



# AMERICAN BENEFITS COUNCIL

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## PENSION FUNDING WAIVER SYSTEM UNWORKABLE: WAIVERS RARELY PROVIDED, DO NOT PROVIDE A VIABLE OPTION TO ADDRESS THE CURRENT SINGLE-EMPLOYER PENSION FUNDING CRISIS

Data collected from over 700 single employer defined benefit plans shows that, due to the current health and economic crises, funding obligations for 2021 are projected to double compared to 2020, when funding levels were already very high. An extensive study by the American Benefits Council has shown that this could cost businesses more than \$24 billion in one year, and could cause close to 500,000 Americans to lose their jobs.

Some have asked whether this problem can be solved by having affected companies request funding waivers from the IRS. If granted by the IRS, under a funding waiver, an employer is excused from making a required contribution for one year due to demonstrated “temporary substantial business hardship.” The waived amount must be contributed over the next five years.

**Very simply, for the reasons set forth below, the funding waiver system is unworkable and is seldom used, in part because funding waivers are not available until at least after all quarterly payments have already been made. For example, in the last five years, only six waivers have been granted, despite the fact that funding obligations in very recent years have been quite burdensome.** According to PBGC, it insures “about 24,000 plans.” On average 1.2 waivers per year have been granted, or .005% of all covered plans. In short, the waiver system very clearly will not address the current crisis.

- **The waiver system is structured so that it cannot provide answers until after many, if not all, funding contributions are made.**
  - **Responses to waiver requests are provided after all quarterly contributions have been made.** The IRS requires current information on requested waivers, which generally means that waivers cannot be requested until mid-way through the year for which the waiver is requested. So, for example, waivers for the looming 2021 plan year cannot

be requested until the middle of 2021. *Because of this timing, all of the waivers granted in the last five years were granted after all quarterly contributions for the year in question had already been made, and just months before the final funding installment was due.*

- **Long and uncertain waits for answer from IRS.** It currently takes many months to receive an answer from the IRS on a waiver application. So, as noted, a response to a waiver request is generally not provided until after the end of the year for the year for which the waiver is requested.
- **If more applications are received, that wait for an answer from the IRS would increase to perhaps a year or more, likely shortly before or even after the date that the final funding payment is due.** This timing would render the waiver basically worthless as a way to manage funding obligations.
- **Companies facing enormous funding obligations must make multi-year plans to address these obligations.** As described above, because waivers are not available until at least after the end of the year for which they are requested, the waiver system is not designed to address companies' real-life need to plan ahead to meet funding obligations. Thus, the waiver system is thus not usable to avoid the layoffs and other business plans that must be made well in advance in order to reserve assets to pay the funding obligations.
- **Extremely narrow circumstances required: business condition of the employer must be adverse, but cannot be too adverse.** No waiver is provided by the IRS if the company is not in dire condition, but if the company is in extremely dire condition, then again no waiver will be given. The concept is that the IRS must be convinced that the company's "recovery is likely," which is very hard to show at any time, since it depends on predicting the future of a business. And in these uncertain times, such a showing can be extremely difficult.
- **Security requirements make waivers virtually worthless.** In the case of waivers over \$1 million, security for the waived amount is routinely required by the government, rendering waivers unattainable in many cases. Companies needing waivers generally do not have security to provide.
- **The relief provided by waivers is not significant.** Funding challenges are typically multi-year problems, not one-year aberrations. But funding waivers only provide relief for one year, and significantly increase funding obligations for the next five years. So even if the hurdles described above could be overcome, the relief provided is not nearly enough.

- **Companies need advance predictability and certainty regarding funding obligations.** The timing and uncertainty of waivers makes such advance predictability impossible, which is why the waiver system is rarely used.