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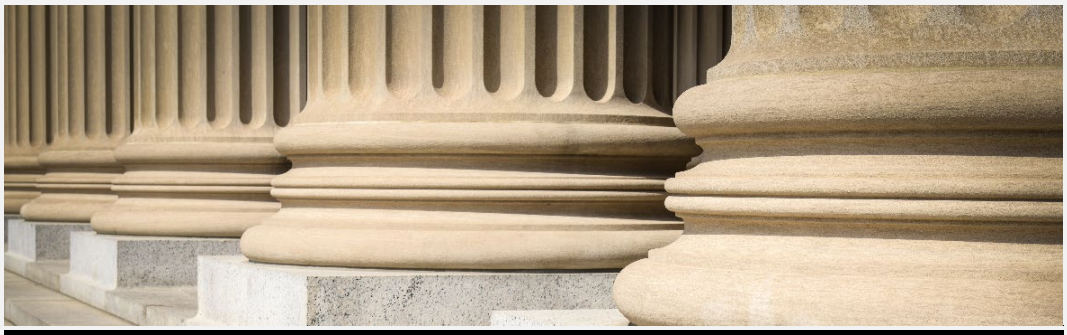

Rewards Policy Insider
2021-15

In this Issue:

IRS Provides Guidance on American Rescue Plan Funding Relief

As reported in Rewards Policy Insider 2021-4, Congress included single-employer pension plan funding relief in the $1.9 trillion American Rescue Plan (ARP) Act that it enacted earlier this year. The IRS has now issued Notice 2021-48 to provide much needed and timely guidance to plan sponsors on these provisions.

Extended Shortfall Amortization Period

For single-employer plans, the ARP more than doubles the funding shortfall amortization period from 7 years to 15 years. This change is automatically effective for plan years beginning after December 31, 2021, but plan sponsors can elect to have it apply as early as plan years beginning after December 31, 2018, 2019, or 2020.

Any shortfall amortization bases for plan years beginning before January 1, 2022 (or preceding the earlier plan year the plan sponsor elects) will be reset to zero, and a new funding shortfall subject to the new 15-year amortization period will be established.

Notice 2021-48 clarifies that a plan sponsor must provide a written election to both the plan's enrolled actuary and administrator in order for the 15-year amortization to apply to plan years beginning in 2019, 2020, or 2021. The election must be signed and dated by the plan sponsor and include certain specific information as outlined in the Notice. The deadline for making this election is December 31, 2021 or, if later, the last day of the plan year beginning in 2021.

However, the plan sponsor will be deemed to have made this election if it files a Form 5500 for the plan year beginning in 2019, 2020, or 2021, and the Schedule SB reflects the 15-year shortfall amortization period. This deemed election will apply beginning with the first plan year for which this 15-year amortization is used. Consider the following example from the Notice:

> … if an attachment to line 32 of the Schedule SB for the 2020 plan year reflects 14 years remaining in the amortization period for the shortfall amortization base for the 2019 plan year, the plan sponsor will be deemed to have elected to apply § 430(c)(8) beginning with the 2019 plan year. If instead an attachment to line 32 of the Schedule SB for the 2020 plan year reflects only one shortfall amortization base with 15 years remaining in the amortization period, the plan sponsor will be deemed to have elected to apply § 430(c)(8) beginning with the 2020 plan year.

The IRS did not release Notice 2021-48 until late on July 30, 2021 – just before the July 31 deadline for calendar year plans to file their Forms 5500 for the 2020 plan year. However, those plan sponsors that want to take advantage of this deemed election option could still do so on their 2021 Form 5500. The election deadline noted above does not apply to deemed elections.

Widening of Pension Funding Stabilization Corridor

The bill also extends the period for widening the pension funding stabilization corridor. Briefly, the three segment rates used to determine a plan's funding target and target normal cost may only fluctuate within a corridor based on the 25-year average for each rate.

This bill resets the corridor to 95% to 105% from 2020 through 2025, and it will incrementally widen each year until it reaches 70% to 130% for 2030 and beyond. Additionally, the bill provides that the 25-year average for any segment rate may not be less than 5%.

The changes to the stabilization corridor apply to plan years beginning after December 31, 2019. However, a plan sponsor can elect to have them not apply to any plan year beginning before January 1, 2022. This election is made in the same manner as the election related to the extended shortfall amortization period, subject to some special content requirements. Additionally, the same timing rules generally apply, i.e., December 31, 2021 or, if later, the last day of the plan year beginning in 2021.

Specifically, if a plan sponsor elects to have the changes not apply before 2022, they can make the election for all purposes the stabilization percentages apply, or just for purposes of calculating the adjusted funding target attainment percentage (AFTAP) under IRC § 436. This gives plan sponsors the option to take advantage of the new rules without adversely impacting any previously certified AFTAPs and related benefit restrictions.

As a result, the election must specify if it is being made for all purposes or just for purposes of determining the plan's AFTAP for the relevant year.

As with the 15-year amortization, there is a deemed election option. Specifically, if the Schedule SB for the Form 5500 for the plan year beginning in 2020 reflects the pre-ARP segment rates, then the plan sponsor is deemed to have elected to apply the pre-ARP segment rates both for purposes of the IRC § 430 minimum funding rules and the IRC § 436 AFTAP rules for that plan year.

The plan sponsor can revoke this deemed election, but only in certain circumstances. Specifically, if the original Schedule SB was filed on or before October 15, 2021, the plan sponsor can file an amended Form 5500 with a revised Schedule SB that reflects the use of the ARP segment rates. The amended Form 5500 and revised Schedule SB must be filed no later than December 31, 2021.

If the plan sponsor revokes the deemed election, it can also use the normal election procedures discussed above to elect to apply the pre-ARP segment rates only for purposes of IRC § 436.

Other Special Elections

In cases where plan sponsors are applying ARP for a plan year beginning in 2019, 2020, or 2021, the Notice provides a special option to elect to increase the plan's prefunding balance to reflect the increase in excess contributions for the plan year resulting from the ARP amendments. This special election must be made by December 31, 2021.

If a plan sponsor used a prefunding balance or funding standard carryover balance to offset the minimum required contribution for the 2019 or 2020 plan year, the Notice provides for a special option to revoke that election to the extent the minimum required contribution is reduced for that year as the result of applying the ARP amendments. The plan sponsor must give written notice of this revocation to the plan's enrolled actuary and administrator by December 31, 2021.

Similarly, the Notice provides an option to wholly or partially revoke an election to reduce a plan's prefunding or funding standard carryover balance as of the first day of a plan year beginning in 2020 or 2021 if either or both of the ARP amendments apply. The plan sponsor must give written notice of this

revocation to the plan's enrolled actuary and administrator by December 31, 2021.

Finally, the Notice permits certain contributions originally designated for a plan year beginning in 2019 or 2020 to be all or partially re-designated for the *immediately succeeding* plan year. This option is available only if the contribution could have been designated for that immediately succeeding plan year. Amended Forms 5500 and Schedule SB for the relevant plan years will be required for this and other elections permitted by the Notice.

AFTAP Changes

The Notice also addresses various issues relating to AFTAP changes resulting from the ARP amendments, and provides special rules for when otherwise material changes will be deemed immaterial. This is significant because a material change to a plan's AFTAP – meaning a change under which a plan's operations would have been different based on the subsequent AFTAP determination (e.g., a benefit restriction would not have applied) – is generally a plan qualification failure.

The Notice also confirms that any options it otherwise provides to plan sponsors are not allowed to the extent they would result in any IRC § 436 restrictions being imposed if those restrictions would not otherwise apply.

For example, assume a plan applies the ARP amendments to the 2019 plan year, which results in a reduced minimum required contribution for that year. Even though the Notice generally would permit the plan sponsor to add the resulting excess contribution to the plan's prefunding balance, the plan sponsor would not be permitted to do that if doing so would cause the plan's AFTAP to fall below 80%.

Reporting Requirements

Finally, the Notice provides guidance on when and how plan sponsors will need to modify Form 5500 and Schedule SB filings for changes affecting the 2019 and 2020 plan years.

The full text of Notice 2021-48 is available here.

IRS Issues More COBRA Premium Subsidy Guidance

The IRS on July 26, 2021 published Notice 2021-46 to answer some lingering questions about the COBRA premium subsidy, which generally applies from April 1, 2021 through September 30, 2021. The Notice supplements more comprehensive guidance that the IRS previously provided in Notice 2021-31.

As discussed in several Rewards Policy Insider issues this year, the American Rescue Plan (ARP) Act established a full COBRA premium subsidy for "assistance

eligible individuals" (AEIs) during coverage periods from April 1, 2021 through September 30, 2021. In order to offset this premium cost, employers (or in some cases the multiemployer plan or insurer) can take an advanceable, refundable tax credit equal to the COBRA premium otherwise payable by AEIs during this period.

Although Notice 2021-31 provided comprehensive guidance on issues relating to the ARP COBRA premium subsidy and COBRA premium assistance tax credit, a number of additional questions have emerged that the IRS decided to address in Notice 2021-46.

Who claims the credit?

In general, the "premium payee for continuation coverage" is eligible for the premium assistance credit. The premium payee is:

- The multiemployer plan (in the case of a multiemployer plan as defined in ERISA § 3(37));
- The common law employer maintaining the plan, in the case of a non-multiemployer plan subject to Federal COBRA, or any other non-multiemployer plan that is wholly or partially self-funded; or
- The insurer in all other cases (generally fully insured plans subject to State continuation coverage requirements)

The general rule is that the "common law employer maintaining the plan" is the current common law employer for an AEI whose COBRA qualifying event was a reduction in hours, or the former common law employer for an AEI whose COBRA qualifying event was involuntary termination.

But what if a single group health plan (that is not a multiemployer plan) covers employees of different common law employers who are all part of the same controlled group? Does the parent company (that maintains the group health plan) get to claim the premium tax credit, or does the credit go instead to the various subsidiaries? According to the notice, "each common law employer that is a member of the controlled group is the premium payee entitled to claim the COBRA premium assistance credit with respect to its employees or former employees."

The same rule applies to a multiple employer welfare arrangement (MEWA) – i.e., a group health plan that covers two or more unrelated employers. Unless an exception applies, "the premium payee entitled to claim the premium assistance credit is the common law employer."

There are some exceptions, including a notable one for State governments. Specifically, the situation is a State government agency ("State agency") that provides health coverage to employees of various other State and local government agencies in the same State and is subject to Federal COBRA. According to the notice, if AEIs would otherwise be required to remit COBRA premiums directly to the State agency, then the State agency gets to claim the premium assistance credit even if the State agency is not the common law employer.

Other exceptions that are discussed in more detail in the notice are for certain third-party payers – usually professional employer organizations (PEOs) – and for certain business reorganization situations.

What is "disqualifying coverage" for dental and vision?

The COBRA subsidy and premium assistance tax credit will end for everyone for periods of COBRA coverage beginning after September 30, 2021. However, it

can end earlier for certain AEIs. Specifically, AEI status ends for an individual when his or her maximum COBRA coverage period ends, even if that is before September 30. Additionally, an individual will stop being an AEI when he or she becomes eligible for other group health coverage or Medicare – i.e., "disqualifying coverage."

Some people have COBRA coverage with respect to dental-only or vision-only plans. Medicare generally does not provide dental or vision benefits, and some employers' group health plans do not provide such benefits either. So, if an AEI with respect to dental-only or vision-only plans becomes eligible for "disqualifying coverage" that does not provide dental or vision benefits, will he or she still lose AEI status?

The answer, according to the notice, is "yes." It doesn't matter what specific benefits Medicare or the group health plan provides, if it is "disqualifying coverage" then the AEI will no longer be eligible for the COBRA premium subsidy.

Note, however, that losing eligibility for the COBRA premium subsidy does not necessarily mean losing COBRA eligibility too. Becoming eligible for another group health plan will end the subsidy, but the individual can still continue COBRA unless he or she actually enrolls in the other group health plan.

The full text of Notice 2021-46 is here.

DOL Publishes Implementing FAQs for New Lifetime Income Disclosure Requirement

The Department of Labor (DOL) has published a set of "Temporary Implementing FAQs" for the new lifetime income disclosure requirement for certain 401(k) and other individual account plans, which was enacted as part of the SECURE Act. Last year the DOL issued interim final regulations (IFR) to implement the rules, effective for benefit statements furnished after September 18, 2021.

Background

The SECURE Act amended ERISA to require that ERISA-governed individual account plans provide participants a lifetime income illustration of their account balances at least once a year. As noted, the IFR made this requirement applicable to benefit statements furnished after September 18, 2021.

However, the IFR also raised some questions about how the effective date works, and particularly about when the first statement including a lifetime income illustration must be provided. In general, ERISA requires individual account plans that allow participants to direct investments (a "participant-directed plan") to provide quarterly benefit statements to participants; those that do not allow participants to direct investments must provide benefit statements to participants at least once each calendar year.

When is the First Lifetime Income Illustration Required?

According to the FAQs, for participant-directed plans the first lifetime income illustration can be provided on the statement for the second calendar quarter of 2022, ending June 30, 2022. Plans can provide it sooner if they want, but not any later.

For non-participant-directed defined contribution plans, the FAQs provide "the lifetime income illustrations must be on the statement for the first plan year ending on or after September 19, 2021. For most such plans, this will be the statement for calendar year 2021, which would be furnished no later than the last date for timely filing of the annual return for that year for a calendar year plan (Oct. 15, 2022)."

The FAQs are available here. Additional information about the lifetime income illustration requirement, including the IFR, is available on the DOL's website.