

## Part IV.--- Items of General Interest

### Special Funding Rules for Multiemployer Plans under PRA 2010

Notice 2010-56

#### PURPOSE

This notice provides guidance on the availability of special funding rules for multiemployer defined benefit plans under § 431(b)(8) of the Internal Revenue Code (Code), as added by section 211(a)(2) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111-192, for a plan year for which the Form 5500 (and Schedule MB) has been filed. This notice also describes anticipated future guidance that will apply for sponsors of multiemployer defined benefit pension plans with respect to the special funding rules under § 431(b)(8).

#### BACKGROUND

Section 431 specifies the minimum funding requirements that apply to multiemployer defined benefit pension plans pursuant to § 412. Section 431(b)(2)(B)(iii) provides for a 15-year amortization of net experience loss with respect to a plan. New section 431(b)(8)(A) provides a special amortization rule for certain net investment losses in the case of a multiemployer plan that meets a solvency test. The special rule applies to the portion of the plan's experience loss or gain attributable to net investment losses (if any) incurred in either or both of the first two plan years ending after August 31, 2008 (an applicable plan year). This portion is amortized over the period beginning with the plan year in which it is first recognized in the actuarial value of assets and ending with the last plan year in the 30-plan-year period beginning with the plan year in which the net investment loss was incurred.

Section 431(b)(8)(B) provides a special asset valuation rule in the case of a multiemployer plan that meets the solvency test. The special rule permits a multiemployer plan to change its asset valuation method in a manner that (1) spreads the difference between expected returns and actual returns for either or both of the applicable plan years over a period of not more than 10 years, (2) provides that, for either or both of the first two plan years beginning after August 31, 2008, the value of plan assets at any time cannot be less than 80 percent or greater than 130 percent of the fair market value of the assets at that time, or (3) provides for both (1) and (2).

Section 431(b)(8)(C) describes the solvency test that a multiemployer plan must meet in order for either or both of the special funding rules to apply. The solvency test is met only if the plan actuary certifies that the plan is projected to have sufficient assets

to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under § 431(b)(8).

In addition, under § 431(b)(8)(D), if either or both of the special funding rules apply for any plan year, a special restriction on benefit increases applies in addition to any other applicable restrictions on benefit increases. Under the special restriction, a plan amendment increasing benefits may not go into effect during either of the two plan years immediately following a plan year for which the special funding rules apply unless (1) the plan actuary certifies that the increase is paid for out of additional contributions not allocated to the plan immediately before the application to the plan of the special amortization rule for certain net investment losses or the special asset valuation rule and the plan's funded percentage and projected credit balances for the two plan years are reasonably expected to be at least as high as they would have been if the benefit increase had not been adopted, or (2) the amendment is required as a condition of qualification under the Code or to comply with other applicable law.

Under § 431(b)(8)(E), the plan sponsor of a multiemployer plan to which either or both of the special funding rules apply must give notice thereof to plan participants and beneficiaries. In addition, the plan sponsor must inform the Pension Benefit Guaranty Corporation (PBGC) that the special funding rules apply in such form and manner as the Director of the PBGC may prescribe.

Under section 211(b) of PRA 2010, § 431(b)(8) takes effect as of the first day of the first plan year ending after August 31, 2008. However, if the application of the special funding rules affects the plan's funding standard account for the first plan year beginning after August 31, 2008, the special rules are disregarded for purposes of applying § 432 and section 305 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) (relating to multiemployer plans in endangered or critical status). In addition, the restriction on plan amendments under § 431(b)(8)(D) is effective on June 25, 2010, the date of the enactment of PRA 2010.

Section 304(b)(8) of ERISA, which was added by section 211(a)(1) of PRA 2010, is parallel to § 431(b)(8) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713), the Secretary of Treasury has interpretive jurisdiction over the subject matter of this notice for purposes of ERISA as well as the Code. Thus, this notice applies to the provisions of section 304(b)(8) of ERISA as well as § 431(b)(8) of the Code.

## ANTICIPATED FUTURE GUIDANCE AND APPLICATION OF SPECIAL RULES

The Service anticipates issuing future guidance on the special funding rules under PRA 2010 for multiemployer plans which may include guidance on (1) determination of the portion of the experience loss or gain attributable to net investment losses incurred in either or both of the first two plan years ending after August 31, 2008, (2) the requirement under § 431(b)(8)(E) to notify participants and

beneficiaries of application of the special rules, and (3) the effect of application of the special rules on the certification of a multiemployer plan's status (i.e., endangered, critical or neither) under § 432(b), including certifications already made.

In the case of an applicable plan year that ends before guidance under § 431(b)(8) is issued, the special rules may be applied for the applicable plan year (subject to the requirements of § 431(b)(8), including the restriction on plan amendments under § 431(b)(8)(D)) without regard to whether the plan sponsor has filed the Form 5500 (and Schedule MB) for that plan year. For example, the sponsor of a multiemployer plan with a calendar year plan year will not be precluded from applying the special rules to the plan for 2009 (subject to the requirements of § 431(b)(8), including the restriction on plan amendments under § 431(b)(8)(D)) merely because the Form 5500 (and Schedule MB) for 2009 has been filed for that plan year. Accordingly, such a plan sponsor should file the Form 5500 (and Schedule MB) in accordance with the applicable deadline, taking into account the rules for obtaining an extension. The Service anticipates issuing future guidance on reporting requirements if the special rules are applied for a plan year after the plan's Form 5500 (and Schedule MB) for the plan year has been filed.

#### DRAFTING INFORMATION

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