AMERICAN BENEFITS COUNCIL

March 30, 2021

The Honorable Gordon Hartogensis
Director
Pension Benefit Guaranty Corporation
1200 K St., NW
Washington, DC 20005

Dear Director Hartogensis:

We are writing regarding transition relief needed to implement the historic changes made by the American Rescue Act Plan Act of 2021 (the "Act") with respect to the single-employer pension plan funding rules.

As discussed in the attached letter to the U.S. Treasury Department and the Internal Revenue Service (IRS), there is a substantial amount of guidance needed from those agencies before plan sponsors can make decisions regarding when and how the new rules affect them. And due to the complexity of the choices available, it will take some significant time for many employers to make decisions, which is why we have requested that Treasury and the IRS allow companies until at least the end of the 2021 plan year to make decisions about how to implement the new rules.

In this context, we ask that the Pension Benefit Guaranty Corporation (PBGC) issue guidance as soon as possible as follows.

PBGC PREMIUMS

As discussed in the letter to Treasury and the IRS, it is possible that by reason of elections made under the Act, contributions may be moved from one year to another. It is also possible that contributions may be discounted differently due to the change in interest rates.

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Accordingly, we ask for guidance (1) not applying any penalties for premium underpayments that arise due to actions taken pursuant to the Act and (2) permitting amended premium filings and refunds where the result of the Act is that premiums paid for a prior year exceed the amount required, by reason of the Act. [1][1] In addition, as explained below, we ask that premiums calculated correctly under the law in effect prior to the Act be deemed to be still correct if the only change is a change in the interest rate used to discount the contribution amount.

Assume, for example, that a plan sponsor used the CARES Act relief to delay a contribution for 2019 until December 31, 2020. Assume further that the plan sponsor does not elect to defer the interest rate changes beyond the 2020 plan year. In that case, the contribution made on December 31, 2020 would be treated as lower than the amount originally taken into account in determining premiums for 2020, since the contribution would be discounted (back to September 15, 2020) at the higher effective rate retroactively in effect for 2020. In this type of situation, for 2020 premium purposes, plan sponsors should be allowed to avoid the burden of redoing this calculation and should be allowed to not take into account the effect of the change in interest rates on the contribution discounting.

ERISA SECTION 4010 REPORTING

A plan sponsor's choices under the new rules may also impact whether an ERISA Section 4010 filing is required and/or the information to report for a plan if such reporting is required. For example, choices that change funding results for the 2020 plan year may impact an ERISA Section 4010 filing due in 2021.

For purposes of reporting under ERISA Section 4010, in the case of filing due dates on or before the end of the 2021 plan year, we ask that the determination of whether a filing is required and the requirements applicable to any such filing be allowed to be determined under either the law in effect prior to the Act or reflecting the Act for any plan year beginning prior to 2021. (For this purpose, a reference to the law in effect prior to the Act means a reference to all aspects of prior law, not just those aspects specifically addressed by the Act.)

CURING MISSED CONTRIBUTIONS

In some cases, by reason of the Act, contributions made for prior years, such as the 2019 plan year, may exceed the amount required to be contributed for such year, thus

[1] This could occur, for example, if a contribution made for the 2020 plan year is re-designated as a contribution for the 2019 plan year.

creating a prefunding balance that can be used in later years. To the extent that such a prefunding balance is created and validly used to offset a missed contribution or other failure, we ask PBGC to take immediate steps to take that into account, such as by eliminating a lien that arose by reason of the missed contribution or other failure.

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Thank you for considering our views. If you have any questions regarding this letter, please contact me at 202-289-6700 or at ldudley@abcstaff.org.

Sincerely,

Lynn D Dudley

Lynn Dudley
Senior Vice President, Global Retirement and Compensation Policy

cc: Kristin Chapman
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