Brownstein Hyatt Farber Schreck

Employee Benefits News

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PBGC Q&As: Impact of COVID-19 and CARES Act on Single-Employer Pension Plans

The Pension Benefit Guaranty Corporation ("PBGC") has posted **questions and answers** ("**Q&As**") related to the impact that COVID-19 and the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136 (March 27, 2020) (the "**CARES Act**") has on reporting contributions missed for 2020, PBGC premiums and PBGC program operations related to single-employer defined benefit pension plans. Below is a summary of these Q&As:

Reportable Events—Missed Contributions for 2020

- **No Reporting for Use of 2020 Contribution Deadline Extension**. Because section 3608(a) of the CARES Act extends the due date for contributions required to be made in 2020 (including quarterly contributions) to Jan. 1, 2021 (the "**2020 Contribution Deadline Extension**"), missed contributions otherwise payable to the plan in 2020, but for the 2020 Contribution Deadline Extension, become a reportable event *only if* these contributions are not paid to the plan by the Jan. 1, 2021, extended contribution due date. Employers are not required to report that they are taking advantage of the 2020 Contribution Deadline Extension.
- **Reporting Required If Jan. 1, 2021, Extended Deadline Is Missed**. If the contributions required to be made to the plan in 2020 are not made by the Jan. 1, 2021, deadline, notice of a reportable event generally is required to be filed with the PBGC:
  - If the accumulated value of the missed contributions exceeds $1 million:
    - ✓ Use Form 200.
    - ✓ File by Jan. 11, 2021.
  - Otherwise, and if the reporting obligation is not waived under PBGC regulation § 4043.25(c):
    - ✓ Use Form 10.
    - ✓ File by Feb. 1, 2021.

Premiums

- **Impact on Variable Rate Premium Calculation**. As a result of the 2020 Contribution Deadline Extension, single-employer pension plans have an additional month to make prior year contributions that will be reflected in the variable rate premium ("VRP") calculation.

  To illustrate, the PBGC provides an example for a calendar year single-employer pension plan:
    - ✓ The due date for the 2020 premium is Oct. 15, 2020. In most cases, PBGC premiums are due on the 15th day of the 10th full calendar month in the plan year.
    - ✓ Ordinarily, the last day for making a required contribution for the 2019 plan year would have been Sept. 15, 2020. As a result, ordinarily, these contributions would be included in the VRP calculation for the plan's 2020 premium.

- ✓ Instead, due to the 2020 Contribution Deadline Extension, the last day for making a required contribution for the 2019 plan year is Jan. 1, 2021. This means that contributions for 2019 could be made *after* the due date of the PBGC premium for 2020.
- ✓ Timing Impacts VRP calculation: If we assume that the premium for 2020 is filed on Oct. 15, 2020, then the discounted value of contributions for 2019 that are received by the plan *after Sept. 15, 2020, but on or before Oct. 15, 2020, would be included* in the asset value for VRP calculation purposes. However, the discounted value of contributions for 2019 received by the plan *after Oct.15, 2020, are not included* in the asset value for VRP calculation purposes.

- **No Refunds If Prior Year Contribution Is Made After Premium Filing**. No amendment of the premium filing, or a request for a premium refund, is allowed if a contribution for the prior year is made after the premium (for that year) is filed. ***Brownstein Comment:*** Because the time value of a delayed contribution may or may not be worth more than the contibution's impact on the VRP amount, we recommend that single-employer plan sponsors work with their actuaries to determine the most advantageous and cost-effective time for making contributions and the premium filing.

PBGC Single-Employer Program Operations

Notwithstanding the ongoing COVID-19 national health emergency, the **Q&As** confirm that PBGC is not suspending any of its activities and intends to continue its operations without material change. For example:

- **Distress Terminations**. The PBGC will continue to process distress terminations.
  - The PBGC encourages a pre-filing consultation between the plan sponsor and the agency to help determine if distress termination is appropriate. The PBGC will:
    - ✓ Provide information on the criteria and process for a distress termination.
    - ✓ Recognize that the impact of COVID-19 on plan sponsors is not fully known and financial projections may change as a result.
    - ✓ Discuss specific facts impacting a plan sponsor's financial projections.
- **PBGC-Initiated Terminations**. The PBGC will continue to review cases and exercise its discretion to initiate plan terminations, based on applicable facts and circumstances.
- **Collections**. The PBGC will continue to work with plan sponsors to collect termination liability amounts, taking into account a sponsor's ability to pay based on the facts and circumstances of each case.
- **Early Warning Program**. The PBGC will continue to operate its early warning program, monitor corporate transactions and events, and request additional information when warranted.

How We Can Help

Please contact one of us or your regular Brownstein attorney for answers to your questions about how this new guidance affects the administration of your company's defined benefit plans or any other questions you may have.

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