



Pension Analyst

Important information

Plan administration and operation

March 2011

IRS issues additional multiemployer funding relief

Who's affected

These developments affect sponsors of and participants in multiemployer defined benefit plans. They do not affect single-employer plans, multiple employer plans, governmental plans or church plans that do not elect to be covered by ERISA ("non-electing church plans"). A separate publication discusses guidance affecting [single-employer plans](#).

Background and summary

On June 25, 2010, President Obama signed into law the "Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010" ("[PRA 2010](#)"). This new law provided funding relief for multiemployer defined benefit plans, in response to the unstable economic environment and continued market volatility. Specifically, PRA 2010 extends the period for amortizing experience gains and losses and also expands the asset smoothing period.

At the same time, the IRS published Notice 2010-56, which promised future guidance with respect to the PRA 2010 funding relief and special rules for Form 5500 filings.

Recently, the IRS published [Notice 2010-83](#), which describes the funding relief provided by PRA 2010 and also discusses the guidance anticipated in IRS [Notice 2010-56](#). In addition to the guidance regarding the extended amortization period for net investment losses and expanded asset valuation rules, Notice 2010-83 provides guidance regarding the:

- Solvency test;
- Restrictions on plan amendments increasing benefits;
- Decision to apply the special funding rules;
- Notification to participants, beneficiaries and the Pension Benefit Guaranty Corporation (PBGC);
- Certification of status; and
- Form 5500 requirements.

This *Pension Analyst* discusses the guidance provided in Notice 2010-83 in an effort to help plan sponsors determine the future actions necessary to obtain funding relief.

Action and next steps

The provisions of PRA 2010 are effective as of the first day of the first plan year ending after August 31, 2008. However, any election made by a plan sponsor that impacts the plan's funding standard account for the first plan year beginning after August 31, 2008, is disregarded for purposes of applying the funding relief for plans in endangered or critical status. The restriction on plan amendments increasing benefits is effective June 25, 2010.

Plan sponsors should carefully read the guidance discussed in this *Pension Analyst*. If you have any questions about the information discussed in this publication, you should contact the plan's enrolled actuary.

In this issue

[Extended amortization relief](#)

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[Expanded asset smoothing](#)
[Solvency test](#)
[Restrictions on plan amendments increasing benefits](#)
[Decision to apply the special funding rules](#)
[Notification to participants, beneficiaries and PBGC](#)
[Content requirements](#)
[Delivery requirements](#)
[Notification to PBGC](#)
[Certification of status](#)
[Form 5500 requirements](#)

Extended amortization relief

Before the enactment of PRA 2010, the amortization period for experience gains and losses was set at 15 years. However, the new law provides an option to amortize over a longer period of time any experience gains or loss attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008. The extended amortization period is determined over a period:

- Beginning with the plan year in which the loss is recognized (“recognition year”) in the actuarial value of assets; and
- Ending with the last plan year in the 30-year period beginning with the year the net investment loss incurred.

The recent IRS guidance clarifies that the determination of net investment loss is calculated depending on whether the plan’s valuation date is:

- The first or last day of the plan year; or
- Neither the first or last day of the plan year.

Notice 2010-83 clarifies that the portion of the net investment loss that is not attributable to the eligible investment loss is amortized over 15 plan years. Therefore, net investment loss is divided into:

- One amortization base for the portion to be amortized over 30 years; and
- Another amortization base for the portion amortized over 15 years that is attributable to other gains or losses.

Expanded asset smoothing

Before the enactment of PRA 2010, multiemployer plans could average (“smooth”) investment losses in their asset valuation over a period of up to five years. Under PRA 2010, plans now have the option to expand the smoothing period for either or both of the first two plan years beginning after August 31, 2008, over a period not to exceed ten years as long as the value of plan assets is not less than 80% nor greater than 130% of the fair market value of plan assets. Notice 2010-83 has confirmed that such a change in the asset valuation has automatic approval from the IRS.

If a plan sponsor elects both the:

- Extended amortization relief; and
- Expanded asset smoothing relief

a reduction in unfunded liability arising from expanded asset smoothing will be treated as a separate amortization base to be amortized over 30 years.

Solvency test

A plan satisfies the solvency test if the plan actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenses over the amortization period, taking into account the amortization extension and the expanded asset smoothing elections. The solvency certification must be made before a formal decision is made to apply either or both of the funding relief rules. If the plan passes the solvency test as of the plan year in which a formal decision is made to apply either or both of the funding relief rules, the plan is deemed to pass the solvency test as of any preceding plan year.

The actuary must use the same actuarial basis (e.g., assumptions, data, and terms of any existing funding improvement or rehabilitation plan) that is used for purposes of certifying the plan status to make the solvency certification.

The solvency certification applies for the period beginning with the plan year in which it is made and ends with the last plan year in the:

- 30-plan year period if the extended amortization relief applies or if both the amortization relief and expanded asset valuation relief apply; or
- 10-year period if only the expanded asset valuation relief applies.

Restrictions on plan amendments increasing benefits

If a plan sponsor elects to apply any of the funding relief rules for a plan year, the plan may not be amended to increase benefits during either of the two plan years immediately following the plan year unless:

- The amendment is required as a condition for the plan to remain qualified or to comply with applicable law; or
- The plan actuary certifies that:
 - Any benefit increase will be funded with additional contributions not allocated to the plan as of end of the immediately preceding plan year; and
 - The plan's funded percentage and projected credit balances for the two plan years are reasonably expected to be at least as high as they would have been if the amendment had not been adopted.

The notice confirms that the restriction on plan amendments increasing benefits is effective on June 25, 2010, the date of the enactment of PRA 2010. Benefit increases that went into effect before June 25, 2010 are not subject to the restrictions. Benefit increases that are effective on or after June 25, 2010, are subject to the restrictions, even if adopted before that date.

Decision to apply the special funding rules

A plan sponsor must use its normal procedures for making a formal decision (e.g., formal trustee vote) to apply either or both of the funding relief rules. The deadline for a formal decision is the earliest of:

- The deadline for the certification of a plan's status for the first plan year beginning on or after January 1, 2011;
- The date of certification of the plan's status for the first plan year beginning on or after January 1, 2011; or
- June 30, 2011.

If a plan sponsor is unable to reach an agreement to apply either or both of the special funding rules and formally decides to resolve the issue through arbitration, the deadline is extended until 30 days after the resolution of the arbitration.

A plan sponsor may also make a formal decision to cease the application of the special amortization rule.

Notification to participants, beneficiaries and PBGC

A plan sponsor that elects to apply the extended amortization relief or the expanded asset smoothing relief, or both, must notify participants and beneficiaries within 30 days after the deadline for the plan sponsor's formal election. This notice must only be provided once, even if the relief applies for more than one plan year.

A notice must be sent to all plan participants and beneficiaries. However, a notice does not have to be provided to any person who either became a:

- Plan participant; or
- Beneficiary

after the last day of the plan year ending before the notice due date or ceased to be a participant or beneficiary prior to the date the notice is provided.

Content requirements

The notice must provide the following information:

- The name of the plan, the taxpayer identification number and plan number;
- An explanation of which special funding rules apply and the plan year(s) for which they apply;
- The effect of the application of the funding relief rules;
- A description of the effect of applying the funding relief rules, including the fact that applying these rules will decrease the amount of required minimum contributions that are taken into consideration in determining the appropriate contribution rates under collective bargaining agreements and that may affect the plan's current and future status;

- A statement that the plan is not permitted to increase benefits during the two plan years immediately following any plan year in which either or both of the funding relief rules apply; and
- The name, address and telephone number of the plan administrator or other contact person from whom more information may be obtained.

The notice must be written in a manner calculated to be understood by the average plan participant or beneficiary. Plan sponsors may include any additional information that is necessary or helpful for recipients to understand the required information, provided the notice does not have the effect of misleading or misinforming recipients from the required information. The notice *must be a separate notice and cannot be combined with other information*. However, the notice can be provided at the same time as another notice is provided. For example, the notice can be provided at the same time the annual funding notice is provided.

Delivery requirements

The notice must be in writing and may be furnished in any paper or electronic form to the extent such form is reasonably accessible to participants and beneficiaries. Permissible electronic methods include those permitted by:

- [The Department of Labor \(DOL\)](#); and
- [The final 204\(h\) regulations](#).

Notification to PBGC

A plan sponsor must provide the PBGC with a copy of the notice provided to participants and beneficiaries by the later of:

- 30 days after the date the plan sponsor makes a formal decision to apply either or both of the funding relief rules; or
- January 18, 2011.

Notification must be provided by either regular mail or e-mail.

Hard copies of the notice must be mailed to the:

Pension Benefit Guaranty Corporation
ATTN: Multiemployer Data Coordinator
1200 K Street, NW
Suite 930
Washington, DC 20005-4026.

Electronic copies of the notice must be emailed to the PBGC at: Multiemployerprogram@pbgc.gov.

The subject line of the e-mail, or the notice sent by mail must contain the:

- Plan's taxpayer identification number;
- Plan number; and
- Name of the plan.

If the plan sponsor makes separate decisions on different dates regarding the application of the funding relief rules or the plan years for which they apply, the plan sponsor must send separate notices.

If Prudential Retirement provides actuarial valuation services to a multiemployer plan, we are prepared to assist plan sponsors in the preparation of the notice.

Certification of status

If a plan sponsor elects to apply the funding relief rules, the application must be reflected in any simultaneous or later:

- Certification of the plan's status (e.g., endangered, critical or neither); and
- Required adoption or update of a funding improvement plan or rehabilitation plan.

A plan sponsor may modify any previously-adopted funding improvement plan or rehabilitation plan to reflect the application of the funding relief rules.

If a plan sponsor decides to apply funding relief after the certification of the plan's status, the relief will be reflected in the following plan year's certification. However, a plan sponsor may ask the plan's enrolled actuary to redetermine the plan's status for a plan year, taking into account the application of the funding relief rules. The redetermined status will be treated as the certified status for the entire plan year provided:

- A revised certification of the plan's status for the plan year is made and sent to the plan sponsor and the IRS before the end of the plan year;
- The revised certification otherwise satisfies the requirements of the annual certification requirements;
- A notice of the revised certification is provided to participants and beneficiaries, the collective bargaining parties, the PBGC and the DOL within 30 days after the revised certification;
- Any measures taken that would not be permitted under the plan's revised certification are reversed; and
- The plan actuary certifies that reversing the measures would not cause the plan to fail to meet the solvency test.

The IRS guidance also clarifies that the application of the funding relief rules for the first plan year beginning after August 31, 2008, is disregarded for purposes of the plan's certification status or the adoption or update of a funding improvement plan or rehabilitation plan.

Form 5500 requirements

Plan sponsors that elect to apply funding relief for a plan year after filing the Form 5500 and Schedule MB for that plan year, which did not reflect this relief are not required to file an amended Form 5500 and Schedule MB. Instead, the Schedule MB filed for the following plan year must include an attachment showing how the information, including any calculations, on the previous year's Schedule MB would have differed if it had reflected the funding relief. Line 9f of Schedule MB is an appropriate means for describing the difference.

Alternatively, plan sponsors may file an amended Form 5500 with a revised Schedule MB showing the correct information for any previous plan year.

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