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On behalf of the undersigned organizations, I am writing about the due date for pension contributions under the CARES Act Section 3608 and the authority of the Internal Revenue Service ("the Service") to delay that date. We jointly sent a letter to the IRS urging a change in the date and describing the reasons for that need. We want to provide more information on the importance and value of moving the currently delayed contribution due date for pension contributions from January 1, 2021, to January 4, 2021. We also want to share an additional analysis of the statutory authority for Treasury, the Service, and the Department of Labor (DOL) to delay the contribution due date.

As you know, the severe decline in asset values and continued low, and even further declining, interest rates as a result of the economic consequences of the pandemic, have dramatically increased plan liabilities at a time when revenue for many companies has been significantly reduced. In response to this concern the CARES Act delayed until January 1, 2021, the date by which plan sponsors would need to make 2020 contributions (with interest). Because January 1, 2021, is a holiday, the IRS' interpretation is that to avoid penalties, companies must make the delayed CARES Act payments on December 31, 2020.

In addition to other arguments, we would like to point out that agencies have statutorily granted authority[1] to provide emergency funding relief for plans sponsors of single-employer defined benefit plans affected by a federally declared disaster. Under this relief, the due date for all funding contributions otherwise due during 2020 and currently delayed until January 1, 2021, under the CARES Act could be delayed until January 4. This relief is similar to the emergency funding relief granted by the agencies in 2017[2] but of course of much shorter duration.

Because of the different accounting treatment attributable to making contributions due in 2021 as opposed to 2020, the technical change of moving the delayed contribution date to January 4 can impact the liquidity of a company and its rate of recovery from the pandemic in a variety of ways:

[1] *See* Code section 7508A(b); ERISA Section 518; ERISA Section 4002(i).

[2] *See* IRS Notice 2017-49, which delayed funding and other deadlines for plans affected by Hurricanes Harvey and Irma.

These include:

- affecting the ability to borrow and the rate of borrowing,
- affecting outstanding loans by not triggering loan covenants,
- affecting whether a business can honor commitments based on the anticipated end of the year financial statements, including business expansion and creating or retaining jobs,
- affecting the ability of a company to help suppliers and buyers as those organizations in turn try to recover (many companies are providing additional time for payments for example)
- triggering additional disclosures that are not necessary if the contributions are going to be made shortly and
- triggering a slower recovery for investment.

The year has been fraught with revenue challenges for many companies due to the pandemic. Many industries have business lines that have been completely disrupted. That lack of revenue from other sources due to that pandemic impact (even if the disruption is temporary) causes a lopsided view of the company's strength on their financial statements and reduces the flexibility they have to try and grow the business as they return to normal since it slows down the ability of a company to move forward on initiatives.

Investors, shareholders and customers look to a company’s cash position at each quarter end as a measure of their financial health. Due to the severe impacts of the pandemic, the quarter end financials have become more important and the major swings in cash position, especially at year end, can be looked at negatively. If customers and investors become concerned, it can have a snowball effect on a business that may be struggling. By delaying the payment due date by three days, it actually allows another quarter to increase cash levels as we all hope the economy continues on a recovery and everyone learns to work with the new normal.

The coronavirus pandemic has had a devastating impact on businesses of all sizes and there is an urgent need for this additional relief from the fast-approaching funding deadline. We hope the additional information is useful. Please let us know if you have any questions or would like to discuss further.

Sincerely,

American Benefits Council

Committee on Investment of Employee Benefit Assets

The ERISA Industry Committee

U.S. Chamber of Commerce