PBGC gives 4010 filing relief for some — but not all — ARPA elections

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Some defined benefit (DB) plan sponsors concerned that elections under the American Rescue Plan Act (ARPA) (Pub. L. No. 117-2) might have created a retroactive ERISA § 4010 reporting requirement can breathe a little easier. In Technical Update (TU) 21-1, the Pension Benefit Guaranty Corporation (PBGC) waives the requirement for information years ending before Dec. 31, 2021, if the filing is triggered solely by the sponsor's creation of additional prefunding balance. The TU also gives sponsors with filing obligations flexibility when submitting required actuarial information. Some plan sponsors may still face retroactive filing requirements, however, and will need to contact the PBGC.

Underfunded plan reporting requirement

Employers with significantly underfunded DB plans generally must annually file controlled-group financial and plan actuarial information (4010 filings) within 105 days after the close of the "information year" — usually, the company's fiscal year. A filing obligation arises for plans that fail any one of three gateway tests: the 80%-funded test, the missed contribution test and the funding waiver test. Under the 80%-funded test, the plan's assets are reduced by its credit balance.

Filers must give the PBGC financial information for each nonexempt controlled-group member and actuarial information about each nonexempt US qualified pension plan. The filing must include a copy of the plan's actuarial valuation report for the plan year ending in the information year.

ARPA elections created uncertainty

Plan sponsors electing ARPA's funding relief can take advantage of their reduced minimum contribution requirements to retroactively create new prefunding balance for the 2020 and 2021 plan years or to reverse previous elections to use credit balance. This additional credit balance will give sponsors greater flexibility to meet contribution requirements in later years. But because the 80%-funded test uses the plan's net assets, retroactive increases in prefunding balance for the 2020 plan year could reduce a plan's funded status below 80%. That result would create a 4010 filing requirement months after the filing would have been due (April 15, 2021, for 2020 calendar-year information years) — even though the plan's actual asset holdings haven't changed.

In addition, under IRS Notice 2021-48, ARPA elections often aren't due until Dec. 31, 2021. This extended time frame for making a retroactive election creates more uncertainty: If a plan sponsor that had a 4010 filing obligation for 2019 or 2020 makes an ARPA election that retroactively changes the valuation results, is it necessary to submit a revised valuation report reflecting the ARPA elections?

Automatic waivers available for some elections

PBGC is waiving any 4010 filing requirements that arise solely due to ARPA elections under Section V.A of Notice 2021-48 to retroactively increase a plan's prefunding balance using newly excess contributions. The waiver applies only in this specific instance, however. Other ARPA elections could also lead to a filing requirement, but the TU provides no waivers for these. For instance, an election under Section V.B of the notice to revoke an election to use credit balance could also cause a plan to retroactively fail the 80%-funded test. An election under Section V.D to redesignate a contribution to a later plan year could have the same result. Sponsors in these situations cannot rely on the automatic waiver in the TU and should contact the PBGC for guidance.

> *Example*. A DB plan's minimum required contribution for the 2019 plan year was $10 million before ARPA. The sponsor paid $5 million in cash and satisfied the remaining $5 million through prefunding balance. The sponsor later elected to reflect ARPA's shortfall relief for 2019, which reduced the minimum required contribution by $3 million. Under Notice 2021-48, the sponsor could:
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> – Create prefunding balance at Jan. 1, 2020, using the excess cash contributions, which would qualify for an automatic waiver if the plan now failed the 80%-funded test
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> – Restore prefunding balance at Jan. 1, 2020, by revoking the excess use elections for 2019, which would not qualify for an automatic waiver if the plan now failed the 80%-funded test

Flexibility for submitting actuarial valuation reports

The TU makes it easy for sponsors to comply with the requirement to submit valuation reports with the 4010 filing, providing relief in two ways:

- Plan sponsors that have already submitted 4010 filings don't need to submit revised actuarial valuation reports reflecting retroactive ARPA elections for information years ending before Dec. 31, 2021.

- Plan sponsors taking advantage of the extended deadline to submit valuation reports (15 days after the Form 5500 due date, including extensions) can submit reports reflecting ARPA elections or not, depending on what report is available by that date.

Plan sponsors may not be entirely off the hook. With respect to the actuarial valuation reports, the PBGC reserves the right to request revised actuarial information reflecting ARPA elections, if the agency concludes the additional information would be helpful.

Related resources

Non-Mercer resources

- Technical Update 2021-1 (PBGC, Oct. 15, 2021)
- Notice 2021-48 (IRS, July 30, 2021)
- Pub. L. No. 117-2, the American Rescue Plan Act (Congress, March 21, 2021)

Mercer Law & Policy resources

- A user's guide to implementing ARPA's DB funding relief (Aug. 20, 2021)

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