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GRIST

SECURE Act helps struggling community newspaper DB plans

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In this article

Community newspapers sponsoring underfunded defined benefit (DB) pension plans can take advantage of special provisions in the Setting Every Community Up for Retirement Enhancement (SECURE) Act (Pub. L. No. 116-94) that lower minimum funding requirements. Sponsors can elect to apply the relaxed funding rules retroactively to plan years ending after Dec. 31, 2017.

Eligible plans

The new rules apply to eligible DB plans sponsored by a "community newspaper" — defined as a newspaper that primarily serves a metropolitan area with a population of 100,000 or more. A community newspaper is eligible for the special funding rules if, as of Dec. 31, 2017, the sponsor:

- Publishes (in print or electronically) one or more community newspapers in a single state
- Is not publicly traded or controlled by a publicly traded company
- Has been controlled directly or indirectly by any of the following:
  - One or more persons living primarily in the state where the newspaper is published
  - The same family for at least 30 years
  - A trust created or organized in the state where the newspaper is published whose sole trustees are the individuals described in either of the two preceding bullets

  - A 501(c)(3) organization organized or operated in the state where the newspaper is published, with a primary purpose to benefit communities in that state
  - Any combination of the above
- Does not control any newspaper in any other state

Details of the new rules

For a plan to qualify for relief, no participant could have received an accrued benefit increase because of service or compensation after Dec. 31, 2017. The plan apparently doesn't need to have been frozen. Plans with no accruals due to benefit restrictions under Internal Revenue Code Section 436 would also seem to qualify. Less favorable rules apply to any new accruals earned while an election to use the alternative rules is in place.

Plans opting to use the relief get favorable interest rates and a longer amortization period for funding shortfalls. Under the new rules, sponsors will:

- Eliminate any previously existing shortfall amortization bases and installments
- Calculate new shortfall amortization bases and installments using an 8% interest rate and a 30-year amortization period instead of the current segment rates and seven-year amortization period
- Disregard the at-risk rules that increase contributions for poorly funded plans
- Calculate the funding target and normal cost for any new benefit accruals using a US Treasury yield curve

Making the election. Plan sponsors may use the new rules for plan years ending after Dec. 31, 2017. Other plans within the sponsor's controlled group also may also use the relief, but aren't required to do so. However, once a sponsor makes an election to apply the rules, the election cannot be revoked without approval from the IRS. Although the IRS hasn't yet issued any guidance on making an election, a written notification from the sponsor to the plan's enrolled actuary presumably will suffice. Until IRS guidance is available, sponsors should seek advice from legal counsel.

Effect on PBGC filings

The statue specifies that the calculation of the plan's PBGC variable-rate premium disregards any election to rely on the relief. This means that plans calculating their variable-rate premiums using the alternative method will need an additional set of liability calculations reflecting the nonstabilized segment interest

rates. (Plans using the standard method will continue to determine their premium funding targets using the spot segment rates as usual.)

How an election to use this relief for a prior plan year might affect PBGC filings for that year is unclear. For example, a sponsor might be able to attribute contributions previously made for the 2019 plan year to the 2018 plan year and thus create credit balance to reduce contributions in a future year. But PBGC might not allow that sponsor to revise the 2019 PBGC filing to reflect the additional contribution in the asset value. PBGC guidance is needed.

Implementation guidance needed

Besides providing guidance on the timing and form of an election to apply the new rules, the IRS and PBGC will need to publish implementation guidance addressing a number of other items, including the implication of a retroactive election on:

- Minimum required contributions for affected plan years
- Section 436 benefit restrictions and adjusted funding target attainment percentage (AFTAP) certifications
- Filing of PBGC premium packages and the Form 5500 series
- Contributions already made for prior plan years under the old rules

However, the Coronavirus Aid, Relief and Economic Security (CARES) Act (Pub. L. No. 116-136) took some pressure off the IRS by delaying all minimum required contributions for the 2020 calendar year to Jan. 1, 2021. This gives the agency extra time to publish guidance.

Additional relief on the table

The Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (HR 6800), passed by the House on May 15, would expand the relief to additional community newspaper plans. The legislation also would provide additional funding relief for all single-employer DB plans. The bill in its current form is a nonstarter in the Senate, but the community newspaper provisions might survive in any compromise package that eventually emerges.

Related resources

Non-Mercer resources

- HR 6800, the HEROES Act (House, May 15, 2020)

- Section-by-section summary of the HEROES Act (May 13, 2020)
- Pub. L. No. 116-136, the CARES Act (Congress, May 27, 2020)
- Section-by-section summary of the CARES Act (May 27, 2020)
- Division O of Pub. L. No. 116-94, the SECURE Act (Congress, Dec. 20, 2019)

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- Pension funding relief features in House-passed aid bill (May 18, 2020)

Other Mercer resources

- Stay informed on the coronavirus (regularly updated)

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