including any members of its controlled group). This regulatory provision does not, however, prohibit the use of plan assets to pay premiums. As the preamble to the regulation explains, PBGC has discretion regarding whether to treat such premium payments as legally ineffective and to seek payment of the amount from the plan sponsor, in which case PBGC would credit the plan assets with an amount equal to that recovered from the sponsor.

This internal guidance applies to all plans with termination initiation dates on or after June 30, 1988 (the effective date of the rule in 29 CFR §4007.12(b)).

## Definitions

**Premium** means any amount required to be paid to the PBGC pursuant to ERISA §4006 and 4007 and the regulations thereunder.

**"PBGC initiates termination proceedings"** means PBGC issues a notice of determination under section 4042 of ERISA.

## Guidance

ERISA section 4007 sets forth the basic rules regarding responsibility for payment of premiums. Under subsection 4007(e), both the plan administrator and the contributing sponsor of a single-employer plan are liable for flat-rate and variable-rate premium payments, and, if the contributing sponsor is a member of a controlled group, each member of the controlled group is jointly and severally liable for the required premiums. Any entity that is liable for required premiums is also liable for any interest and penalties assessed with respect to such premiums.

For any plan year in which the plan administrator issues a Notice of Intent to Terminate in a distress termination under section 4041(c) of ERISA or the PBGC initiates termination proceedings under section 4042 of ERISA, and for each plan year thereafter, the premiums (and associated penalties and interest) are an obligation solely of the contributing sponsor (including any members of its controlled group).

In general, in cases in which premiums (and associated penalties and interest) are paid from plan assets even though they are not an obligation of the plan, the payment will be treated as legally effective. The assets used to pay such premiums will not be returned to the plan and will not be considered plan assets for purposes of the section 4044 allocation.

In rare instances, PBGC may treat any payment of premiums from plan assets that are not an obligation of the plan as legally ineffective. PBGC reserves the right to seek payment of such premiums from the plan sponsor (including any members of its controlled group). In such a case, PBGC will return to the plan the assets used to pay the premiums, but only to the extent of PBGC's recovery of the premium from the plan sponsor. Any assets returned to the plan will be considered plan assets for purposes of the ERISA section 4044 allocation.

Any unpaid premiums as of the date of PBGC trusteeship will not be considered liabilities of the plan for purposes of determining the amount of assets available for the section 4044 allocation, regardless of whether they are obligations of the plan.