March 26, 2020

Coronavirus Market Volatility and Pension Plan Contributions

The Coronavirus (COVID-19) pandemic's impact on your family, friends and economy continues to unfold daily. Interest rates are down, and the equity markets are depressed and have been highly volatile. This economic situation will cause revenues of many plan sponsors to stagnate, which will drain cash reserves, and likely lead to layoffs. This is another "perfect storm" for the pension plan, which if the markets don't normalize, will lead to much higher required pension contributions in the upcoming year.

When revenues drop significantly, organizations will struggle to meet current and future funding obligations, as well as pay for essential plan operation services.

Seeking Federal Relief

Congress continues to work on additional funding relief and has recently released several changes impacting defined benefit plans. However, additional relief measures may be contained in possible Phase 4 coronavirus legislation by early April. This relief will likely delay the impact of the current economic situation and allow plan sponsors to make lower contributions than they would have otherwise, but it likely will not permit sponsors to eliminate their long-term obligations. In other words, it will delay the impact of the current market conditions in hopes that the market will rebound after the coronavirus is under control.

The Consequences for Late Contributions

If at all possible, plan sponsors will want to adhere to the required deadlines for contributions, both the quarterly requirements and any additional amount required by the final due date (8-1/2 months after the end of the plan year). This table shows the consequences for delayed quarterly contributions:

Contribution Timing	Penalties
Less than 30 days late	Interest penalty at effective rate plus 5%*
More than 30 days late	Interest penalty at effective rate plus 5%* Notification to PBGC**
More than 60 days late	Interest penalty at effective rate plus 5%* Notification to PBGC (due once contribution at least 30 days late)** Notification to all plan participants

**Approximately 10% payable to the Trust as additional required contributions*
***Generally, there is a waiver of the notification for late or missed quarterly contributions if the plan has less than 100 participants. However, regardless of the size of the plan, the PBGC must be notified if a final minimum required contribution is missed.*

Plan sponsors must meet the total required plan year contribution by the final due date, which is 8-1/2 months after the end of the plan year. There is no grace period for this contribution. Organizations that miss this deadline will experience:

- Disclosure of an unpaid minimum on the U.S. Department of Labor's Form 5500
- Interest and penalties beginning immediately

- An excise tax of 10% of the missed contribution, which is payable on the due date of the final contribution (for plans with a calendar plan year, the deadline for the final 2019 plan year contribution is September 15, 2020 and the deadline for the final 2020 plan year contributions is September 15, 2021), with interest accruing until paid. This tax is paid to the IRS and cannot be paid from plan assets.

Funding Waiver Requests

Organizations that experience temporary business hardship due to the Coronavirus's (COVID-19) impact on the economy may consider applying to the Internal Revenue Service (IRS) for a funding waiver. However, under current law, it is generally cost prohibitive for smaller plans. The IRS user fee is approximately $30,000, which does not include the cost to prepare the request. Also, the waiver does not eliminate the required contribution, but merely allows you to amortize the payment over five years.

The application process for a funding waiver is onerous as organizations must provide extensive information about the company's financial condition, the pension plan, as well as share details about executive compensation arrangements. In addition, notifications of the waiver request must be sent to plan participants, and the company must consider comments they receive from participants. The IRS also coordinates with the PBGC as it reviews funding waiver requests, seeking analysis and recommendations from the PBGC.

Maintaining Pension Plan Operations

For organizations whose cash flow is being dramatically impacted by the steps being implemented to fight the coronavirus, there are ways to continue essential services of the plan. Fees for most plan operations can be paid from plan assets. Essential services of the plan include:

- Initiating new retirements or payments to beneficiaries
- Paying lump sum benefits
- PBGC insurance premiums
- Plan audits
- ERISA counsel services including plan documents and amendments
- Government form filings
- Actuarial counseling services

It's important to remember that this is a one-year deferral of the cash expense since fees paid from plan assets are generally added to the following year's minimum required cash contribution. Consult with your ERISA counsel about paying any fees from plan assets as services that are essential to the employer, but not the plan, are generally not payable from plan assets.

Other Ways to Reduce Contributions?

For plan sponsors who deposited contributions in excess of minimum requirements in the past, a prefunding balance or a carryover balance may be available to be used to offset all, or a portion of, a future contribution requirement. A formal election to create or add to the prefunding balance must be made, and there still may be time to do this related to last year's contribution.

Plan sponsors with cash flow concerns may consider options of freezing benefits or reducing benefits in order to reduce future contributions. If participants are currently earning new benefits (i.e., your plan is not currently frozen) an organization may be able to amend the plan to eliminate (i.e. freeze) or reduce benefits before they are earned in 2020. This may not eliminate the required contribution for 2020, but it will reduce it by the value of the benefits that were expected to be earned. However, in order to freeze or reduce the current year's benefit, the organization must amend the plan **before** any participant completes the required number of hours during the plan year (typically 1,000 hours, but varies by plan design).

Freezing or reducing plan benefits requires a plan amendment and a participant notification. Plans with at least 100 participants require at least a 45-day notice before benefits can be reduced or eliminated. Plans with less than 100 participants only require at least a 15-day notice period. For plan sponsors who are considering reducing 2020 plan year benefits, time is of the essence to amend your plan and distribute the proper notification within the timing guidelines.

Eliminating or reducing plan benefits is a tough decision. There are issues other than cash contributions to consider before making a move, including possible financial statement impact (i.e., ASC715 curtailment expense, if applicable) and human resource/employee relations implications.

Questions regarding contribution options for your defined benefit pension plan, contact the Findley consultant you normally work with, or Keith Nichols at *KeithNichols@findley.com* or *724.933.0631* or Wesley Wickenheiser at *Wesley.Wickenheiser@findley.com* or *502.253.4625*