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# PBGC issues FAQs on CARES Act contribution delay

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Better late than never? Less than a week after the July 15 deadline for some non-calendar year premium filings, the Pension Benefit Guaranty Corporation (PBGC) has issued Q&As on the effect of the Coronavirus Aid, Relief and Economic Security (CARES) Act (Pub. L. No. 116-136) extended contribution due date on variable-rate premiums. The FAQs also address missed contribution reporting and the agency's single-employer program operations during the pandemic.

## Effect of extended contribution due date on premium filing

The PBCG premium comprises a flat-rate portion based on the number of plan participants and a variable-rate portion based on the plan's unfunded vested benefits. When determining the plan's unfunded vested benefits, the assets include the discounted value of contributions for the plan year preceding the premium year, but only contributions made on or before the date the filing is submitted — contributions receivable may not be reflected.

Ordinarily, the deadline for making contributions for a given plan year is 8-1/2 months after the end of that plan year (Sept. 15 for calendar-year plans). The PBGC premium filing is usually due a month later (Oct. 15 for calendar-year plans). The CARES Act gives employers until Jan. 1, 2021, to make any minimum required contributions originally due during the 2020 calendar year. However, the act didn't extend the deadline for Form 5500 (sponsors report contributions to the IRS on the Schedule SB) or the PBGC premium package, leaving plan sponsors and practitioners wondering how to prepare the 2020 filings.

For instance, would the 2020 filing deadline for Form 5500 and the PBGC premium package be extended from Oct. 15 to some date after Jan. 1, 2021, to allow sponsors to reflect the delayed 2019 plan year contributions? Or would sponsors be allowed to reflect discounted receivable contributions when preparing filings?



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PBGC's answer to both these questions is a definitive "no." The filing deadline remains unchanged, and the variable-rate premium may only reflect contributions received by the premium filing date. PBGC confirms that sponsors may not submit an amended filing reflecting a later contribution and then request a refund.

The FAQs note that the delay gives sponsors an extra month to make their 2019 contributions (Oct. 15 instead of Sept. 15). But that is still 2-1/2 months earlier than the deadline contemplated by the CARES Act. This may pose a dilemma for some cash-strapped plan sponsors, who will have to choose whether the additional extension to Jan. 1 is worth the extra variable-rate premium (4.5% of unfunded vested benefits for 2020, unless one of two premium caps applies).

One uncertainty remains: IRS has not yet issued any guidance on whether the extended due date applies only to minimum required contributions — as suggested by a narrow reading of the statute — or whether *any* contribution made by Jan. 1, 2021, can be attributed to the prior plan year. If the extension applies only to the minimum required contribution, then sponsors seeking to reflect contributions in excess of the minimum for premium purposes will need to make all contributions by the ordinary due date (Sept. 15 for calendar-year plans), rather than the Oct. 15 premium filing due date. Additional guidance from IRS and PBGC would be helpful.

## No impact on other PBGC filings or plan terminations

The FAQs confirm that contributions paid on or before Jan. 1, 2021, are not considered late. Therefore, the delay doesn't trigger the need for a missed-contribution filing in accordance with ERISA Section 4043 event-reporting rules. Contributions not paid by Jan. 1, 2021, will be reported following the normal reporting procedure, treating Jan. 1, 2021, as the contribution due date.

The FAQs also confirm that PBGC's single-employer program operations continue to operate during the pandemic. The agency is processing distress termination applications and may initiate terminations of plans if the statutory criteria are met. For terminating plans, the agency will still attempt to collect termination liabilities, though each case is processed considering a sponsor's ability to pay based on its own facts and circumstances. The agency's Early Warning Program continues to operate as normal.

## Related resources

### Non-Mercer resources

- COVID-19-related single-employer plan sponsors and administrators questions and answers (PBGC, July 20, 2020)
- Pub. L. No. 116-136, the CARES Act (Congress, March 25, 2020)

- Section-by-section summary of the CARES Act (Senate Health, Education, Labor & Pensions Committee, March 25, 2020)

## Mercer Law & Policy resource

- Stimulus bill gives 2020 DB funding relief, access to DC savings (March 26, 2020)

## Other Mercer resource

- Stay informed on the coronavirus (regularly updated)

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