

PRESIDENT SIGNS INTO LAW PENSION FUNDING REFORM ACT

On June 25, 2010, President Obama signed into law, H.R. 3962, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (the "Act"). The Act provides funding relief for both single and multiemployer defined benefit pension plans and provides sponsors of such plans additional time to amortize pension funding shortfalls.

Relief for Single-Employer Plans

Under the Act, single-employer plans may elect to defer the amortization of their funding shortfalls beyond the seven years required by current funding rules. The Act permits plan sponsors to elect one of two different schedules.

The first option is the "2 plus 7" schedule. This schedule permits interest-only payments for two years based on the effective interest rate for the election year, followed by seven level annual installments that would amortize the remaining balance based on the segment rates for the election year. The second option is the 15-year schedule, which permits an employer to amortize the funding shortfall over 15 years. Relief under either option is available for up to two plan years beginning in 2008 through 2011, for which contributions are due on or after June 25, 2010. If the relief is elected for two years, the two years do not need to be consecutive, but must be in the same form of relief.

The rules require the plan sponsor to notify plan participants, beneficiaries and the Pension Benefit Guaranty Corporation ("PBGC") of an election to use the relief provisions.

Once the election is made, the election may not be revoked without the approval of the Secretary of the Treasury, with an opportunity for comment by the PBGC.

Cash Flow Rule

A key provision of the Act requires a plan sponsor or any other company in its controlled group that elects funding relief under the Act to make an additional contribution to the pension plan if they pay any excess employee compensation, an extraordinary dividend or redeem stock. This additional contribution is equal to the sum of (1) the aggregate excess employee compensation over \$1 million (indexed) and (2) the aggregate amount of dividends and redemptions for the plan year in excess of a specified threshold. Compensation only includes payment for services performed after February 28, 2010, and does not include commissions on income directly generated by the individual's performance.



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Lookback for Certain Benefit Restrictions

The Act extends the relief provided by the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA") which allows a plan to apply the 2008 funded status to 2009 and 2010 in order to (1) prevent a plan from being forced to freeze accruals, if the funded percentage is lower than 60 percent, and (2) avoid the restriction on a Social Security leveling option, if the funded percentage is lower than 80 percent.

Relief for Multiemployer Pension Plans

In addition to providing single-employer plans with an extended period to amortize certain funding shortfalls, the Act also affords relief to multiemployer pension plans. Now, certain multiemployer plans are permitted to amortize net investment losses for the two consecutive years ending on or after August 31, 2008 over a 30-year period.

To be eligible for relief, multiemployer pension plans must meet the solvency test. A multiemployer pension plan passes the solvency test if the plan's actuary certifies that the plan is projected to have assets sufficient to meet its benefit and expenditure obligations over the amortization period, taking into account amortization extensions and the expanded asset smoothing elections.

In an attempt to curb volatility in year-to-year contribution requirements, the Act also extends the maximum smoothing period for determining plan asset values from 5 years to 10 years for the first two plan years ending on or after August 31, 2008.

Similar to the single-employer plans, the plan sponsors of multiemployer plans must notify plan participants, beneficiaries and the PBGC of an election to use relief provisions.

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