

SUBCHAPTER B—PREMIUMS

PART 4006—PREMIUM RATES

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

SOURCE: 61 FR 34016, July 1, 1996, unless otherwise noted.

§ 4006.1 Purpose and scope.

This part, which applies to all plans covered by title IV of ERISA, provides rules for computing the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4007 of this chapter for rules for the payment of premiums, including due dates and late payment charges.)

§ 4006.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, ERISA, fair market value, insurer, irrevocable commitment, mandatory employee contributions, multiemployer plan, notice of intent to terminate, PBGC, plan administrator, plan, plan year, single-employer plan, and termination date.

In addition, for purposes of this part:

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.

New plan means a plan that did not exist before the premium payment year and includes a plan resulting from a consolidation or spinoff. A plan that meets this definition is considered to be a new plan even if the plan constitutes a successor plan within the meaning of section 4021(a) of ERISA.

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.

Participant has the meaning described in § 4006.6.

Participant count of a plan means the number of participants in the plan on the participant count date of the plan.

Participant count date of a plan means the date provided for in § 4006.5(c), (d), or (e) as applicable.

Premium funding target has the meaning described in § 4006.4(b)(1).

Premium payment year means the plan year for which the premium is being paid.

Short plan year means a plan year of coverage that is shorter than a normal plan year.

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 date of a plan means the plan's funding valuation date for the UVB valuation year, determined in accordance with ERISA section 303(g)(2).

UVB valuation year of a plan means—

(1) In general,—

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

(ii) The premium payment year, in any other case; or

(2) For a small plan that so opts subject to PBGC premium instructions, the premium payment year.

[61 FR 34016, July 1, 1996, as amended at 65 FR 75163, Dec. 1, 2000; 73 FR 15074, Mar. 21, 2008; 79 FR 13559, Mar. 11, 2014]

§ 4006.3 Premium rate.

Subject to the provisions of § 4006.5 (dealing with exemptions and special rules) and § 4006.7 (dealing with premiums for certain terminated single-employer plans), the premium paid for basic benefits guaranteed under section 4022(a) or section 4022A(a) of ERISA shall equal the flat-rate premium under paragraph (a) of this section

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plus, in the case of a single-employer plan, the variable-rate premium under paragraph (b) of this section. 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 the applicable provisions of—

(1) Section 4006(a)(3)(A) and (G) of ERISA for a single-employer plan, or

(2) Section 4006(a)(3)(A) and (J) of ERISA 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 the applicable provisions of 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 the applicable provisions of ERISA section 4006(a)(3)(E)(i)(II), (E)(i)(III), (K), and (L) 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.

[61 FR 34016, July 1, 1996, as amended at 72 FR 71228, Dec. 17, 2007; 73 FR 15074, Mar. 21, 2008; 79 FR 13559, Mar. 11, 2014; 88 FR 76664, Nov. 7, 2023]

§ 4006.4 Determination of unfunded vested benefits.

(a) *In general.* Except as provided in the exemptions and special rules under § 4006.5, the amount of a plan's unfunded vested benefits for the UVB valuation year is the excess (if any) of the plan's premium funding target for the UVB valuation year (determined under paragraph (b) of this section) over the fair market value of the plan's assets for the UVB valuation year (determined under paragraph (c) of this section). Unfunded vested benefits for the UVB valuation year must be determined as of the plan's UVB valuation date, based on the plan provisions and the plan's population as of that date. The determination must be made in a manner consistent with generally accepted actuarial principles and practices.

(b) *Premium funding target—(1) In general.* A plan's premium funding target is its standard premium funding target under paragraph (b)(2) of this section or, if an election to use the alternative premium funding target under § 4006.5(g) is in effect, its alternative premium funding target under § 4006.5(g).

(2) *Standard premium funding target.* A plan's standard premium funding target under this section is the plan's funding target as determined under ERISA section 303(d) (or 303(i), if applicable) for the UVB valuation year using the same assumptions that are used for funding purposes, except that—

(i) Only vested benefits are taken into account, and

(ii) The interest rates to be used are the segment rates for the month preceding the month in which the UVB valuation year begins that are determined in accordance with ERISA section 4006(a)(3)(E)(iv). These are the rates that would be determined under ERISA section 303(h)(2)(C) if ERISA section 303(h)(2)(D) were applied by using the monthly yields for the month preceding the month in which the UVB valuation year begins on investment grade corporate bonds with varying maturities and in the top 3 quality levels rather than the average of such yields for a 24-month period. For this purpose, the transition rule in ERISA section 303(h)(2)(G) is inapplicable.

(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.

(c) *Value of assets.* The fair market value of a plan’s assets under this section is determined in the same manner as for funding purposes under ERISA section 303(g)(3) and (4), except that averaging as described in ERISA section 303(g)(3)(B) must not be used and prior year contributions are included only to the extent received by the plan by the date the premium is filed. Contribution receipts must be accounted for as described in ERISA section 303(g)(4), using effective interest rates determined under ERISA section 303(h)(2)(A) (not rates that could be determined based on the segment rates described in paragraph (b)(2) of this section).

(d) “*Vested.*” For purposes of ERISA section 4006(a)(3)(E), this part, and part 4007 of this chapter:

(1) A participant’s benefit that is otherwise vested does not fail to be vested merely because of the circumstance that the participant is living, in the case of the following death benefits:

(i) A qualified pre-retirement survivor annuity (as described in ERISA section 205(e)),

(ii) A post-retirement survivor annuity that pays some or all of the participant’s benefit amount for a fixed or contingent period (such as a joint and survivor annuity or a certain and continuous annuity), and

(iii) A benefit that returns the participant’s accumulated mandatory employee contributions (as described in ERISA section 204(c)(2)(C)).

(2) A benefit otherwise vested does not fail to be vested merely because of the circumstance that the benefit may be eliminated or reduced by the adoption of a plan amendment or by the occurrence of a condition or event (such as a change in marital status).

(3) A participant’s pre-retirement lump-sum death benefit (other than a benefit described in paragraph (d)(1)(iii) of this section) is not vested if the participant is living.

(4) A participant’s disability benefit is not vested if the participant is not disabled.

(e) Illustration of vesting principles. The vesting principles set forth in paragraph (d) of this section are illustrated by the following examples:

(1) *Example 1.* Under Plan A, if a participant retires at or after age 55 but before age 62, the participant receives a temporary supplement from retirement until age 62. The supplement is not a QSUPP (qualified social security supplement), as defined in Treasury Reg. §1.401(a)(4)–12, and is not protected under Code section 411(d)(6). The temporary supplement is considered vested, and its value is included in the premium funding target, for each participant who, on the UVB valuation date, is at least 55 but less than 62, and thus eligible for the supplement. The calculation is unaffected by the fact that the plan could be amended to remove the supplement after the UVB valuation date.

(2) *Example 2.* Plan B provides a qualified pre-retirement survivor annuity (QPSA) upon the death of a participant who has five years of service, at no charge to the participant. The QPSA is considered vested, and its value is included in the premium funding target, for each participant who, on the UVB valuation date, has five years of service and is thus eligible for the QPSA. The calculation is unaffected by the fact that the participant is alive on that date.

(f) *Plans to which special funding rules apply.* The following statutory provisions are disregarded for purposes of determining unfunded vested benefits (whether the standard premium funding target or the alternative premium funding target is used):

(1) Section 402(b) of the Pension Protection Act of 2006, Public Law 109-280, dealing with certain frozen plans of commercial passenger airlines and airline caterers.

(2) Section 306 of ERISA and section 433 of the Code, dealing with certain defined benefit pension plans maintained by certain cooperatives and charities.

[73 FR 15074, Mar. 21, 2008, as amended at 79 FR 13560, Mar. 11, 2014; 85 FR 6058, Feb. 4, 2020]

§ 4006.5 Exemptions and special rules.

(a) *Variable-rate premium exemptions.* A plan described in any of paragraphs (a)(1) through (5) of this section is not required to determine or report its unfunded vested benefits under § 4006.4 and does not owe a variable-rate premium under § 4006.3(b).

(1) *Plans without vested participants.* A plan is described in this paragraph if it does not have any participants with vested benefits as of the UVB valuation date.

(2) *Section 412(e)(3) plans.* A plan is described in this paragraph if the plan is a plan described in section 412(e)(3) of the Code and the regulations thereunder on the UVB valuation date.

(3) *Certain plans completing a standard termination.* A plan is described in this paragraph if it—

(i) Makes a final distribution of assets in a standard termination during the premium payment year, and

(ii) Did not engage in a spinoff during the premium payment year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code.

(4) *Certain plans in the process of completing a standard termination initiated in a prior year.* A plan is described in this paragraph if —

(i) The plan administrator has issued notices of intent to terminate the plan in a standard termination in accordance with section 4041(a)(2) of ERISA;

(ii) The proposed termination date set forth in the notice of intent to terminate is before the beginning of the premium payment year; and

(iii) The plan ultimately makes a final distribution of plan assets in conjunction with the plan termination.

(5) *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.

(b) *Reporting exemption for plans paying capped variable-rate premium.* A plan that qualifies for the variable-rate premium cap described in section 4006(a)(3)(I) of ERISA for certain small employers is not required to determine or report its unfunded vested benefits under § 4006.4 if it reports that it qualifies for the cap and pays a variable-rate premium equal to the amount of the cap.

(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 transactions.* (1) The participant count date of a plan described in paragraph (e)(2) or (3) of this section is the first day of the premium payment year.

(2) With respect to a transaction where some, but not all, of the assets

and liabilities of one plan (the “transferor plan”) are transferred into another plan (the “transferee plan”)—

(i) The transferor plan if the spinoff is not de minimis and is effective at the beginning of the transferor plan’s premium payment year; and

(ii) The transferee plan if the transferor plan meets the criteria in paragraph (e)(2)(i) of this section and the transfer occurs at the beginning of the transferee plan’s premium payment year.

(3) With respect to a merger effective at the beginning of the premium payment year, the transferee plan if—

(i) The merger is not de minimis; or

(ii) The assets of the transferee plan immediately before the merger are less than the total assets transferred to the transferee plan in the merger.

(4) For purposes of this paragraph (e), “de minimis” has the meaning described in regulations under section 414(l) of the Code (for single-employer plans) or in part 4231 of this chapter (for multiemployer plans).

(f) *Proration for certain short plan years.* The premium for a plan that has a short plan year described in this paragraph (f) is prorated by the number of months in the short plan year (treating a part of a month as a month). The proration applies whether or not the short plan year ends by the premium due date for the short plan year. For purposes of this paragraph (f), there is a short plan year in the following circumstances:

(1) *New or newly covered plan.* A new plan becomes effective less than one full year before the beginning of its second plan year, or a newly covered plan becomes covered on a date other than the first day of its plan year. (Cessation of coverage before the end of a plan year does not give rise to proration under this section.)

(2) *Change in plan year.* A plan amendment changes the plan year, but only if the plan does not merge into or consolidate with another plan or otherwise cease its independent existence either during the short plan year or at the beginning of the full plan year following the short plan year.

(3) *Distribution of assets.* The plan’s assets (other than any residual assets under section 4044(d) of ERISA) are dis-

tributed pursuant to the plan’s termination, but only if the plan did not engage in a spinoff during the plan year, unless the spinoff is de minimis pursuant to the regulations under section 414(l) of the Code.

(4) *Appointment of trustee.* The plan is a single-employer plan, and a plan trustee is appointed pursuant to section 4042 of ERISA.

(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

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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.

[61 FR 34016, July 1, 1996, as amended at 62 FR 60428, Nov. 7, 1997; 65 FR 75163, Dec. 1, 2000; 71 FR 31081, June 1, 2005; 73 FR 15075, Mar. 21, 2008; 79 FR 13560, Mar. 11, 2014; 85 FR 6058, Feb. 4, 2020; 88 FR 76664, Nov. 7, 2023]

§ 4006.6 Definition of “participant.”

(a) *General rule.* For purposes of this part and part 4007 of this chapter, an individual is considered to be a participant in a plan on any date if the plan has benefit liabilities with respect to the individual on that date.

(b) *Loss or distribution of benefit.* For purposes of this section, an individual is treated as no longer being a participant—

(1) In the case of an individual with no vested accrued benefit, after—

(i) The individual incurs a one-year break in service under the terms of the plan,

(ii) The individual's entire “zero-dollar” vested accrued benefit is deemed distributed under the terms of the plan, or

(iii) The individual dies; and

(2) In the case of a living individual whose accrued benefit is fully or partially vested, or a deceased individual whose accrued benefit was fully or partially vested at the time of death, after—

(i) An insurer makes an irrevocable commitment to pay all benefit liabilities with respect to the individual, or

(ii) All benefit liabilities with respect to the individual are otherwise distributed.

(c) *Examples.* The operation of this section is illustrated by the following examples:

Example 1. Participation under a calendar-year plan begins upon commencement of employment, and the only benefit provided by the plan is an accrued benefit (expressed as a life annuity beginning at age 65) of \$30 per month times full years of service. The plan credits a ratable portion of a full year of service for service of at least 1,000 hours but less than 2,000 hours in a service computation period that begins on the date when the participant commences employment and each anniversary of that date. John and Mary both commence employment on July 1, 2008. On December 31, 2008 (the participant count date for the plan's 2009 premium), John has credit for 988 hours of service and Mary has credit for 1,006 hours of service. For purposes of this section, Mary is considered to have an accrued benefit, and John is considered not to have an accrued benefit. Thus, the plan is considered to have benefit liabilities with respect to Mary, but not John, on December 31, 2008; and Mary, but not John, must be counted as a participant for purposes of computing the plan's 2009 premium.

Example 2. The plan also provides that a participant becomes vested five years after commencing employment and defines a one-year break in service as a service computation period in which less than 500 hours of service is performed. On February 1, 2010, John has an accrued benefit of \$18 per month beginning at age 65 based on credit for 1,200 hours of service in the service computation period that began July 1, 2008. However, John has credit for only 492 hours of service in the service computation period that began July 1, 2009. On February 1, 2010, John terminates his employment. On December 31, 2010 (the participant count date for the 2011 premium), John has incurred a one-year break in service, and thus is not counted as a participant for purposes of computing the plan's 2011 premium.

Example 3. On January 1, 2012, the plan is amended to provide that if a vested participant whose accrued benefit has a present value of \$5,000 or less leaves employment, the benefit will be immediately cashed out. On December 30, 2013, Jane, who has a vested benefit with a present value of less than \$5,000, leaves employment. Because of reasonable administrative delay in determining the amount of the benefit to be paid, the plan does not pay Jane the value of her benefit until January 9, 2014. Under the provisions of this section, Jane is treated as not having an accrued benefit on December 31, 2013 (the participant count date for the 2014 premium), because Jane's benefit is treated as having been paid on December 30, 2013. Thus, Jane is not counted as a participant

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for purposes of computing the plan's 2014 premium.

Example 4. If the plan amendment had instead provided for cashouts as of the first of the month following termination of employment, and the plan paid Jane the value of her benefit on January 1, 2014, Jane would be treated under the provisions of this section as having an accrued benefit on December 31, 2013, and would thus be counted as a participant for purposes of computing the plan's 2014 premium.

[65 FR 75163, Dec. 1, 2000, as amended at 73 FR 15076, Mar. 21, 2008]

§ 4006.7 Premium rate for certain terminated single-employer plans.

(a) The premium under this section ("termination premium") applies to a DRA 2005 termination described in § 4007.13 of this chapter.

(b) The amount of the premium under this section that is payable with respect to each applicable 12-month period (as described in § 4007.13 of this chapter) is the number of participants in the plan, determined as of the day before the termination date, multiplied by the termination premium rate. In general, the termination premium rate is \$1,250. However, the termination premium rate is \$2,500 for an "eligible plan" under section 402(c)(1) of the Pension Protection Act of 2006 (dealing with certain plans of commercial passenger airlines and airline catering services) while an election under section 402(a)(1) of the Pension Protection Act of 2006 (dealing with alternative funding schedules) is in effect for the plan if the plan terminates during the five-year period beginning on the first day of the first applicable plan year (as defined in section 402(c)(2) of that Act) with respect to the plan, unless the Secretary of Labor determines that the plan terminated as a result of extraordinary circumstances such as a terrorist attack or other similar event.

(c) The premium under this section is in addition to any other premium under this part.

(d) See § 4007.13 of this chapter for further rules about termination premiums.

[72 FR 71229, Dec. 17, 2007, as amended at 79 FR 13561, Mar. 11, 2014]

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PART 4007—PAYMENT OF PREMIUMS

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APPENDIX TO PART 4007—POLICY GUIDELINES ON PREMIUM PENALTIES

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§ 4007.1 Purpose and scope.

This part, which applies to all plans that are covered by title IV of ERISA, provides procedures for paying the premiums imposed by sections 4006 and 4007 of ERISA. (See part 4006 of this chapter for premium rates and computational rules.)

§ 4007.2 Definitions.

(a) The following terms are defined in § 4001.2 of this chapter: Code, contributing sponsor, ERISA, IRS, notice of intent to terminate, PBGC, plan, plan administrator, plan year, single-employer plan, and termination date.

(b) For purposes of this part, the following terms are defined in § 4006.2 of this chapter: continuation plan, new plan, newly covered plan, participant, participant count, premium funding target, premium payment year short plan year, small plan, and UVB valuation date.

[61 FR 34020, July 1, 1996, as amended at 73 FR 15076, Mar. 21, 2008; 79 FR 13561, Mar. 11, 2014]

§ 4007.3 Filing requirement; method of filing.

(a) *In general.* The estimation, determination, declaration, and payment of