AMERICAN BENEFITS COUNCIL

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Dear Carol, Stephen, and Cathy:

We are writing to raise a number of time-sensitive issues relating to the provision in the CARES Act permitting defined benefit plan funding obligations due in 2020 to be delayed until January 1, 2021. We have asked our consulting firm members, and they estimate that a very substantial number of plans will use the permitted delay, raising a number of questions and the need for guidance.

Urgent Need for Delay in the Due Date for the Filing of the Form 5500

As previously discussed, we urge you to issue guidance as soon as possible delaying the due date for any defined benefit plan Form 5500 that would otherwise be due during the remainder of this year to no earlier than February 1, 2021. ***Many Form 5500s are due next week, so the need for this relief is urgent.*** Otherwise, many such Form 5500s would be required to be filed showing unpaid minimum required contributions ("MRCs"), which might then need to be amended once the MRCs are made. Why require an incomplete filing that could trigger processing problems and then require a second filing? There seems to be no reason for such a cumbersome requirement.

Moreover, such an extension will also address a thorny PBGC premium issue. If the due date for the Form 5500 is not delayed, then the PBGC variable premium filing will also be due next week (unless otherwise delayed), meaning that any deferred contributions would not be taken into account for determining the amount of the variable rate premium due. This would impose a substantial penalty on employers using the extended contribution due date, which is certainly not consistent with Congress' intent in providing this delay.

Delay applies to entire payment made, not just the minimum.

The CARES Act provides that the due date for any "minimum required contribution" is deferred to January 1, 2020. Some plan sponsors and pension practitioners are suggesting that this language can be read literally to establish a strange rule under which the exact MRC can be delayed but any contribution above the minimum must be made by the original due date. This does not make sense technically, since the first contributions made are applied to the minimum amount required. In other words, there cannot be an extra contribution until the MRC is made. So, we ask for clarification that any contributions that could have been made by the original due and be taken into account for a prior plan year can also be delayed and still be taken into account for that prior plan year.

The above interpretation is also consistent with Code section 430(j)(1), which defines the due date for "any payment of any minimum required contribution" to be 8 ½ months after the end of the plan year, but has, of course, been interpreted as the due date for all contributions that are applied to a given plan year. It is also consistent with the Schedule SB instructions for line 18, which require all contributions to a plan to be "credited towards minimum funding requirements for a particular plan year" – including those in excess of the actual minimum.

Deductibility of Delayed Payments

It would be incongruous for Congress to specifically allow delayed payments, and implicitly penalize employers that use the delay by denying them a deduction for the prior year to which the delayed payment relates. We accordingly ask for clarification that delayed payments can be deducted for the year to which they relate.

Interest on Delayed Payments

The CARES Act requires the delayed payments to be increased by interest based on the effective rate of interest for the plan year in which the delayed payment is made. This can create a problem for delayed contributions for prior plan years because Code section 430(j)(2) discounts contributions at the effective rate of interest for the plan year for which the payment is made. We ask that this inconsistency be addressed. If it is not, and assuming that the effective interest rate for 2019 is higher than the effective interest rate for 2020, making a contribution in 2020 increased with interest as required under the CARES Act could result in an unpaid minimum required contribution for 2019 when that contribution is discounted back at the 2019 effective interest rate.

Payment Due Date

The delayed payments are due by January 1, 2021. Since that date is a holiday immediately followed by a weekend (and we understand bank wires cannot execute on those days), we ask for clarification that payments made on January 4, 2021 (the next business day) would be deemed to have been made by the due date. In addition, if the inconsistency described above is resolved by using the effective interest rate for the year of payment, since the effective rate of interest for 2021 will not be known by early January of 2021, and the effective rate for 2020 may not yet be known for non-calendar year plans starting late in 2020, we ask that the latest known effective interest rate be applicable for payments made by January 4, 2021.

Sincerely,

Lynn D. Dudley
Senior Vice President, Global Retirement and Compensation Policy