



MULTIEMPLOYER REVIEW

Update on Issues Affecting Taft-Hartley Plans

Year-End Compliance Issues for Multiemployer Retirement Plan Sponsors

Dawilla Madsen, CLU, ERPA

Peer reviewed by Barry Marks, EA, MAAA

By year-end 2011, sponsors of calendar-year multiemployer retirement plans must act on necessary and discretionary amendments and perform a range of administrative procedures to ensure compliance with statutory and regulatory requirements. This Multiemployer Review looks at key areas that sponsors of multiemployer defined benefit (DB) or defined contribution (DC) plans, including money purchase pension plans and annuity plans, should address by Dec. 31, 2011.

PPA and WRERA Amendments and Related Issues

Nearly all multiemployer DB and DC plans were affected by the 2006 Pension Protection Act (PPA) and the 2008 Worker, Retiree, and Employer Recovery Act (WRERA), both of which included required and discretionary plan amendments. Plan sponsors should consider:

- *PPA Amendments*—In November 2010, the IRS extended the deadline – to Dec. 31, 2011 – for adopting PPA-required plan amendments regarding investment diversification for DC plans with employer securities, and “certain cash balance” plan provisions. Last month, however, the IRS extended the amendment deadline for the new definition of “market rate of return” and new interest crediting options for cash balance plans to a date to be determined when final regulations are issued.
- *WRERA Amendments*—WRERA set aside for one year the need for DC plans to make required minimum distributions (RMDs) to individuals who attained age 70-1/2. DC plans that waived the RMD requirement for 2009 must be amended by Dec. 31, 2011.

Required amendments relating to prior plan years should be considered as part of any year-end plan reviews, taking into account whether they have been properly adopted and executed. Similarly, if discretionary, operational changes were made **during the current**

plan year, the amendments should be formally adopted by Dec. 31, 2011. However, 401(k) plan sponsors that allowed participants to convert tax-deferred amounts to Roth after-tax accounts within the plans during either 2010 or 2011 must amend the plan for the **in-plan Roth conversions** by Dec. 31, 2011.

If a plan sponsor discovers it has failed to adopt a plan amendment, it should consider correcting the mistake through the IRS’s Employee Plans Compliance Resolution System (EPCRS). In many cases, EPCRS’s standard filing fees are reduced for a failure to adopt either required or discretionary amendments. The monetary sanction can be substantial if the IRS discovers a late amendment or a failure to adopt an amendment during an audit or a review of a determination letter request.

Annual Notices and Benefit Statements

There are a variety of notices that plan sponsors may need to distribute to participants:

- For DC plans, provide by Dec. 1, if applicable: a 401(k) safe harbor notice; an automatic enrollment notice; and/or a qualified default investment alternative notice.
- For DC plans, distribute the Summary Annual Report (SAR) two months after the Form 5500 filing was due (e.g., Dec. 15, 2011, if an Oct. 15, 2011 extension applies).
- For DC plans that allow participant-directed investments, by Dec. 31 provide, if not included in a summary plan description (SPD), a statement: relieving the plan sponsor of liability for certain losses resulting from participants’ exercise of their rights; and notifying participants about the availability of any investment advice services.

- For DB calendar plan years first certified as endangered or critical by the March 31, 2011 Zone Certification, distribute by Dec. 26, 2011, a notice to participating unions and contributing employers that describes the revised benefit and/or contribution structures under the funding improvement or rehabilitation plan.

The requirements for participant benefit statements vary depending on the type of plan:

- For participant-directed DC plans, provide statements quarterly.
- For nonparticipant-directed DC plans, provide statements annually by the Form 5500 due date.
- For DB plans, provide statements every three years or provide an annual notice explaining how participants may obtain statements.

Other Operational Action Items

Multiemployer plan sponsors also should:

- make recurring age 70-1/2 RMDs to participants, for both DC and DB plans;
- process corrective distributions to correct a failed 2010 actual deferral percentage/actual contribution percentage (ADP/ACP) test to maintain a 401(k) plan's qualified status;
- post on the DB plan sponsor's intranet site (if one is available) the Part I and Part II of the 2010 Form 5500 and the Schedule MB by Jan. 13, 2012, if the Oct. 15, 2011 extension applies for Form 5500; and/or

- comply with the Financial Accounting Standards Board's expanded disclosure requirements for 2011 financial statements and notify participating employers of the new disclosure requirements, if the contributor to a multiemployer DB plan is a publicly traded company.

2009 and 2010 IRS Form 8955-SSA

Plan sponsors of DB and DC plans are required to provide information on separated participants with deferred vested benefits on a new Form 8955-SSA. The extended deadline for the 2009 and 2010 filing is Jan. 17, 2012. The extended deadline also applies to the distribution of the individual statements required to be distributed to terminated participants with deferred vested benefits.

Action

Although the year-end clock is rapidly ticking, there is still time to review and amend retirement plans. All multiemployer plan sponsors should check their plan document files and ensure that the PPA and other amendments for prior plan years are adopted and executed. Operational procedures and plan changes also should be assessed for compliance, as well as for properly drafted, adopted, and executed amendments. In addition, the need for participant notices should be assessed and, if necessary, distributed as soon as possible.

For additional information about year-end compliance reviews or plan amendments for calendar-year retirement plans, please contact your Milliman consultant.

Dawilla Madsen, CLU, ERPA, is a compliance consultant with the Woodland Park, New Jersey, office of Milliman. Contact her at dawilla.madsen@milliman.com.

Barry Marks, EA, MAAA, is a principal and consulting actuary with the New York office of Milliman. Contact him at barry.marks@milliman.com.

For additional information about these new regulations or for assistance with the requirements discussed in this Multiemployer Review, please contact your Milliman consultant.

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