

October 2012 Guidelines for Enforcement of ERISA section 4062(e)

These guidelines are understood to be general rather than precise, and subject to change.

New small-plan cases. PBGC will not initiate enforcement of section 4062(e) liability if the affected plan's participant count for purposes of the flat-rate premium is less than 100 as of the most recent participant count date before the beginning of the cessation of operations giving rise to the section 4062(e) event.

Existing small-plan cases. If an existing section 4062(e) settlement involves a plan that would have met the participant-count criterion, PBGC will rescind the agreement.

New strong-company cases. PBGC will not initiate enforcement of section 4062(e) liability if and so long as the affected company is financially sound as described below.

In general, an affected company is financially sound if:

- The company has unsecured debt-equivalent ratings from both Moody's and S&P, and the ratings are at least Baa3 by Moody's and BBB- by S&P; or
- The company is rated by only one of those agencies, and the rating is at least Baa3 or BBB-; or
- The company is rated by neither of those agencies, and:
 - The company has a D&B Financial Stress Score of 1477 or higher, and
 - The company's secured debt (disregarding debt incurred to purchase real estate or equipment) does not exceed 10 percent of its asset value.

However, an affected company is not financially sound if in the judgment of ONR, concurred in by the Chief of Negotiations and Restructuring, the company presents signs of financial weakness, such as (without limitation) a lack of ongoing operations, existing or imminent changes in business fundamentals such as a large drop in demand, existing or imminent transactions that would result in a credit ratings downgrade, or an insignificant amount of assets or operations in the U.S.

Existing strong-company cases. If an existing section 4062(e) settlement involves a company that is financially sound at any time during the 5-year protection period, PBGC will offer to suspend the company's obligations under the settlement agreement on condition that the obligations will be reinstated if the company ceases to be financially sound. For example, any bond or escrow could be discontinued; excess contributions could not be refunded, although they might be the basis for a credit balance.

Applying the guidance described above will allow PBGC to test its programmatic effects and gain an understanding of how best to exercise enforcement discretion in balancing the availability of agency resources against the risks associated with section 4062(e) events.