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Alert: IRS publishes DB pension funding relief guidance

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Aug. 2, 2021

Eagerly awaited IRS guidance explains how defined benefit (DB) plan sponsors and actuaries should implement the pension funding relief in the American Rescue Plan Act (ARPA) of 2021 (Pub. L. No. 117-2). Notice 2021-48 dropped late on a summer Friday afternoon and covers the following (an upcoming GRIST will review the guidance in more detail):

- **Making elections.** Plan sponsors generally have until the last day of the plan year beginning in 2021 to make written elections regarding retroactive application of ARPA's 15-year shortfall amortization and interest rate stabilization provisions. Sponsors may also make deemed elections by filing Form 5500 Schedule SB reflecting the relief for an applicable plan year. However, sponsors taking this approach will have to make a written election if they want to reflect interest rate relief only for minimum funding purposes and not for purposes of IRC Section 436 benefit restrictions for the 2020 plan year. (The deemed option is apparently unavailable for 2021 plan year elections to defer the ARPA interest rates. Sponsors will have to make a written election by the last day of the 2021 plan year or, if later, Dec. 31, 2021.)

- **Credit balance management.** Plan sponsors may add excess contributions arising from reflecting ARPA for the 2019, 2020 or 2021 plan year to the plan's prefunding balance for the subsequent plan year by making a written election by Dec. 31, 2021 (or the normal deadline for the plan year, if later). Newly created prefunding balance can't be used to retroactively satisfy a funding requirement.

  – Sponsors have until Dec. 31, 2021, to revoke credit balance elections for the 2019 or 2020 plan years in excess of the revised minimum required contribution. The same deadline applies to revoke an election to waive credit balance for the 2020 or 2021 plan years. (Sponsors can't revoke elections if the revocation would result in benefit restrictions that wouldn't otherwise apply.)

  – Contributions previously designated for the 2019 or 2020 plan year on a Schedule SB filed before Oct. 15, 2021, may be redesignated for the following plan year if the contributions could have been originally designated for that later plan year (that is, were made during the appropriate time frame and would not have resulted in an unpaid minimum required contribution for the earlier year).

- **AFTAP certifications.** If a plan's adjusted funding target attainment percentage (AFTAP) changes for the 2020 or 2021 plan year due to ARPA elections, the change will be deemed immaterial if the sponsor obtains a revised AFTAP certification by Dec. 31, 2021. The sponsor may elect to apply the changes prospectively or retroactively. If applying the change retroactively, sponsors make any necessary corrections to benefits using the self-correction principles under the Employee Plans Compliance Resolution System. Sponsors who elected under the Coronavirus Aid, Relief and Economic Stimulus Act (CARES) Act (Pub. L. No. 116-136).to use the pre-2020 AFTAP for the 2020 plan year may revoke that election.

- **Reporting.** Plan sponsors may — but don't need to — file revised Schedules SB to reflect ARPA changes to the 2019 minimum required contribution and credit balance elections. Sponsors may instead simply reflect the change on the appropriate lines of the 2020 Schedule SB. But sponsors will need to file a revised Schedule SB if they want to redesignate a contribution made for 2019 as a 2020 contribution. Sponsors that owed an excise tax on a retroactively eliminated 2019 minimum required contribution may file an amended Form 5330 to get a refund. Plan sponsors that have already filed a 2020 Schedule SB may make an amended filing if the original filing was inconsistent with the guidance in the notice.

- **Miscellaneous.** The notice confirms the following:

  – Plans not electing to defer ARPA's interest rate stabilization provisions should use the third ARPA segment rate for determining the assumed rate of return when determining a plan's actuarial asset value for an applicable year.

  – The ARPA interest rates don't apply for determining 2019 plan year discounted contributions delayed as late as Jan. 4, 2021, under the CARES Act relief. This will avoid a potential unpaid 2019 plan year minimum contribution for plans that took advantage of the extended due date. But the notice doesn't provide any relief for delayed CARES Act contributions made for the 2020 plan year, meaning that some contributions might now be insufficient for plans that elect the interest rate relief.

  – Cash balance plans that credit interest using funding segment rates can make a "reasonable interpretation" of plan terms if the sponsor chooses to reflect ARPA interest rates for funding purposes for plan years before 2022. The notice says that a reasonable interpretation would be that the ARPA rates apply starting on March 11, 2021, the date of ARPA's enactment.

Related resources

Non-Mercer resources

- Notice 2021-48 (IRS, July 30, 2021)
- Pub. L. No. 117-2, the ARPA (Congress, March 11, 2021)
- Pub. L. No. 116-136, the CARES Act (Congress, March 27, 2020)

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- Pension funding relief, union plan reforms in aid bill near enactment (March 10, 2021)

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