



Time is Near for Additional Reporting for Multiemployer Pension Plans Under PPA

The new reporting requirements for multiemployer pension plans added by the Pension Protection Act of 2006 (PPA) are effective for 2008 plan years. Thus, the additional information required to be reported on the Form 5500 must be provided by July 31, 2009 for a calendar year plan. Additional disclosures are also required to be provided to employers and union representatives. Affected pension funds need to assess whether they have the needed information and can meet the impending deadline, or need to apply for an extension for filing Form 5500.

Introduction

The Pension Protection Act of 2006 (PPA) added sections 103(f) and 104(d) to ERISA to require sponsors of multiemployer pension plans to furnish extensive additional information covering plan operations in their Form 5500 filings, and to provide a summary of certain plan information to employers and union representatives. These new provisions are effective for plan years beginning after December 31, 2007 and the expanded Forms 5500 for 2008 plan years could be due as early as July 31, 2009. Pension funds are required to provide the summary plan information to their contributing employers and union representatives within 30 days after the due date of their Form 5500. If a fund applies for a 2½-month extension to file its Form 5500, the extension will presumably also apply to the summary plan information deadline. Administrators of multiemployer plans will be required to gather and organize a large amount of information that might not be readily available.

Additional Information in Form 5500

ERISA Section 103(f) requires additional information to be reported with the Form 5500 filing. The instructions to the 2008 Form 5500 specify that the information must be provided as attachments to Schedule R. Beginning with the 2009 plan year, the Schedule R is to be revised so that most of the information can be entered directly on the form.

The additional information required to be reported for the 2008 plan year includes –

- the number of employers obligated to contribute to the plan for the 2008 plan year
- for each employer that contributed more than five percent of the plan's total contributions for the 2008 plan year (listed in descending order, based upon contribution amounts) –
 - the name and EIN of the contributing employer

- the dollar amount contributed by the employer
 - the expiration date of each collective-bargaining agreement under which the employer is obligated to contribute to the fund
 - every contribution rate at which the employer contributes and a description of each contribution base unit for each rate.
- the number of participants on whose behalf no contributions were made by any employer for the 2008, 2007 and 2006 plan years, because their former employers had withdrawn from the plan as of the beginning of each of the respective years. Terminated-vested and retired participants whose employers had not withdrawn from the plan are not to be included

BUCK COMMENT. *This information could prove to be especially difficult to obtain.*

- the ratio of the number of participants for whom no employer was required to make a contribution for the 2008 plan year to the number of such employees for the 2007 plan year. In calculating this ratio, all participants whose employers have withdrawn from the plan and all terminated-vested and retired participants from employers that continue to contribute to the plan must be taken into account, unless the collective-bargaining agreement specifically requires that an employer contribute on behalf of such inactive participants

BUCK COMMENT. *This information differs from that noted immediately above and could also be difficult to obtain.*

- the number of employers that withdrew during the 2007 plan year and the aggregate amount of withdrawal liability assessed against these withdrawn employers. Estimates may be used if final assessments are not yet available
- if the plan received a transfer of assets and liabilities (or was the surviving plan of a merger) during the 2008 plan year, the names and EINs of the transferor plans, plus the actuarial values of assets and liabilities of the transferor plans and the filing plan, based upon the most recent data available before the beginning of the 2008 plan year
- for a fund certified as being in an endangered or critical status, a summary of the funding-improvement plan or the rehabilitation plan in effect at the end of the 2008 plan year, including –
 - a description of the various contribution and benefit schedules provided to the bargaining parties and any other actions taken, such as use of the shortfall funding method or extensions of the amortization period
 - a schedule of the expected progress for the funding-improvement or rehabilitation plan, including any language under PPA's red-zone exhaustion clause

- a description of any updates made to the funding-improvement or rehabilitation plan
- if the plan's liabilities as of the end of the 2008 plan year consist of liabilities that were held by two or more plans as of the end of the 2007 plan year (e.g., liabilities that the plan assumed in connection with a merger or transfer during the year), the names and EINs of all plans that held a portion of the liabilities as of the end of the 2007 plan year (including the filing plan) and the funded percentage of each plan as of the end of the 2007 plan year
- for plans with more than 1,000 participants as of the beginning of the 2008 plan year, the percentage of assets (including assets held in master trusts) invested in each of the following categories as of that date: stocks, investment-grade debt, high-yield debt, real estate, and other.

Information for Disclosure to Contributing Employers and Employee Organizations

The information required under ERISA Section 104(d) for the disclosure to contributing employers and employee organizations is similar, but not identical to the information required to be reported on Schedule R of Form 5500. PPA requires the Department of Labor to issue a model form for providing the required information, but this model has not yet been issued.

BUCK COMMENT. *Pending further guidance, it would appear that plan administrators should furnish this information via the same methods and media they have been using for other required disclosures. Given the recurring nature of this disclosure, and absent a model notice from regulatory authorities, plan sponsors may want to develop a model format this year that can be used for future years.*

The required information for the 2008 plan year includes –

- a description of the contribution schedules and benefit formulas under the plan, and any modification to the schedules and formulas made during the 2008 plan year
- the number of employers obligated to contribute to the plan for the 2008 plan year (same as for Form 5500)
- a list of the employers that contributed more than five percent of the total contributions to the plan during the 2008 plan year (same as for Form 5500, but without any information on contribution rates or amounts)
- the number of participants under the plan for whom no contributions were made by an employer for the 2008, 2007 and 2006 plan years. (same as for Form 5500)
- whether the plan was in critical or endangered status during the 2008 plan year and, if so, a list of actions taken by the plan to improve its benefit security and a description of how to obtain a copy of the plan's

funding-improvement or rehabilitation plan, along with actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement

- the number of employers that withdrew from the plan during the 2007 plan year and the corresponding aggregate amount of withdrawal liability assessed (or estimated to be assessed) against these withdrawn employers (same as for Form 5500)
- if the plan received a transfer of assets and liabilities (or was the surviving plan of a merger) during the 2008 plan year, the names and EINs of the transferor plans, plus the actuarial values of assets and liabilities of the transferor plans and the filing plan, based upon the most recent data available before the beginning of the 2008 plan year (same as for Form 5500)
- a description of whether the plan sought or received an amortization extension or whether the plan used the shortfall funding method for the plan year
- notification of the right to request a copy of the annual report, the summary plan description, and any summary of material modifications of the plan. Recipients are not entitled to receive more than one copy of these documents during any 12-month period, and the plan administrator may charge a reasonable amount to cover costs of copying, mailing, and furnishing these materials.

Conclusion

One of the objectives of PPA was to increase transparency of employee benefit plans, especially multiemployer pension plans. The mandate for including additional information in the Form 5500 filing and for additional disclosures to stakeholders is consistent with that objective. Note that these additional requirements do not supersede any other provisions requiring disclosure to contributing employers.

Compliance with these new requirements for the 2008 plan year will present special challenges because of the lack of detailed guidance and the need to collect information that was not previously required to be reported.

Forms 5500 could be due as early as July 31, 2009, with the additional disclosures required as soon as the end of August 2009. Plan administrators that have not already applied for extensions of their filing deadlines should consider whether to do so.

Buck's consultants will be pleased to discuss the effects of ERISA Sections 103(f) and 104(d) on your multiemployer plan disclosures and assist with compliance.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.