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IRS Sets Forth Procedures for Multiemployer Plan Amortization Extensions

The IRS has issued Rev. Proc. 2010-52, which updates the procedures set forth in Rev. Proc. 2008-67 for sponsors of multiemployer defined benefit pension plans to obtain “automatic” or discretionary “alternative” extensions of the amortization period for unfunded liabilities. The new procedures, which are effective for ruling requests submitted on or after January 1, 2011, follow the prior procedures but make some helpful changes, especially extra time to file the application and the actuary’s ability to consider pending extension requests when doing “zone” certifications.

Background

The Pension Protection Act of 2006 (PPA 2006) revised certain of the funding rules for multiemployer defined benefit pension plans. One change allows a multiemployer plan sponsor (i.e., the plan’s board of trustees) to apply to the Internal Revenue Service (IRS) to receive “automatic” and “alternative” extensions of the amortization periods for unfunded liabilities. The IRS originally set forth procedures for these extension ruling requests in [Rev. Proc. 2008-67](#). [Rev. Proc. 2010-52](#) updates these procedures.

Rev. Proc. 2010-52

Rev. Proc. 2010-52 follows Rev. Proc. 2008-67 closely. Principal changes include –

- Modifying the list of affected parties who must receive notification of the application,
- Extending the period for submission of the application,
- Modifying the treatment of automatic extension applications for purposes of certifying whether a plan is in an endangered status or in critical status (yellow, orange, or red zone), and
- Providing that these extensions are not available with respect to the special 30-year amortization rule for net investment losses incurred during either or both of the first two plan years ending after August 31, 2008, as added by the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010) and explained by [Notice 2010-83](#) (see our [July 1, 2010](#) and [December 21, 2010](#) For Your Information publications).

Applications Generally

A plan sponsor may apply for both types of extensions (automatic and alternative) in a single application or in sequential applications. However, the combined requested amortization extension period may not exceed 10 years. If the application includes a request for both extensions, the IRS will issue a single ruling letter but could approve the automatic extension without approving the alternative extension. If the original combined request is for fewer than 10 years, a plan sponsor may submit a subsequent application asking for a further alternative extension of up to 10 years in total. If the requests are sequential, even if the request for the original extension was for less than five years, the IRS will treat a subsequent request as a request for an alternative extension.

Notice

Within 14 days prior to its submission, the plan sponsor must provide notice of the application to each employee organization representing employees covered by the plan; each participant, beneficiary, and alternate payee; and the Pension Benefit Guaranty Corporation (PBGC). An authorized trustee must sign the original of the notice.

BUCK COMMENT. *The new procedure adds the PBGC and eliminates contributing employers as parties who must receive the notice.*

Appendix A of Rev. Proc. 2010-52 includes a model notice, which the sponsor's notice must substantially follow. The IRS has revised the model notice to include a plain language explanation section and, for those choosing to comment, a "Comment and IRS Acknowledgment Sheet." The sponsor may send the notice to the last known address or deliver it electronically in accordance with the IRS's rules. Merely posting this notice in the workplace is not sufficient.

Automatic Extensions

Even though a sponsor is entitled to an "automatic" extension of an amortization period for up to five years, to receive the extension, the sponsor must submit an application meeting detailed standards and pay a \$1,000 user fee. Once the IRS has determined that the application meets the requirements of Rev. Proc. 2010-52, the IRS will issue a letter approving the requested automatic extension.

Pursuant to a "sunset" provision in PRA 2010, automatic extensions are not available for applications submitted after December 31, 2014. In addition, pursuant to Rev. Proc. 2010-52, the IRS will not issue an automatic extension with respect to the special amortization periods for net investment losses added by PRA 2010.

The application must include a list of the amortization periods for which the sponsor is applying for an extension, and the sponsor must indicate whether the IRS granted or rejected any prior applications for automatic or alternative extensions or for any pre-PPA 2006 extension applications. If the IRS approved a prior extension application, the sponsor must note, in the current application, the length of the extension. If the IRS rejected the

prior extension application, the sponsor must provide the reason for the denial and why that reason is no longer relevant.

The plan actuary must certify as part of the application that –

- Absent the extension, the plan would have an accumulated funding deficiency in the current plan year or any of the nine succeeding plan years,
- The plan sponsor has adopted a plan to improve the plan's funding,
- The actuary projects the plan to have sufficient assets to pay expected benefits and expenses over the extension period, and
- The sponsor has provided the notice to the required parties.

A plan's actuary has 90 days from the beginning of a plan year to certify to the plan's "zone" status under Code Section 432 for that plan year. If an application for an automatic extension is pending during that time, the actuary must treat the IRS as having approved the extension when making the zone calculations if the plan sponsor submitted the automatic extension application on or after January 1, 2011, and the actuary believes that the application satisfied IRS guidelines. With respect to applications submitted before 2011, the actuary may, but is not required to, treat the application as approved.

***BUCK COMMENT.** Under Rev. Proc. 2008-67, when making the zone certification, actuaries were not able to take into consideration any extension applications on which the IRS had not yet ruled.*

Alternative Extensions

PPA 2006 also allows a sponsor to apply for an alternative extension of up to ten years (which would incorporate any automatic extension period). The IRS had discretion whether to grant the alternative extension. The sponsor must provide evidence that the extension would carry out the purposes of the Employee Retirement Income Security Act (ERISA) and PPA 2006 and would provide participants and beneficiaries with adequate protection. In addition, the sponsor must demonstrate the consequences of a failure of the IRS to grant the extension. Circumstances justifying the grant include that the absence of the extension would seriously jeopardize the voluntary continuation of the plan, would result in a substantial cut in benefit levels or employee compensation, or would be adverse to the interests of participants in the aggregate.

The application must include a history of the plan's contributing employers and a history of the industry. It must also include any recent or contemplated merger or acquisition activity or curtailment of operations that could affect the plan.

Each principal contributing employer must directly provide the IRS with detailed financial information about itself and about all members of its controlled group. For this purpose, a principal contributing employer is any employer

represented on the plan's board of trustees and any employer that made in the prior year or the sponsor expects to make in the current year, five percent or more of the total contributions.

The sponsor must also provide the identity of any recent withdrawing employers and each such employer's withdrawal liability. Also required is a general description of the financial state of the industry. The sponsor has to include actuarial information about the fund as well as projections of the plan's financial and actuarial position for the requested extension period plus 10 years thereafter. The sponsor must include in the application a user fee of \$10,000. The IRS will make its decision on the alternative extension based on all the facts and circumstances.

Deadlines

A sponsor must submit its extension request by the 15th day of the third calendar month following the last day of the plan year for which the extension will first apply (e.g., March 15th of the following year for a calendar year plan). The IRS will consider applications that are late only upon good cause.

BUCK COMMENT. *Under Rev. Proc. 2008-67, the sponsor had to apply by the end of the plan year. Thus, Rev. Proc. 2010-52's change in the application deadline gives sponsors approximately 75 additional days to apply for an extension.*

PPA 2006 requires the IRS to act on an application for an alternative extension within 180 days after the submission is complete. The IRS advises that the sponsor not submit an application for an alternative extension (as opposed to an automatic extension) more than 90 days before the end of the plan year because the extensive information required is unlikely to remain fresh enough for the IRS to rule favorably.

Effective Date

Rev. Proc. 2010-52 applies to all applications submitted on or after January 1, 2011. Sponsors submitting applications after IRS released Rev. Proc. 2010-52 were allowed, but not required, to follow Rev. Proc. 2010-52.

Conclusion

Rev. Proc. 2010-52 makes some helpful changes for plan sponsors, especially the extra time to file and the ability to consider pending extension requests when doing zone certifications. The application process for the alternative extension continues to require considerable information, especially from the principal contributing employers.

Buck's consultants are available to advise you on the merits of, and help you prepare, any application for an extension of funding periods.

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.