IRS bends on CARES Act funding deadline; PBGC follows suit

By Margaret Berger, Bruce Cadenhead and Brian J. Kearney
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Three months after taking a hard stance on the Jan. 1, 2021, extended deadline for minimum required contributions otherwise due in 2020 under the Coronavirus Aid, Relief and Economic Security (CARES) Act (Pub. L. No. 116-136), IRS has agreed to let defined benefit (DB) plan sponsors make contributions as late as Jan. 4, the first business day of 2021. Within hours of the IRS announcement, PBGC issued guidance similarly extending the deadline to Jan. 4 for recognizing contributions in the variable-rate premium calculation.

IRS eases deadline

The CARES Act gives DB sponsors until Jan. 1, 2021, to make any minimum required contributions ordinarily due during the 2020 calendar year. This deferral opportunity applies to quarterly contributions and any year-end contributions for the prior plan year otherwise due in 2020. Because Jan. 1 is a federal holiday, depositing and documenting contributions on that day would be impossible for most employers.

Sponsors and industry groups urged IRS to accept the delayed contributions up to Jan. 4, 2021, the next business day. When IRS issued CARES Act guidance in Notice 2020-61, however, the agency held firm to the statutory deadline. Now, in Notice 2020-82, IRS has relaxed its position and will treat contributions through Jan. 4 as timely. Contributions will have to reflect interest through the date the contribution is made. This treatment is not quite the same as an actual extension of the deadline: Interest and any late quarterly penalties will apply back to Jan. 1 on contributions made after Jan. 4.

The notice also extends the deadline for making elections to increase the plan's prefunding balance or apply credit balance to the minimum required contribution. This means that standing credit balance elections to satisfy year-end contributions will now be triggered on Jan. 4, not Jan. 1, although this delay will ultimately have no effect on the amount of credit balance applied.

PBGC follows suit

PBGC quickly followed up the IRS notice with a separate announcement allowing sponsors to reflect contributions made through Jan. 4, 2021, in 2020 PBGC premium filings. Sponsors can amend their 2020 premium filings by Feb. 1, 2021, to reflect the additional contributions and request a refund of any excess variable-rate premium.

PBGC has revised Technical Update (TU) 20-2 to reflect the later deadline. TU 20-2 explains that for variable-rate premium calculations, delayed contributions should be discounted in the same manner and using the same interest rates as required for funding purposes.

PBGC also has updated its COVID-19 FAQs to address the effect of Notice 2020-82 on reportable-event filings. The FAQs confirm that contributions due Jan. 1, 2021, are not considered late if deposited by Jan. 4. However, for contributions made after that date, the missed-contribution reportable event occurs on Jan. 1, not Jan. 4. This means that if accumulated missed contributions exceed $1 million, the Form 200 reportable-event filing is due 10 days after Jan. 1 — Jan. 11, not Jan. 14. For smaller missed amounts, the Form 10 filing is due 30 days after Jan. 1. However, because Jan. 31 is a Sunday, the filing deadline moves to the next business day, Feb. 1.

Interest calculation

The CARES Act requires that delayed contributions must include interest at the plan's effective interest rate (EIR) for the plan year in which the contribution is made, rather than the plan year to which the contribution is attributed. However, for calendar-year plans and some noncalendar-year plans starting late in the calendar year, the EIR almost certainly won't be known by the Jan. 4 contribution due date. In that case, sponsors should estimate interest using the highest of the three segment rates for the plan year.

This conservative approach will ensure that the contribution is at least as large as needed to satisfy minimum requirements. If the actual EIR is lower than the estimate, the sponsor can create prefunding balance with the excess contributions.

However, what this means for PBGC premiums is unclear. TU 20-2 says that for variable-rate premium calculations, delayed contributions should be discounted in the same manner and using the same interest rate as applied for funding purposes. But the deadline for making an amended premium filing is Feb. 1, by which time sponsors will likely still not know the applicable EIR. Theoretically, to get the maximum refund, sponsors may have to make three PBGC premium filings:

- The first on the normal due date (Oct. 15, 2020, for calendar-year plans), reflecting only contributions made by that date

- The second by Feb. 1, 2021, reflecting all contributions for the 2020 plan year, discounting back delayed contributions using the estimated EIR originally used to calculate interest

- The third after the applicable EIR is finally known, though the difference in premium may be so small that sponsors may not want to bother with this filing

Related resources

Non-Mercer resources

- Notice 2020-82 (IRS, Nov. 16, 2020)
- Technical Update 20-2 (PBGC, Nov. 16, 2020)
- COVID-19-related single-employer plan sponsors and administrators Q&As (PBGC, Nov. 16, 2020)
- Notice 2020-61 (IRS, Aug. 6, 2020)
- Pub. L. No. 116-136, the CARES Act (Congress, March 27, 2020)

Mercer Law & Policy resources

- PBGC takes a U-turn on CARES Act contribution delay (Sept. 24, 2020)
- CARES Act DB funding and AFTAP guidance provides little relief (Aug. 11, 2020)
- PBGC issues FAQs on CARES Act contribution delay (July 23, 2020)
- Stimulus bill gives 2020 DB funding relief, access to DC savings (March 26, 2020)