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PBGC to Back-Date Certain 2020 Contributions and Refund Premiums

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The Pension Benefit Guaranty Corporation (PBGC) is supplementing the relief provided by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)¹ for single-employer pension plans with the promise of a possible premium refund. According to the PBGC's announcement issued on September 21, 2020,² and expounded on September 23,³ it will retroactively rectify the effect delayed contributions provided in the CARES Act have on the unyielding due date for 2020 premiums. Consequently, many plan sponsors may receive a partial refund of their 2020 premiums.

In a pre-Covid-19 world, a calendar year, single-employer pension plan would contribute to the plan

on specified dates throughout a year. The plan would pay a premium to the PBGC based on the plan's underfunded status as determined under the premium rate regulation 29 C.F.R. Part 4006. Section 4006.4(c) allows only those prior year contributions *actually in* the plan, not receivable, by the date the premium is filed to be used to calculate the premium for the year. The premium payment dates are determined by the premium payment regulation, 29 C.F.R. Part 4007. A calendar year plan's premium due date is October 15. Meaning any contributions made for the prior plan year after the premium filing date are not used to calculate the premium. The fewer contributions made before the premium filing date, the higher the calculated premium.

As the consequences of the economy's shut-down manifest on plan sponsors' bottom lines, the scheduled contributions loomed, further stressing plan sponsors' finances. A late contribution must be reported to the PBGC and has its own financial consequences. But, on March 27, 2020, the president signed the CARES Act into law.

A provision of the CARES Act extended the deadline to January 1, 2021, of certain pension contributions otherwise due between March 1, 2020, and January 1, 2021.⁴ These contributions count toward plans' asset values, affecting the calculations of plans' 2020 premiums.⁵ Therein lies the rub, the CARES Act *did not* extend the premium filing deadlines with the PBGC for 2020, e.g., October 15, 2020, for calendar year plans.⁶

The regulations dictate the premium due dates and the rules by which the premiums are calculated. By extending the due dates of contributions, the relief the CARES Act granted adversely affected the calculations used to determine the underfunded status as of the premium filing date. With fewer contributions *actually in* the plan, the premiums are higher than estimated.

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¹ Pub. L. No. 116-136.

² Pension Benefit Guaranty Corporation, *PBGC to Expand COVID-19 Relief, Support Economic Recovery: Will Allow Greater Flexibility Related to Premium Filings* (Sept. 21, 2020), <https://www.pbgc.gov/news/press/releases/pr20-04>.

³ Pension Benefit Guaranty Corporation, *Technical Update 20-2: Extended Due Date for Inclusion of Prior Year Contributions* (Sept. 23, 2020), <https://www.pbgc.gov/prac/other-guidance/extended-due-date-inclusion-prior-year-contributions>.

⁴ 29 C.F.R. §4006.3(b), §4006.4(b).

⁵ See Notes 2-3, above.

⁶ See Notes 2-3, above. 29 C.F.R. §4007.11.

The PBGC cannot change the due date for the premiums,⁷ but, for this Covid-19 year, it has come up with a solution to the adverse impact of the CARES Act relief on determining the value of assets under 29 C.F.R. §4006.4(c).

The PBGC is allowing plan sponsors to submit amended premium filings after the final contribution payment date of January 1, 2021.⁸ Because the premiums are calculated based on the underfunded status calculation, the plan sponsor should see a lower premium after adding the delayed contributions. The PBGC will process the amended premium filings and

refund any excess premium paid in the original premium filing. They do not offer a time frame for the refunds. Still, to be eligible for any refund of excess premiums, the plan sponsor must file the amended premium filing by February 1, 2021.⁹ Plan sponsors now have the relief of delayed contributions the CARES Act provides and a way to receive credit for those contributions as they impact their premium calculations even though the contributions flow into the plan after the premium filing due date. Kudos to the PBGC for their action and innovation, enabling plan sponsors to utilize the CARES Act relief without an ultimate adverse impact on their premium payments.

⁷ 29 C.F.R. §4007.11(a)(2), 29 C.F.R. §4007.11(a)(3) (establishing due dates).

⁸ See Note 2, above.

⁹ See Note 2, above.