

August 11, 2020

Single Employer Defined Benefit Plan CARES Act Guidance Issued by IRS

IRS Notice 2020-61 was issued on August 6, 2020 and provides clarification on the relief the CARES Act provided to single employer defined benefit plans. The CARES Act extended the due date of all 2020 calendar year required pension plan contributions to January 1, 2021 and allows the use of the prior year AFTAP certification to avoid benefit restrictions.

Extended Contribution Deadline

Many plan sponsors are considering taking advantage of the extended due date for 2020 calendar year required contributions. As this option is considered, plan sponsors should be aware of the potential impact on the administration of the plan. IRS Notice 2020-61 has provided additional details regarding the impact to the plan's administration.

Contribution amounts will be increased as a result of the later payment date. The due dates are extended but as required by §430, interest is added at the plan's effective interest rate until the date the contribution is paid. The CARES Act has waived the additional 5 percentage point penalty for late contributions until the new due date of January 1, 2021. Any contribution made after January 1, 2021 will start to accrue the additional 5 percentage point interest penalty on January 2, 2021 in addition to the effective interest rate.

An amended Form 5500 filing will be required. The only contributions that are allowed to be included in the 5500 filing are those that have already been contributed to the plan as of the filing date, which is October 15th for calendar-year plans. Consequently, if a plan sponsor opts to delay any 2019 contributions, the 5500 contribution will need to be filed omitting those contributions. Once the contributions are made, the 5500 filing will need to be amended in order to avoid any additional penalties that would be triggered on unpaid contribution requirements.

The audit report may need to be updated once the contributions are made in order to match the amended

5500 filing. This should be discussed with the auditor prior to delaying contributions. Some auditors may choose to footnote the audit report either this year or next year in order while other auditors may choose to update the audit report.

The contribution deadline applies to excess contributions in addition to required contributions. For calendar year plans, any contribution made before January 1, 2021 can be applied to the 2019 plan year even if it is made after September 15, 2020. Plan sponsors therefore have additional time to improve the 2020 funded level of the plan. Note, however, as detailed in [our earlier article](#), contributions made after the filing of the PBGC premium payment for 2020 cannot be included to reduce PBGC premiums.

AFTAP certification for 2020 may be lower because any calendar year plan will need an AFTAP certification by September 30, 2020 but such certification can only include contributions made as of the date of certification. Once the contributions are made, the plan can update their certification if it materially changes the funded percentage of the plan. Alternatively, the CARES Act also allows plan sponsors to use their 2019 AFTAP certification for 2020 which is discussed later.

Prefunding Balance elections are also delayed to January 1, 2021. Plan sponsors have until January 1, 2021 to elect to use the Prefunding Balance towards any contribution requirements or to increase the Prefunding Balance with any excess contributions.

Use of Prior AFTAP Certification

A Plan Sponsor may use the prior year AFTAP certification for any plan year occurring in 2020. This will help keep plans from falling into benefit restrictions as a result of a lower 2020 AFTAP certification.

The election can be used for a 2019 plan year if it ends in 2020. Any plan that has a plan year that ends in 2020, can opt to use the prior year's AFTAP as long as that prior year ends on or before December 31, 2019. For example, a July 1, 2019 plan year that ends June

30, 2020 can use the July 1, 2018 AFTAP for 2019. The same AFTAP can also then be used for the plan year beginning July 1, 2020.

Plan Sponsors must make the election by notifying their plan actuary and plan administrator in writing. The process to make such an election is similar to the elections made regarding the plan's credit balances. The certification is deemed to be made on the day the Plan Sponsor makes the election. An attachment should then be included with the applicable Schedule SB indicating such election has been made.

Election by the Plan Sponsor is a recertification if the actuary had already certified the AFTAP. Therefore the election would be applicable from the date of the election forward. The actuary cannot certify the AFTAP after an election unless the Plan Sponsor revokes their election in writing.

Presumptive AFTAP for following year is based on the actual AFTAP instead of the plan sponsor's election. Therefore for any calendar year plan, the 2021 presumed AFTAP as of April 1, 2021 would be the actual 2020 AFTAP less 10% ignoring the participant's election to use the 2019 AFTAP for 2020.

There are many administrative hurdles that should be considered before choosing to elect any of the options provided in the CARES Act. However, for plan sponsors that need the relief, there are several strategies you can employ.

For more information regarding this notice and its effects on single employer defined benefit plans, contact Amy Gentile at amy.gentile@findlley.com or [216.875.1933](tel:216.875.1933)