

Multiemployer Review

Update on issues affecting multiemployer plans

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IRS issues guidance on temporary relief measures in American Rescue Plan Act

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On October 12, 2021, the IRS published Notice 2021-57 regarding the temporary relief measures for multiemployer defined benefit plans in the American Rescue Plan Act of 2021 (ARP). The Notice provides guidance on when and how relief elections are made, any notices that are required, and restrictions on benefit improvements that may apply. It does not discuss the special financial assistance (SFA) program, which was separately addressed in IRS Notice 2021-38 and the Pension Benefit Guaranty Corporation (PBGC) interim final rule, except to note how the temporary relief interacts with the SFA program.

Temporary relief measures

The following temporary relief measures in ARP are intended to help plans that were negatively impacted by the COVID-19 pandemic. They are similar to the types of relief provided under the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA) following the 2008 global financial crisis.

1. “Freeze” of PPA zone status

Trustees may elect to freeze their plan’s Pension Protection Act (PPA) zone status for the first and/or second plan year beginning on or after March 1, 2020. By freezing the zone status, plans operate based on the prior year’s zone status, and could avoid or delay a downgrade in zone status.

For example, trustees of a plan that was in the Green Zone in the 2020 plan year but certified in critical status in the 2021 plan year could elect to freeze their Green Zone status for the 2021 plan year and would not be required to adopt a rehabilitation plan. The option to freeze the plan’s Green Zone status would also be available for the 2022 plan year if the plan is certified to be in non-Green Zone status in 2022.

Plans already in endangered or critical status that elect to freeze their zone status will not be required to update their funding improvement or rehabilitation plans for the years in which the zone status is frozen. However, the actuary of a plan that is currently in its funding improvement or rehabilitation period must certify whether the plan is making scheduled progress under its funding improvement or rehabilitation plan regardless of the freeze election. Finally, plans that are certified in critical status without regard to the freeze election are exempt from excise taxes associated with any failure to meet minimum funding standards for the applicable freeze years.

2. Five-year extension of funding improvement or rehabilitation period

Trustees of plans certified in endangered or critical status for the 2020 or 2021 plan year may elect to extend their funding improvement or rehabilitation periods by five years to provide additional time to meet the funding goals set in their funding improvement or rehabilitation plans. This relief is available even if Trustees previously elected the three-year extension provided by WRERA in 2008. In order to be eligible for this relief, a plan must be in endangered or critical status in the 2020 or 2021 plan year (taking into account any freeze election). While the relief is available for either the 2020 or 2021 plan years, extending the improvement period five years may only be elected once.

Observations. Trustees should weigh the election to freeze the zone status with the election to extend the improvement period five years. For example, if choosing to elect to freeze a plan's zone status means the plan is considered to be in the Green Zone for the 2020 and 2021 plan years, the trustees will not be eligible to elect to extend the improvement period five years if their plan becomes non-Green Zone in the 2022 plan year or later.

The excise tax exemption for plans in critical status applies for the statutory 10-year rehabilitation period. Plans using reasonable measures to emerge from critical status after the 10-year period or to forestall insolvency may not be protected from excise taxes after the first 10 years. The IRS has not addressed this concern. Therefore, trustees may want to consider electing the five-year extension as it may protect against excise taxes for an additional five years. Plans that elected the three-year extension provided by WRERA may have a total of eight years of added protection.

3. Longer amortization of experience losses due to COVID-19

Trustees of eligible plans may elect to amortize COVID-19 experience losses sustained during either or both of the first two plan years ending after February 29, 2020, over 29 years (current law amortizes such losses over 15 years). In addition to any investment losses, losses due to reductions in contributions and/or employment, and deviations from assumed retirement rates, can be recognized over the extended period. The Notice states that the IRS will rely on the plan sponsor's calculation of COVID-19 experience losses unless the calculations are clearly erroneous.

4. Special asset valuation rules: Extended asset smoothing period and widened asset corridor

Trustees of eligible plans may elect to smooth any asset losses incurred during either or both of the first two plan years ending after February 29, 2020, over a period of up to 10 years in determining the actuarial value of assets. In addition, trustees may elect to widen the asset corridor for determining the actuarial value of assets from 80% to 120% to 80% to 130% of the market value of assets. By law, the actuarial value of assets may not fall outside this asset corridor.

Plans are eligible for the longer amortization or special asset valuation rules if they do not receive SFA and pass a solvency test. The solvency test is met only if the plan is projected to remain solvent throughout the longer amortization period (generally 30 years).

Interaction with special financial assistance program

The Notice clarifies the following with respect to the interaction between the temporary relief measures and the SFA program:

- Eligibility for SFA is based on a plan's zone status before any freeze election.
- The longer amortization and special asset valuation rules are not available to plans that receive SFA.

Observation. If a plan is eligible for the SFA and the longer amortization and special asset valuation rules, then trustees may face a difficult decision between choosing one over the other. Additionally, the guidance is unclear as to whether a plan can elect the aforementioned relief measures now and revoke the elections later if and when they receive SFA.

When to elect relief

The deadline to elect relief is the later of:

- Last day of the plan year for which the relief is elected
- December 31, 2021

A notable exception is if the freeze election changes a plan's zone status. Such election must be made by the later of 30 days after the plan actuary certifies the zone status or December 31, 2021.

How to elect relief

Freeze of zone status or five-year extension of funding improvement or rehabilitation period

Plans that make either of these elections must notify the IRS within 30 days of making the election(s). If a freeze election is made before the zone certification for that plan year is filed, then the election must be submitted with the zone certification. If the election is made after the zone certification, then the election must be submitted to the IRS within 30 days of the due date for making the election.

These elections may only be revoked with consent of the Secretary of the Treasury.

Longer amortization or special asset valuation rules

Plans that make either of these elections must send a copy of the required participant notice to the PBGC by the later of:

- 30 days after the deadline for trustees to elect the relief
- January 31, 2022

Required notices

Plans that avoid entering endangered or critical status (i.e., remain in the Green Zone) due to a freeze election must notify plan participants and beneficiaries, the bargaining parties, the PBGC, and the Department of Labor within 30 days of the election. Plans certified in critical status but as a result of the freeze election are considered in endangered status must send the notice of endangered status for that year.

Plans that elect the longer amortization or special asset valuation rules must notify plan participants and beneficiaries within 30 days of the election. A copy of this notice must be sent to the PBGC.

Restrictions on benefit improvements

Plans that elect the longer amortization or special asset valuation rules will be subject to restrictions on benefit improvements. The restriction period begins March 11, 2021, and ends two plan years immediately following the plan year in which the longer amortization bases are established or special asset valuation rules are implemented.

For example, if only the special asset valuation rule applies beginning with the 2021 plan year, benefit restrictions are in place through the 2023 plan year. If both the longer amortization and special asset valuation rules are used and amortization bases related to COVID-19 losses are established through the

2026 plan year, then benefit restrictions would be in place through the 2028 plan year. Trustees also have the option to stop establishing new amortization bases to shorten the benefit restriction period.

Benefit increases that go into effect on or after March 11, 2021, are restricted unless the plan's actuary certifies that the benefit improvement is paid for with additional contributions not allocated to the plan as of the end of the prior plan year, and the plan's projected funded percentage and credit balance for the two years are "reasonably expected to be at least as high" as if benefits were not increased. Benefit improvements required by law are not subject to this restriction.

For more information

For more information on how these temporary relief measures impact your multiemployer pension plan, please contact your Milliman consultant.



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