September 8, 2020

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

Dear Director Hartogensis:

We very much appreciate the ongoing dialogue regarding PBGC's decision this summer to effectively require many plan sponsors to choose between:

(1) making 2019 funding contributions by the time they submit their premium filing on October 15, 2020, thereby giving up 2 ½ months of the congressionally granted delay for making those contributions until January 1, 2021, or

(2) delaying making those 2019 contributions until January 1, 2021, as permitted by Congress, and thus being subject to a 4.5% variable rate premium on contributions for which the full congressional delay is used.

As we have written to you previously, we believe that PBGC's decision is contrary to the law, but it is clear that at a minimum PBGC has the discretion not to impose a 4.5% penalty on employers that use the full delay.

Our letter today, however, addresses a different point, based on some additional information that we hope you will find helpful. Some have raised the question about whether essentially requiring many employers to give up the last 2½ months of the congressionally granted delay imposes a material hardship on employers. If not, then PBGC's decision does not result in any meaningful harm. We have reached out to employers on this issue. Based on the feedback we have received, as described below, we have determined that giving up the last 2½ months of the delay would cause material hardships for employers in some cases, including job loss. We think this is important information to share with you and hope you find it helpful.

In this context, the law, congressional intent, and the economic situation all support correcting PBGC's prior position, so that companies can use the full delay provided by Congress without paying a 4.5% penalty. We respectfully ask you to modify your guidance accordingly.

Giving up the last 2½ months of the congressionally granted delay can cost jobs in many cases, such as seasonal businesses. Many businesses have a seasonal element, like retailers. For these businesses, a large part of their income can be derived during the November to December period. If a large cash burden is put on those businesses before their peak income period, then those businesses may have no alternative but to cut jobs.

This is not hypothetical. This point came to us directly from an affected business, which is not atypical in any way. Putting seasonal companies in a position where they are forced to pay large amounts prior to their high-income season will cost jobs, directly contrary to the Congress' express decision to delay 2019 funding obligations until January 1, 2021.

Borrowing is not an option for many such companies. We have also been asked: why can't companies just borrow the money to make the contribution early? The answer to this question is very simple. For the companies that really need the full congressionally granted delay, this type of credit is generally not available.

An October 15 deadline for companies trying to find new credit will lead to lost jobs. A related problem is companies losing their line of credit as of the end of the year. We spoke to one such company. They don't know where they will get the credit that they need to survive, nor do they know what the terms of that credit will be if they can get it. They won't know this until year end. For now, they have to assume very harsh credit terms. Under such assumptions, they will need to lay off employees to make their funding contribution. On the other hand, if they could wait past October 15, they may find credit that does not force them to lay off employees.

There is a myriad of other needs for the full congressionally granted delay. Companies need time to plan in these difficult times. We have heard from another company that will have difficulty deciding before late 2020 whether to make additional non-required 2019 contributions to its plan, and that may refrain from making such additional contributions if they will not count for premium purposes. So PBGC's decision not to recognize the full congressionally granted delay can serve as a disincentive for making additional contributions to a plan, exactly the opposite of the right policy.

Not all companies are in positions like those described above, but the overall point we want to make is clear. In these challenging times, companies are facing hard decisions every day about how to spend scarce dollars. Congress gave companies until January 1, 2021, to make contributions otherwise due in 2020. PBGC's rule takes away 2 ½ months of planning time provided by Congress.

This needs to be corrected. Providing a rule consistent with the statute would result in more Americans keeping their jobs.

Thank you for your consideration of our views.

Sincerely,

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

cc: The Honorable Richard Neal
The Honorable Charles Grassley
The Honorable Kevin Brady
The Honorable Ron Wyden
The Honorable Bobby Scott
The Honorable Virginia Foxx
The Honorable Lamar Alexander
The Honorable Patty Murray
PBGC Participant and Plan Sponsor Advocate Constance Donovan