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Towers Watson Explains New Pension Relief Law

By Editor Test *Wed, Jun 30, 2010*

A Client Alert details the implications of the "Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010."

On June 25, the President signed the “Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010” into law. Among other measures, the new law makes available relief for pension plan funding for years through 2011 and certain benefit restrictions for 2010.

“Those considering using the relief for 2009 will need to move quickly as any contribution adjustments must be made by September 15,” said the consulting firm of Towers Watson in a Client Advisory on the topic. The firm described the single-employer relief provisions of the law as follows:

Plan sponsors could elect to extend the shortfall amortization period from the 7 years required under the Pension Protection Act (PPA) to either 9 years (with interest-only payments for the first two years) or 15 years for shortfall amortization bases created during the years for which relief is elected.

This election could be made for any two plan years during the period 2008-2011, although most plans will not have the option of choosing relief for 2008.

Many sponsors will find it useful to elect relief for either 2009 or 2010, depending on their circumstances, and then again for 2011, when the expiration of certain PPA transition provisions will tend to create a large amortization base. If relief is elected for two years, the same option (i.e., 9 years or 15 years) must be used for both. Sponsors would have to notify plan participants and the PBGC of such elections.

The benefit restriction that prohibits future benefit accruals if a plan is funded below 60% would apply for plan years beginning on or after October 1, 2008 and before October 1, 2010 based on the greater of the funded status for the current plan year or the funded status for the plan year beginning on or after October 1, 2007 and before October 1, 2008. This will avoid the elimination of benefit accruals for 2010 for most plans and applies whether or not funding relief is elected.

The same provision would apply to the restriction on Social Security Level Income Options, meaning that such options will be permitted for most plans for 2010.

Plan sponsors that elect the extension of the amortization periods would be subject to a limitation called the cash flow rule. For a period of 3 years (for the 9-year amortization period) or 5 years (for the 15-year amortization period) the sponsor would be required to make additional “matching” contributions to the pension plan if certain payments are made.

These contributions equal compensation to any employee in excess of $1 million plus the excess of dividends and stock redemptions over the greater of EBITDA or the historical dividend amount.

The cash flow rule would not increase contributions to amounts greater than those that would have been required if no relief had been elected. Although its mechanics are unclear, the cashflow rule applies on a controlled group basis. It appears as if credit balances may be used to satisfy the obligation to make these matching contributions under the cash flow rule.

This brief description summarizes the cash flow rule; however there are many complexities involved in understanding, evaluating and administering it. For some plan sponsors it could result in substantial and unplanned contributions and thus should be evaluated carefully before funding relief is elected.

During the legislative process, several other provisions had been debated but ultimately were not included in the Act. Among the most prominent of these were:

A requirement to maintain a plan with ongoing benefit accruals in order to use the 15- year alternative amortization, Stricter nondiscrimination rules relative to cross testing,

Enhanced fee disclosures for 401(k) plans, Expanding requirements for reporting financial information to the PBGC, and Easing of credit balance rules to permit use if 80% funded in 2008.

In many situations, the funding relief provided will be substantial. However, the implications of the cash flow rule can also be significant and burdensome. Sponsors will want to evaluate their options and develop a strategy regarding the relief provisions.