



Pension Analyst

Important Information

Legislation

March 2009

WRERA provides PPA technical corrections and other changes to multiemployer defined benefit plans

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"). Separate publications discuss the changes affecting [single-employer plans](#), [governmental plans and 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). This new law contains important technical corrections to the Pension Protection Act of 2006 (PPA) that plan sponsors and employers have requested. For example, WRERA provides technical corrections regarding:

- Clarification of the cash balance vesting requirements; and
- Non-spouse beneficiary rollovers.

In response to the current economic crisis, WRERA also provides welcome funding relief for multiemployer plans. For example, for plan years beginning on or after October 1, 2008, and before October 1, 2009, WRERA allows plans to temporarily freeze their actuarial funding certification based on the prior year's funding status.

Action and next steps

The provisions of WRERA impact plan funding, design and administration. Sponsors should carefully read the information contained in this *Pension Analyst* and should discuss the new law's impact 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 the new law on your plan.

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PPA technical corrections

The following PPA technical corrections have retroactive effective dates as if they had been included in PPA, unless otherwise noted.

Implementation and enforcement of default schedule

Effective for plan years beginning after December 31, 2007, PPA requires [multiemployer plans](#) in endangered, seriously endangered, or critical status to adopt a funding improvement plan (FIP) or rehabilitation plan within 240 days after the due date of the enrolled actuary's annual certification of the plan's status. If, upon the expiration of a collective bargaining agreement, an employer and the employees' union are unable to reach a new agreement that includes contributions or benefit schedules necessary to meet the benchmarks stated in the FIP or rehabilitation plan, the plan sponsor must implement a default schedule. The default schedule reduces future benefit accruals as necessary to achieve applicable funding benchmarks.

WRERA clarifies that plan trustees must implement the default schedule within 180 days of the expiration of the existing collective bargaining agreement. This provision applies retroactively to plan years beginning after December 31, 2007.

Non-spouse beneficiary direct rollovers

PPA allowed non-spouse beneficiaries to make direct rollovers of death benefit payments from qualified defined benefit plans to an IRA. These direct rollovers were available for distributions made after December 31, 2006.

[IRS Notice 2007-7](#) provided guidance that plans were permitted, but not required, to offer these direct rollovers to non-spouse beneficiaries. However, the technical corrections in WRERA clarify that, effective for plan years beginning after December 31, 2009, plans must provide a direct rollover option for non-spouse beneficiaries and must provide a 402(f) notice.

For plan years beginning on or after January 1, 2009, if you have already adopted a plan amendment to allow non-spouse beneficiaries to make direct rollovers to an IRA, Prudential Retirement will permit non-spouse beneficiaries to make direct rollovers to an IRA. If you have not adopted an amendment to allow non-spouse beneficiaries to make direct rollovers to an IRA during the 2009 plan year, Prudential Retirement will not permit non-spouse beneficiaries to make direct rollovers this year. However, for plan years beginning on or after January 1, 2010, as directed by WRERA, Prudential will allow non-spouse beneficiaries to make direct rollovers to an IRA.

Combined plan deduction limit

A special combined plan contribution deduction limit applies when an employer sponsors both a defined contribution plan and a defined benefit plan covering one or more of the same employees. This limit is the greater of:

- 25% of compensation paid or accrued during the plan years to participants in the combined plans; or
- The contribution needed to meet the minimum funding requirements, but not less than the amount of the defined benefit plan's unfunded current liability.

Effective for contributions made to tax years beginning on or after January 1, 2006, PPA provided that this combined plan limit does not apply if the defined contribution plan contributions do not exceed 6% of compensation for beneficiaries under the plans. However, in 2007, the IRS took the [position](#) that even if defined contribution plan contributions do not exceed 6% of compensation, the combined plan limit would still apply to the defined benefit plan. WRERA clarifies that if contributions to a defined contribution plan are less than 6% of compensation, the defined benefit plan is not subject to the combined plan deduction limit. If contributions to a defined contribution plan exceed 6% of compensation, only contributions exceeding 6% of compensation are counted toward the contribution limit. This provision is effective retroactively to contributions made for tax years beginning after December 31, 2005.

Extension of Pension Funding Equity Act amendment deadline

For plan years beginning in 2004 and 2005, the Pension Funding Equity Act (PFEA) replaced the Code section 417(e)(3) rate to be used for determining maximum annual benefits with a rate of 5.5%. PFEA also required plan sponsors to amend their plans by the end of the 2006 plan year to reflect this requirement.

PPA then required that distributions made in years beginning after December 31, 2005, use an interest rate assumption

for adjusting a lump sum payment to comply with the benefit limitation rules, which is not less than the greater of:

- 5.5%;
- The rate that produces a benefit of not more than 105% of the benefit calculated using the minimum value lump sum interest rate; or
- The interest rate specified in the plan.

PPA also extended the PFEA amendment deadline to the last day of the 2008 plan year.

WRERA has now further extended the amendment deadline to the last day of the 2009 plan year.

Mortality tables for lump sum payments

PPA amended the [interest rates and mortality tables](#) used in calculating the minimum value of certain optional forms of benefit, such as lump sum payments. These are referred to as the “applicable interest rate” and the “applicable mortality table.”

WRERA clarifies that the applicable mortality table that must be used to calculate the minimum value must also be used to adjust benefits to comply with the maximum annual benefit limits. This clarification is effective for plan years beginning after December 31, 2008. However, a plan may use the new mortality table for years or portion of years beginning after December 31, 2007, and before January 1, 2009.

Hybrid plan rules

PPA clarified the legal status of cash balance plans and other hybrid plan designs created after June 29, 2005, under ERISA, the Code and the Age Discrimination in Employment Act (ADEA), if they satisfy certain requirements. In 2008, the IRS issued [proposed regulations](#) on hybrid plan designs to reflect the changes required by PPA. The proposed rules incorporated the transitional guidance provided under Notice 2007-6 and offered guidance on a variety of issues regarding vesting, age discrimination, conversions, market rate of return and plan amendments.

WRERA provides additional clarifying guidance that:

- A failure to comply with the preservation of capital rule (i.e., a participant’s account balance cannot be less than the contribution credits) violates ADEA, ERISA and the Code;
- The new vesting rules apply to participants who have an hour of service after December 31, 2007;
- The interest crediting rules for hybrid plans in existence on June 29, 2005, apply to plan years beginning after December 31, 2007, unless the plan sponsor elects to apply the rules earlier; and
- The vesting and interest crediting rules for hybrid plans that apply to collectively bargained plans do not apply to plan years beginning before the earlier of:
 - The later of the termination of the collective bargaining agreement or January 1, 2008; or
 - January 1, 2010.

DB(k) plans

Effective for plan years beginning in 2010, PPA allows certain employers to establish “eligible combined plans,” more commonly known as “DB(k) plans.” This plan design will only be available to employers with fewer than 500 employees when the plan is established and will provide both a defined benefit portion and a 401(k) automatic enrollment portion. A DB(k) plan must be funded through a single trust with a single plan document and will file only one Form 5500. However, the rules of ERISA must be applied to the defined benefit component and the 401(k) component as if each component were a free-standing plan.

Although the IRS has not provided any regulatory guidance with respect to DB(k) plans, WRERA clarifies that in the case of a termination of a DB(k) plan, the 401(k) component and the defined benefit component must be terminated separately. As a result, the defined benefit component will need to comply with Pension Benefit Guaranty Corporation (PBGC) plan termination requirements.

Retiree health care

PPA permitted a plan with assets exceeding 120% of the plan’s current liability (or funding target) to transfer two but not more than ten years of estimated retiree medical costs to a health care account under the plan. For all years for which a transfer has been made, the employer must make contributions sufficient to maintain a plan’s 120% funding level (or transfer assets back from the health account to the pension plan.) This provision applied to transfers made after August

17, 2006.

The new law provides that asset transfers from health accounts to maintain the plan's funded status are not subject to the excise tax on reversions. This change applies retroactively to transfers made after August 17, 2006.

Provisions relating to the economic crisis

WRERA also includes provisions intended to provide funding relief to multiemployer plans in response to the current economic crisis.

Temporary delay of endangered or critical status designation

PPA imposed additional funding and notice requirements on multiemployer plans that are in [endangered, seriously endangered or critical status](#). Each year, a plan's enrolled actuary must certify to 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 a 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 preceding 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. Plan sponsors should consult with the plan's enrolled actuary regarding whether to take advantage of this temporary delay.

If a plan elects to retain its prior year status, the plan is not required to update its FIP or rehabilitation plan until the following plan year. If a plan makes an election to retain a prior year endangered status, but the plan's actuary certifies the plan to be in critical status, the plan is treated as being in critical status for purposes of the special rules that relieve contributing employers from liability for minimum required contributions and the excise tax that applies in the case of such failure to make such contributions.

Plan sponsors must file any election with the IRS no later than 30 days after the date of the election. An election may only be revoked with the consent of the IRS. WRERA authorizes the IRS to prescribe the timing rules and other procedures applicable to the election

Plan sponsors must also provide a special notice regarding the election to retain the plan's prior year funding status to:

- Participants;
- Beneficiaries;
- Bargaining parties;
- PBGC; and
- DOL.

If the election is made before the annual actuarial certification is made, the notice must be provided no later than 30 days after the certification. However, if the election is made after the annual actuarial certification is filed, the notice must be provided no later than 30 days after the date of the election.

Temporary extension of funding improvement 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 funding improvement plan is extended to 15 years.

Under the new law, 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.

Next steps

Prudential Retirement will continue to monitor the IRS, PBGC and DOL's published guidance regarding these new rules. We will keep you informed as additional guidance is made available that clarifies the provisions discussed in this *Pension Analyst*.

If you have questions about the funding provisions discussed in this *Pension Analyst*, you should contact the plan's enrolled actuary. If you have questions about how the distribution rules affect your plan and the need for amendments, you should contact your document provider or your Prudential Retirement representative.

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