

Publications

IRS and PBGC Give Sponsors Until January 4, 2021 to Make Contributions Under the CARES Act

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PUBLISHED

11/18/2020

SOURCE

Groom Publication

SERVICES

- [Fiduciary & Plan Governance](#)
- [Retirement Programs](#)

The [Coronavirus Aid, Relief, and Economic Security Act](#) (“CARES Act”) passed earlier this year delayed the due date of quarterly and final contributions otherwise due in calendar year 2020 to January 1, 2021. But because January 1, 2021 is a legal holiday, sponsors would have had to make 2020 contributions by December 30, 2020 (the last business day of the year), which could have undercut the relief provided for under the CARES Act. However, recent guidance from the IRS and PBGC clarifies that contributions made by January 4, 2021 (the first business day following January 1) are timely made under the CARES Act. Plan sponsors should consult with their ERISA counsel and plan actuary regarding the timing of payment of the 2020 contributions.

Generally, the sponsor of a defined benefit pension plan must make the minimum required contributions to the plan for a plan year by 8 ½ months after the close of that plan year. Internal Revenue Code (“Code”) Sec. 430(j)(1). For plans that had a funding shortfall for the preceding plan year, the sponsor is required to make quarterly installments toward the minimum required contribution for the plan year. Additionally, the plan sponsor generally has until 8 ½ months after the close of the plan year to elect to increase the plan’s prefunding balance by the amount of any excess contributions for that plan year.

On March 27, 2020, the CARES Act was signed into law. Section 3508(a)(1) of the CARES Act provides that any quarterly or final contribution that would otherwise be due in calendar year 2020 with respect to a single-employer defined benefit pension plan is instead due on January 1, 2021.

On November 16, 2020, the IRS issued [Notice 2020-82](#) (“Notice”) providing that a defined benefit pension plan contribution that has an extended due date of January 1, 2021 under the CARES Act will be treated as timely made if received no later than January 4, 2021 (the first business day after January 1, 2021). The IRS reasoned that the intent of the CARES Act was to allow sponsors to defer contribution obligations until calendar year 2021; however, because January 1, 2021 is a legal holiday,

financial institutions cannot transfer funds on that date. Therefore, a due date of January 1, 2021, without taking into account the legal

holiday, would effectively require sponsors to make deferred contributions prior to January 1, 2021 (in other words, in calendar year 2020), which would be inconsistent with legislative intent.

The IRS also provided in the Notice that a sponsor has until January 4, 2021 to elect to increase or use a plan's prefunding balance. Finally, in calculating the amount of a minimum required contribution (as well as an excess contribution), the IRS clarified that the applicable interest adjustment required under the CARES Act and [IRS Notice 2020-61](#) (*i.e.*, interest from the original due date to the date of payment at the effective interest rate for the plan for the plan year that includes the payment date) must be applied using the actual contribution date.

Consistent with the Notice, on November 16, 2020, PBGC issued revised guidance regarding required reporting for missed contributions and calculation of plan assets for premium purposes. Specifically, PBGC clarified that there will be no missed contribution "reportable event" for a contribution otherwise due in 2020 as long as the contribution is made by January 4, 2021. Importantly, however, if the contribution is not made by January 4, 2021, the deadline to submit the Form 200 (for missed contributions over \$1 million) or Form 10 (for all other missed contributions) is calculated from January 1, 2021, not January 4, 2021. Thus, a Form 200 would be due on January 11, 2021 and a Form 10 would be due on February 1, 2021 (the next business day after January 31). Failure to timely report a missed contribution subjects the sponsor to penalties.

Regarding whether a contribution deferred under the CARES Act may be taken into account in calculating plan assets for the purpose of PBGC variable-rate premiums for a plan year, PBGC clarified in its revised [Technical Update 20-2](#) that a contribution for the prior plan year that is made by January 4, 2021 may be counted as long as the premium filing is amended by February 1, 2021 to reflect the contribution. Any premium overpayment will either be refunded or credited to the plan's My PPA account.