



CLIENT ACTION Bulletin

Employee Benefits

Pension Funding Relief Signed into Law

SUMMARY

Defined benefit plan funding relief for single employer and multiemployer pension plans is included in the “Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010” (P.L.111-192) that the President signed on June 25. The new law does not include an extension of the eligibility period for COBRA healthcare premium assistance or savings plan fee disclosure provisions that had been considered in earlier “tax extenders” legislation.

DISCUSSION

Single Employer Pension Funding Relief

Under the law’s provisions for single employer pension plans, relief is available for no more than two plan years between 2008 and 2011. The two plan years that are chosen do not have to be consecutive. A sponsor of an underfunded single employer defined benefit plan may elect to extend the amortization period of the funding shortfall to nine or 15 years from the current seven years.

- If electing the nine-year option, the plan sponsor will be required to make “interest-only” payments on the funding shortfall in the first two years, followed by seven years of level annual installments.
- If opting for the 15-year amortization period, plan sponsors must amortize the funding shortfall over 15 years in level annual installments.

Plan sponsors electing relief must increase their plan contributions to match “excessive employee or shareholder payments.” Excessive employee or shareholder payments is defined as compensation of over \$1 million paid to any employee in a plan sponsor’s controlled group of companies during the plan year. This provision applies to compensation to employees in a controlled group’s subsidiary even if the subsidiary does not sponsor a single employer defined benefit pension plan.

The definition takes into account nearly all taxable compensation, nonqualified deferred compensation, extraordinary dividends, and stock redemptions. There are also complex rules that take into account the plan sponsor’s adjusted net income but without regard to interest, taxes, depreciation or amortization, as well as the payment of dividends for the five prior fiscal years.

If the plan sponsor elects the nine-year amortization option above, the increase in the contributions must be maintained for three years; for an election of a 15-year amortization period, the increase in the contributions must be maintained for five years.

The new law also extends for one year the relief available under the 2008 “Worker, Retiree and Employer Recovery Act” (WRERA). In applying the WRERA benefit accrual restriction rules for plan years beginning on or after Oct. 1, 2008, and before Oct. 1, 2010, a plan may use its funded percentage (“AFTAP”) for the plan year beginning after Oct. 1, 2007, and before Oct. 1, 2008.

In addition, the law:

- requires plan sponsors to give notice about the relief election to participants and beneficiaries, as well as to inform the Pension Benefit Guaranty Corporation (PBGC);
- permits a plan maintained by a charity under section 501(c)(3) to offset its minimum required contributions by using credit balances for 2009 to 2011, if the plan was at least 80% funded prior to the financial crisis;
- allows benefits to be paid in the form of a Social Security-leveling payment for 2009 and 2010, which otherwise would be restricted if the plan’s funded status is below 80%; and

- includes special rules providing funding relief for single-employer plans for which compliance with the 2006 Pension Protection Act's funding rules were delayed (e.g., plans of government contractors, multiple employer plans of certain cooperatives), newly adding "eligible charity plans" for the special rules. An eligible charity plan is a plan maintained by more than one employer (multiple employer plan) and 100% of the employers are described in tax code section 501(c)(3).

Multiemployer Pension Funding Relief

For multiemployer pension plans, the new law provides relief to plans that can satisfy a solvency test requiring that the plan be projected to have sufficient assets to pay benefits and anticipated expenses over the amortization period, as extended by the funding relief provisions. The law provides the following:

- A plan may elect a 30-year amortization period (increased from the current 15 years) for the net investment losses incurred in either or both of the first two plan years ending after Aug. 31, 2008.
- A plan may elect a smoothing period of up to 10 years (increased from the current five years) of the net investment losses incurred in either or both of the first two plan years ending after Aug. 31, 2008.
- A plan may elect a wider asset corridor for either or both of the first two plan years beginning after Aug. 31, 2008. The actuarial value of assets may be no less than 80% and no more than 130% (increased from the 80% - 120% corridor) of the fair market asset value.
- Benefit increases may not go into effect during either of the two plan years immediately following a plan year in which the funding relief applies unless the plan actuary certifies that the increases are fully paid for by additional contributions and the plan is projected to attain a funded percentage and a credit balance for these two years that is "reasonably expected to be at least as high" as if benefits were not increased.
- Plan participants and the PBGC must be notified of the plan adopting this relief.

ACTION

Sponsors or trustees of pension plans that have experienced significant asset losses due to the financial crisis should discuss with their actuaries and other professional advisors the funding relief available under the new law. With additional time granted to amortize the losses, plan sponsors and trustees will have to determine whether they qualify for relief and whether satisfying the eligibility conditions is appropriate for their individual plan. If relief is elected, plan sponsors and trustees will have 30 days to notify participants, beneficiaries, and the PBGC.

For additional information about or assistance with the new law's pension funding relief provisions, please contact your Milliman consultant.