



Pension Analyst

Important Information

Plan administration and operation

May 2009

IRS provides WRERA funding relief election procedures

Who's affected

These developments affect sponsors of and participants in qualified 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").

Background and summary

On December 23, 2008, President Bush signed into law the [Worker, Retiree, and Employer Recovery Act of 2008 \(WRERA\)](#). In response to the current economic crisis, WRERA provides welcome funding relief for multiemployer plans. For plan years beginning on or after October 1, 2008, and before October 1, 2009, WRERA allows plans to temporarily freeze their funding status based on the prior year's actuarial certification. In addition, the sponsor of a multiemployer plan may elect for a plan year beginning in 2008 or 2009 to extend the plan's applicable funding improvement plan or rehabilitation plan by three years.

The IRS recently issued [Notice 2009-31](#) to provide guidance relating to the elections offered under WRERA. Specifically, Notice 2009-31 describes the:

- Effect of making an election;
- Election procedures;
- Special notice requirements for plans that elect to retain their prior year's funding status; and
- Effect of a WRERA election on Form 5500, Schedule MB and Schedule R filings.

This Notice also established an April 30, 2009 deadline for making these elections.

Following the publication of this guidance, some plan sponsors identified a need for additional time to make WRERA elections. As a result, on April 30, 2009, the IRS issued [Notice 2009-42](#), which extends the deadline for making the WRERA funding relief elections to June 30, 2009.

Action and next steps

Sponsors should carefully read the information contained in this *Pension Analyst* and should discuss the impact of this guidance on their plans with their enrolled actuary and their fund counsel. Prudential Retirement's enrolled actuaries are well prepared to respond to your inquiries regarding the effect of this recent guidance on your plan.

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Temporary delay of endangered or critical status

The Pension Protection Act of 2006 (PPA) requires a plan's enrolled actuary to annually certify the plan's funding status within a specified timeframe. Sponsors of plans that are in endangered, seriously endangered, or critical status must notify interested parties of the plan's funding status and must adopt either a funding improvement plan (FIP) or rehabilitation plan. These provisions are effective for plan years beginning after 2007.

WRERA provides relief from these requirements by allowing affected plans to elect to treat the plan's funding status for the prior plan year as its status for the applicable plan year. The "applicable plan year" is the first plan year beginning during the period from October 1, 2008, through September 30, 2009. As a result, a plan that is not in endangered, seriously endangered or critical status for 2008 may elect to retain this status for the 2009 plan year. In addition, a plan that was in endangered, seriously endangered or critical status for 2008 may elect to retain this status for 2009. In this case, if a plan elects to retain its prior year funding status, the plan is not required to update its FIP or rehabilitation plan until the following plan year.

Effect of election

A plan that elects to retain its prior year funding status must be operated in accordance with that election, rather than the funding status certified by the actuary for that year. For example, the sponsor of a multiemployer plan that would have been in critical status for the election year, but elected to retain its prior year's status as endangered, could not:

- Assess employer surcharges;
- Reduce adjustable benefits; or
- Restrict lump sum benefits.

In addition, the plan would continue to operate in accordance with its FIP, rather than adopt a rehabilitation plan. However, the FIP would not need to be updated for the election year. If a plan sponsor had not adopted a FIP based on its endangered status for the prior year (because the PPA rules did not yet apply), then it would need to adopt a FIP in the election year. However, no excise tax would apply to any accumulated funding deficiency for the election year.

Finally, a plan sponsor may make an election to retain the plan's prior year status so that no updates to a FIP or rehabilitation plan are required until the following year, even if the plan would have the same funding status if the election was not made.

Election procedures

A plan sponsor must make an election to freeze the plan's prior year funding status by the later of:

- June 30, 2009; and
- The date that is 30 days after the due date of the annual certification.

For example, the sponsor of a plan with a plan year beginning July 1 whose actuary certifies the plan's funding status on September 23, 2009, and who wishes to make an election, must make the election by October 28, 2009 (30 days after September 23, 2009).

The election must contain specific information and must be submitted to the IRS, as further described [below](#).

Special notice requirements

A plan sponsor must provide a special notice if it elects to freeze the plan's funding status as neither endangered nor critical despite an actuarial certification to the contrary. The notice must be provided to:

- Participants;
- Beneficiaries;
- Collective bargaining parties (e.g., unions);

- Pension Benefit Guaranty Corporation (PBGC); and
- Department of Labor (DOL).

The notice must be provided no later than 30 days after the later of the:

- Actuarial certification; or
- Date of the election.

Plan sponsors must provide the notice either in:

- The form of a paper document; or
- An electronic form that is consistent with [ERISA and the E-SIGN Act](#).

Content of notice

The notice must be written in a manner to be understood by the average employee to whom it applies and must contain information such as:

- The name of the plan, the Employer Identification Number (EIN) of the plan sponsor and plan, and the plan number.
- That an election has been made to treat the plan as neither in endangered or critical status for the plan year.
- The plan's endangered or critical status for the election year as certified by the plan's actuary as if no election had been made.
- An explanation that (i) the election applies only for the current plan year; and (ii) if the plan is certified to be in endangered or critical status for the year following the election year, the plan sponsor will provide notice of the plan's status (i.e., endangered or critical) for that following year and steps will have to be taken to improve the plan's funded situation, which steps may include increases in contributions and reductions in future benefit accruals.
- An explanation that, if the plan is certified to be in critical status for the year following the election year, the steps that will have to be taken to improve the plan's funded situation will include a surcharge on employer contributions and the suspension of the payment of lump sums and similar accelerated distributions for individuals who commence receiving benefits after notice is provided of the plan's critical status, and may include amendments to reduce early retirement benefits or other adjustable benefits for such individuals.
- Information on how to obtain information about the election from the plan administrator, including a telephone number, address, and email address (if appropriate).

Submitting the notice to the PBGC and DOL

A plan sponsor must submit the notice to the PBGC and DOL to the following addresses:

Pension Benefit Guaranty Corporation
Multiemployer Program Division
1200 K Street, N.W., Suite 930
Washington, D.C. 20005

U.S. Department of Labor
Employee Benefits Security Administration
Public Disclosure Room, N-1513
200 Constitution Avenue, N.W.
Washington, D.C. 20210

The notice may also be submitted electronically to:

multiemployerprogram@pbgc.gov and to wreanotice@dol.gov

Temporary extension of FIP or rehabilitation plan

A multiemployer plan in endangered, seriously endangered or critical status must adopt a FIP or a rehabilitation plan within 240 days after the due date of the enrolled actuary's certification of its status. The purpose of this requirement is to help a plan emerge from endangered or critical status within a 10-year period. For seriously endangered plans, the period for the FIP is extended to 15 years.

WRERA allows the sponsor of a multiemployer plan to elect for a plan year beginning in 2008 or 2009 to extend the applicable FIP or rehabilitation plan by three years.

The plan sponsor must make this election by the:

- Last day of the plan year as of which the election is made; or if earlier
- Date a FIP, rehabilitation plan or update is adopted that takes into account the election.

The election must contain specific information and must be submitted to the IRS, as further described [below](#).

Submitting elections to the IRS

The sponsor must submit all WRERA elections to the IRS. If the election is made on or before the date of the annual actuarial certification, the notice must be submitted to the IRS with the certification. However, if the election is made after the annual actuarial certification is filed with the IRS, the notice must be submitted no later than 30 days after the date of the election.

Elections should be submitted to the Employee Plans Compliance Unit (EPCU). Instructions for filing elections electronically with EPCU may be found at <http://www.irs.gov/retirement/article/0,,id=171015,00.html>. Alternatively, elections may be mailed to:

Internal Revenue Service
EPCU
Group 7602
SE:TEGE:EP
Room 1700 – 17th Floor
230 Dearborn Street
Chicago, IL 60604

Content of election

An election must be signed by an authorized trustee who is a current member of the plan sponsor board of trustees. In addition, the election must contain information such as:

- Name, address, telephone number and the plan sponsor EIN;
- Name, plan EIN (if different from plan sponsor), and plan number for the plan that is making the election;
- The plan year for which the election is made;
- A statement that the election is to freeze the plan's prior year funding status and/or extend the plan's applicable FIP or rehabilitation plan; and
- Information pertaining to the funding status of the plan.

Interaction between elections

The IRS cautions that a plan sponsor should consider the interaction between electing to:

- Retain its prior year funding status; and
- Extend the applicable FIP or rehabilitation plan by three years

in deciding whether to take advantage of the temporary relief provided under the Notice.

For example, for the plan year beginning in 2009, a plan sponsor may choose to freeze the plan's prior year funding status as neither endangered nor critical. However, if the plan is later certified in the plan year beginning in 2010 to be in endangered or critical status, then the election to extend the FIP or rehabilitation plan would no longer be available because the initial year for which the plan is certified to be in endangered or critical status is 2010. In 2010, the election to extend the FIP or rehabilitation plan is no longer available.

Contingent elections

In addition to extending the election deadline, IRS Notice 2009-42 also allows plan sponsors to make contingent elections that may be revoked if specific requirements are met. Either type of WRERA election may be revoked if:

- As of the election deadline, the plan sponsor is unable to reach an agreement as to whether to make an election and the decision must be resolved through an arbitration process;

- The plan sponsor makes an election by the applicable deadline that is contingent on the resolution of the arbitration; and
- The resolution is to not make an election.

In this situation, the IRS will automatically approve a request to revoke the election. The Notice does not provide any guidance regarding deadlines for making requests to revoke a WRERA election or the procedures for doing so.

Effect of election on Form 5500, Schedule MB and Schedule R filings

Sponsors of multiemployer plans must file a Schedule MB – Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information and Schedule R – Retirement Plan Information with the Form 5500, Annual Report. Schedule MB requires the plan's actuary to certify the plan's funding status and to include supporting documentation for the certification. If a plan is in endangered or critical status, the plan sponsor must submit with Schedule R a summary of the plan's funding improvement or rehabilitation plan, or an update of the plan, as applicable.

The election to temporarily freeze the plan's funding status affects whether a funding improvement plan or rehabilitation plan must be adopted or updated. However, Schedules MB and R and the related instructions for plan years beginning in 2008 have already been issued and do not address the effect of such an election. As a result, the IRS has revised the instructions for the 2008 Schedule MB and Schedule R to address the reporting for a multiemployer plan with a plan year beginning between October 1, 2008, and December 31, 2008, for which an election is made.

Under the revised instructions:

- The funding status of the plan that is reported on Schedule MB is the status of the plan as certified by the plan actuary without taking into account an election to freeze; and
- The plan sponsor must include an attachment to the Schedule R which provides information about the election to freeze, and its effect on the plan's funding status and on the requirement to adopt a FIP or rehabilitation plan.

Next steps

Plan sponsors should read the guidance contained in this publication to determine the impact on their plans. They should consult the plan's enrolled actuary and fund counsel regarding whether to take advantage of this temporary relief.

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Pension Analyst by Prudential Retirement

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