Rescue plan modifies funding relief for community newspaper plans

By Brian J. Kearney and Margaret Berger
April 2, 2021

In this article
Eligible plans | Details of the relief | Making the election | Effect on PBGC premium filings | Additional IRS, PBGC guidance needed | Related resources

For community newspapers' defined benefit (DB) pension plans, the American Rescue Plan Act (ARPA) of 2021 (Pub. L. No. 117-2) modifies the minimum funding relief first enacted by the Setting Every Community Up for Retirement Enhancement (SECURE) Act (Pub. L. No. 116-94). ARPA revises the eligibility requirements for plans to qualify for the relief but doesn't change the relaxed funding calculations. Last August, IRS issued Notice 2020-60 on the SECURE Act's community newspaper relief. That guidance apparently still applies to the modified relief, with one possible exception — whether elections to use the relaxed funding rules apply to all plans in a community newspaper's controlled group.

Eligible plans

The relief is available to a "community newspaper plan" under which no participant's accrued benefit has increased after April 2, 2019. Under ARPA, a community newspaper plan is any DB plan maintained as of Dec. 31, 2018, by a sponsor that:

- Sponsors the plan for employees who worked for newspapers published at any time during the 11-year period ending on Dec. 20, 2019
- Is either of the following:
  - Not publicly traded or controlled by a publicly traded company
  - Controlled directly or indirectly during the entire 30-year period ending on Dec. 20, 2019, by members of the same family, and doesn't publish or distribute a daily print newspaper circulated in more than five states
- Is controlled directly or indirectly by any of the following:
  - One or more persons residing primarily in a state where the newspaper is published in print or distributed

- The same family for the entire 30-year period ending on Dec. 20, 2019
- One or more trusts whose trustees are the individuals described in either of the two preceding sub-bullets
- Any combination of the above sub-bullets

In addition, to qualify for the relief, a newspaper must:

- Be in general circulation
- Be published in print or electronically at least three times per week
- Have been regularly published in print at some point
- Have a bona fide list of paid subscribers

Changes to eligibility conditions. ARPA rewrote the SECURE Act's eligibility requirements for community newspaper plans to qualify for the relief. Despite the significant redrafting, most of the new requirements are substantively similar to the old. However, ARPA:

- Extends the deadline by which a DB plan's accruals must have ceased from Dec. 31, 2017, to April 2, 2019
- Extends the date by which sponsors had to meet the eligibility requirements from Dec. 31, 2017, to Dec. 31, 2018
- Eliminates the SECURE Act's requirement that a community newspaper must serve a metropolitan area with a population of 100,000 or more, replacing it with the circulation, print and subscriber requirements described above
- Limits family-controlled sponsors to those that don't publish or distribute newspapers in more than five states
- Adds a requirement that the newspaper for which plan participants work must have been published any time during the 11-year period ending Dec. 20, 2019
- Restricts other controlled-group plans' eligibility to elect relief

These changes presumably were intended to expand the relief available to more newspaper plans. But it's unclear whether some plans that elected the relief under the SECURE Act's eligibility requirements are now ineligible under ARPA — e.g., because the newspaper is published only weekly or doesn't have a bona fide list of paid subscribers.

Details of the relief

For a plan to qualify for the ARPA relief, accrued benefit increases because of a participant's service or compensation had to cease by April 2, 2019 (the SECURE Act required accruals to cease by 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 also seem to qualify.

Plans opting to use the relief get favorable interest rates and a longer amortization period for funding shortfalls. ARPA made no changes to these rules, under which 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

New accruals

A sponsor that elects the relief must calculate the funding target and normal cost for any new benefit accruals using a US Treasury yield curve. Notice 2020-60 specifies that new benefit accruals are valued using the spot rate yield curve for Treasury nominal coupon issues (TNC yield curve). The applicable yield curve depends on a plan's valuation date:

- **First day of the month:** the daily TNC yield curve for the last business day of the previous month
- **Last day of the month:** the daily TNC yield curve for the last business day of that month
- **Any other day:** The monthly average of the daily TNC yield curves for that month

Other plans in controlled group

In Notice 2020-60, IRS said if a community newspaper elected the relief for its plan, the election applies to all other DB plans in the same controlled group, regardless of whether the other plans are sponsored by newspaper publishers or continue to provide benefit accruals. This position was based on IRS's interpretation of an arguably ambiguous phrase in the SECURE Act that said the sponsor could elect the relief for its plan and any other plan in the controlled group.

ARPA's language clarifies the requirement, saying that an eligible newspaper plan sponsor can elect the relief for a plan under which no participant's benefit has increased since April 2, 2019. For this purpose, an "eligible newspaper plan sponsor" is defined as the sponsor of a community newspaper plan or any other plan sponsored as of April 2, 2019, by a controlled-group member that is also in the business of publishing newspapers. Contrary to the IRS guidance, ARPA appears to say the relief is elected on a plan-by-plan basis and makes clear the relief isn't available for plans sponsored by controlled group members that don't publish newspapers.

Making the election

Notice 2020-60 provides that sponsors must make a written election to the plan's enrolled actuary, plan administrator and all members of the sponsor's controlled group. The appendix to the notice includes a model election form, but sponsors drafting their own election must include:

- The first plan year for which the election applies
- A certification that the sponsor satisfies the ownership and control standards of Section 430(m)

- A list of the sponsor's controlled-group members, including each member's employer identification number (EIN) and whether the member sponsors a DB plan

Sponsors must make the election before filing Form 5500 Schedule SB for that plan year. The due date for that filing is generally the 15th day of the 10th month after plan year-end. For instance, a sponsor of a calendar-year plan has until Oct. 15, 2021, to make an election to use the relief starting with the 2020 plan year.

Once made, the election remains in effect until formally revoked by the plan sponsor. To revoke the election, the sponsor must request an IRS private letter ruling, using procedures laid out in Rev. Proc. 2021-4 (updated annually).

Plan sponsors may use the new rules for plan years ending after Dec. 31, 2017.

Effect on PBGC premium 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.)

Additional IRS, PBGC guidance needed

Although IRS issued relief guidance in Notice 2020-60, new guidance from IRS and PBGC is still needed on several issues.

Plans no longer eligible for relief under ARPA. As noted above, some plans that were eligible for the funding relief under the SECURE Act might not be eligible under ARPA's eligibility provisions — e.g., because the newspaper is published less than three times per week or doesn't have a paid subscriber list. These plans presumably must stop using the relief. But IRS will need to address whether those plans must unwind any elections to use the relief in past years, and if so, the process for doing so.

Eligibility of other plans in controlled group. Because the ARPA language conflicts with Notice 2020-60 on this issue, IRS needs to clarify whether it still holds the position that all controlled-group plans must use the relief if one plan elects to do so. If not, IRS will need to address how a sponsor might unwind an election made for a controlled-group plan that is no longer eligible for the relief.

Retroactive elections by newly eligible plans. As noted above, both the SECURE Act and ARPA allow eligible sponsors to elect the relief for plan years ending after Dec. 31, 2017. Notice 2020-60 said that sponsors electing to use the relief retroactively had to make their elections by Dec. 31, 2020. IRS guidance on retroactive elections is needed for plans that are newly eligible for the funding relief under ARPA's expanded eligibility rules.

Impact of retroactive election on past PBGC premium filings. How a retroactive 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. PBGC will need to issue guidance on whether that sponsor can revise its 2019 filing to reflect the additional contribution in the asset value.

Related resources

Non-Mercer resources

- Pub. L. No. 117-2, the American Rescue Plan Act of 2021 (Congress, March 11, 2021)
- Notice 2020-60 (IRS, Aug. 13, 2020)
- Pub. L. No. 116-94, the SECURE Act (Congress, Dec. 20, 2019)
- Treasury coupon issues (Treasury Department, updated monthly)

Mercer Law & Policy resources

- IRS gives guidance on SECURE Act community newspaper relief (Aug. 18, 2020)
- SECURE Act helps struggling community newspaper DB plans (May 26, 2020)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.