1-29-2009

The Worker, Retiree, and Employer Recovery Act of 2008: An Overview

Jennifer Staman
Congressional Research Service

The Worker, Retiree, and Employer Recovery Act of 2008: An Overview

Abstract

[Excerpt] In December of 2008, Congress unanimously enacted the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) (P.L. 110-455), which makes several technical corrections to the Pension Protection Act of 2006 (P.L. 109-280) and contains provisions designed to help pension plans and plan participants weather the current economic downturn. This report highlights the provisions of WRERA relating to the economic crisis, such as the temporary waiver of required minimum distributions and provisions that temporarily relax certain pension plan funding requirements. This report also discusses certain technical corrections to the Pension Protection Act made by WRERA, and certain other notable provisions of the Act affecting retirement plans and benefits.

Keywords

The Worker, Retiree, and Employer Recovery Act of 2008, WRERA, retirement, pension, benefit, public policy, Congress

Comments

Suggested Citation:
Staman, J. (2009). *The Worker, Retiree, and Employer Recovery Act of 2008: An overview* (R40171). Washington, DC: Congressional Research Service.
http://digitalcommons.ilr.cornell.edu/key_workplace/599

Congressional Research Service

The Worker, Retiree, and Employer Recovery Act of 2008: An Overview

Jennifer Staman
Legislative Attorney

January 29, 2009

Congressional Research Service
7-5700
www.crs.gov
R40171

CRS Report for Congress
Prepared for Members and Committees of Congress

Summary

In December of 2008, Congress unanimously enacted the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) (P.L. 110-455), which makes several technical corrections to the Pension Protection Act of 2006 (P.L. 109-280) and contains provisions designed to help pension plans and plan participants weather the current economic downturn. This report highlights the provisions of WRERA relating to the economic crisis, such as the temporary waiver of required minimum distributions and provisions that temporarily relax certain pension plan funding requirements. This report also discusses certain technical corrections to the Pension Protection Act made by WRERA, and certain other notable provisions of the Act affecting retirement plans and benefits.

Contents

WRERA's Provisions Relating to the Economic Crisis ... 1
Temporary Waiver of Minimum Distribution Rules ... 1
Amendment of the Funding Transition Rule for Single-Employer Plans ... 2
Temporary Modification on Freezing Benefit Accruals ... 3
Temporary Delay of Designation of Endangered or Critical Status for Multiemployer Plans ... 4
Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status ... 6
Technical Corrections to the Pension Protection Act of 2006 ... 6
Rollovers to Non-Spouse Beneficiaries ... 6
Missing Participants Program ... 7
Lump-Sum Payments for Underfunded Plans ... 7
Disclosure Requirements for Distress/Involuntary Terminations ... 8
Selected Other Provisions of WRERA ... 8
Rollover of Amounts Received in Airline Carrier Bankruptcy to Roth IRAs ... 9
Determination of Plan Assets to Account for Expected Earnings ... 9
Plan Asset Valuation for Airline Plans ... 10

Tables

Table 1. General Characteristics of Plans in Endangered or Critical Status under Internal Revenue Code Section 432 ... 5

Contacts

Author Contact Information ... 10

There has been a great deal of concern over the effect of the current economic downturn on retirement plans. One company recently reported that at the end of 2008, the "chaos" in the financial markets led to a $409 billion deficit in defined benefit pension plan funding for the plans of S&P 1500 companies.[1] The report indicated that this deficit will negatively affect corporate earnings in 2009.[2] Due in part to the large investment losses in pension plans and other retirement accounts, in December of 2008, Congress unanimously enacted H.R. 7327, the Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA" or "the Act"). While several provisions of WRERA make technical corrections to the Pension Protection Act of 2006 ("PPA"),[3] the Act also provides some temporary relief from certain requirements that may be difficult for pension plans to meet due to current economic conditions. This report provides an overview of some of the key provisions of WRERA, in particular, the provisions relating to the funding of single and multiemployer plans, the temporary waiver for required minimum distributions, as well as certain technical corrections and other provisions that affect the two primary types of pension plans, defined benefit and defined contribution plans, as well as individual retirement accounts and annuities (IRAs).[4]

WRERA's Provisions Relating to the Economic Crisis

Title II of WRERA contains provisions designed to protect both individuals and retirement plans from the potentially large losses of plan amounts due to the decline of the stock market and the current economic climate. These provisions include a temporary waiver of the required minimum distributions, and temporary relief from funding rules created by the PPA that apply to single and multi-employer plans.[5] In essence, these provisions permit a delay in taking required distributions and meeting pension funding obligations, in an effort to give retirement plans and accounts more time for economic conditions to improve and for the losses in investments to be recovered.

Temporary Waiver of Minimum Distribution Rules

Under section 401(a)(9) of the Internal Revenue Code, employer-sponsored retirement plans, such as 401(k), 403(b) and 457 plans, and individual retirement accounts and annuities ("IRAs") must make certain annual required minimum distributions in order to maintain their "qualified"

---

[1] See Michael W. Wyand, *Funding Deficit of $409 Billion is Due to Financial Market 'Chaos,' Mercer Says*, BNA Pension and Benefits Daily (Jan. 8, 2009).

[2] *Id*.

[3] P.L. 109-280, 120 Stat 780 (Aug. 17, 2006).

[4] A defined benefit plan is a pension plan under which an employee is promised a specified future benefit, traditionally an annuity beginning at retirement. In a defined benefit plan, the employer bears the investment risk and is responsible for any shortfalls. 29 U.S.C. § 1002(35). A defined contribution plan is a pension plan in which the contributions are specified, but not the benefits. A defined contribution plan (also called "an individual account" plan) provides an individual account for each participant that accrues benefits based solely on the amount contributed to the account and any income, expenses, and investment gains or losses to the account. See 29 U.S.C. § 1002(34).

[5] A multiemployer plan is a collectively bargained plan maintained by several employers—usually within the same industry—and a labor union. Multiemployer defined benefit plans are subject to funding requirements that differ from those for single-employer plans. For a general discussion of the funding requirements for single and multi-employer plans, seeCRS Report RL34443, *Summary of the Employee Retirement Income Security Act (ERISA)*, by Patrick Purcell and Jennifer Staman.

(i.e., tax-favorable) status.[6] The theory behind these required distributions is to ensure that tax-deferred retirement accounts that have been established to provide income during retirement are not used as permanent tax shelters or as vehicles for transmitting wealth to heirs. For employer-sponsored plans, required minimum distributions to participants must start no later than April 1 of the year after the year in which the participant either attains age 70 ½,or retires, whichever is later.[7] For traditional IRAs, required minimum distributions must commence by April 1 following the year the IRA owner reaches age 70 ½. Alternative minimum distribution requirements apply to beneficiaries in the event that the participant dies before the entire amount in the participant's account is distributed.[8] Failure to make a required distribution results in an excise tax equal to 50 percent of the required minimum distribution amount that was not distributed for the year, which is imposed on the participant or beneficiary.[9]

Following the decline in the stock market, there was concern about individuals taking these required distributions when there has not been enough time to recover losses.[10] Section 201 of WRERA suspends the minimum distribution requirements, both initial and annual required distributions, for defined contribution arrangements, including IRAs, for calendar year 2009.[11] Thus, plan participants and beneficiaries are allowed, but are not required, to take required minimum distributions for 2009. However, it should be noted that the required distributions for 2008, or for years after 2009, are not waived by the new law.

Amendment of the Funding Transition Rule for Single-Employer Plans

The Internal Revenue Code sets out certain minimum funding standards that apply to defined benefit plans.[12] The funding standards for single-employer plans were completely revamped by the PPA, which created more stringent standards than under prior law. When fully phased in, the new funding requirements established by the PPA will generally require plan assets to be equal to 100 percent of plan liabilities on a present value basis. Under these standards, when the value of a plan's assets is less than the plan's "funding target,"[13] a plan's minimum required contribution for

---

[6] It should be noted that this section focuses on required minimum distributions for defined contribution plans. While defined benefit plans are also subject to minimum required distribution rules, these rules will not be discussed in this memorandum.

[7] 26 U.S.C. § 401(a)(9). An exception to this rule applies if the employee is a 5 percent owner of the employer. These owners must receive a distribution the year after the owner turns 70 ½, subject to exceptions. 26 U.S.C. § 401(a)(9)(C)(ii).

[8] See 26 U.S.C. §401(a)(9)(B). It is important to note that Roth IRAs are not subject to the required minimum distribution requirements during the IRA owner's lifetime. However, beneficiaries of Roth IRAs are subject to required minimum distribution rules that apply to traditional IRAs.

[9] 26 U.S.C. § 4974.

[10] The amount of required minimum distributions are calculated using the account balance of the end of the previous year. If, following this calculation, there is a great decline in the value of the plan, the distribution may be disproportionately large compared the lower level of plan amount. For a plan participant who does not immediately need this money from his or her account, it would benefit the participant to keep this money in the retirement account on a tax-deferred basis.

[11] 26 U.S.C. § 401(a)(9)(H).

[12] 26 U.S.C. § 430 *et. seq*. Pension plan funding requirements may also be found in the Employee Retirement Income Security Act (ERISA). See 29 U.S.C. § 1001-1461.

[13] In essence, a plan's funding target is the plan's liabilities. It is defined by the PPA as the present value of all benefits accrued or earned under the plan as of the beginning of the plan year. 26 U.S.C. § 430(d)(1). The funding target is (continued...)

a plan year is comprised of the plan's "target normal cost," (i.e., the present value of the benefits expected to be accrued or earned during the year, minus certain plan expenses), plus a "shortfall amortization base," an amount which is established if the plan has a funding shortfall.[14] However, under a special exemption, if the value of the plan's assets is equal to or greater than the funding target, then the shortfall amortization amount will be zero.[15] The PPA also created a transition rule, under which a shortfall amortization base does not have to be established if, for plan years beginning in 2008 and ending in 2010, the plan's assets are equal to a certain percentage of the plan's funding target for that year. The percentage of the funding target is 92 percent for 2008, 94 percent for 2009, and 96 percent for 2010.[16] In other words, the PPA, through this transition rule, gave pension plans a three year period to ease into the new plan funding requirements, in which plans could gradually increase the value of the plan assets, thus relieving them from the burden of having to contribute a large part of the funding shortfall in one year.

The PPA placed a limitation on the transition rule, under which the rule will not apply with respect to any plan year after 2008 unless the shortfall amortization base was zero (e.g., the plan failed to meet the transition rule, or be 92 percent funded in 2008). Section 202 of WRERA allows plans to follow the transition rule even if the plan's shortfall amortization base was not zero in the preceding year.[17] Thus, a plan that was not 92 percent funded in 2008 would only be required to be 94 percent funded in 2009, instead of 100 percent.[18] This provision gives plans some additional time to be 100 percent funded, a requirement that may have become more difficult to fulfill because of the decline in the financial markets and the resulting loss of value of plan assets.

Temporary Modification on Freezing Benefit Accruals

As provided by the PPA, underfunded single-employer defined benefit plans may be subject to certain restrictions on benefits and benefit accruals.[19] Under one of these restrictions, if a plan's "adjusted funding target attainment percentage" (AFTAP)[20] is less than 60 percent (i.e., generally speaking, if a plan is less than 60 percent funded) for a plan year, a plan must stop providing future benefit accruals.[21] Section 203 of WRERA provides that for the first plan year beginning during the period of October 1, 2008 through September 30, 2009, this restriction on benefit accruals is determined using the AFTAP from the preceding year, instead of the current year, *if* the AFTAP for the preceding year is greater. Thus, this provision allows a plan to look to the

---

(...continued)

different for plans which in "at-risk status"(*i.e.*, in general, has more severe underfunding). See 26 U.S.C. § 430(i).

[14] Minimum required contribution also includes a waiver amortization charge, an amount based on the portion of the minimum funding requirement, if any, that is waived by the Secretary and not satisfied by employer contributions. See 26 U.S.C. § 412(c)(3).

[15] 26 U.S.C. § 430(c)(5)(A).

[16] 26 U.S.C. § 430(c)(5)(B). Certain plans are precluded from the transition rule. See 26 U.S.C. § 430(c)(5)(B)(iv).

[17] 29 U.S.C. § 1083(c)(5); 26 U.S.C. § 430(c)(5).

[18] *See* Joint Committee on Taxation, *Technical Explanation of H.R. 7327, the Worker, Retiree, and Employer Recovery Act of 2008*, JCX-85-08 (Dec. 11, 2008) at 28.

[19] 29 U.S.C. § 1056; 26 U.S.C. § 436.

[20] In essence, a plan's AFTAP is the ratio of the value of a plan's assets to the plan's funding target, adjusted by the amount of the plan's purchases of annuities for certain employees. 26 U.S.C. § 436(j)(2).

[21] This restriction does not apply to a plan for the first five years of the plan, or if the employer makes an additional contribution to the plan that brings the funding level up to 60 percent. See 26 U.S.C. 436(e)(2); 26 U.S.C. 436(g).

previous year's funding levels in order to determine whether there must be a restriction of benefit accruals. For plans that have lost a lot in the value of plan assets, looking to the AFTAP for the previous year may allow some plans to continue providing future benefit accruals that would otherwise have to cease them. However, plans that have higher funding levels for the current year will not be affected by this provision.

Temporary Delay of Designation of Endangered or Critical Status for Multiemployer Plans

Under section 432 of the Internal Revenue Code as created by the PPA, multiemployer plans failing to meet certain funding levels may be subject to certain additional funding obligations and benefit restrictions. These additional requirements depend on whether the plan is in "endangered" or "critical" status. A multiemployer plan is considered to be endangered if it is less than 80 percent funded *or* if the plan has an accumulated funding deficiency[22] for the plan year, or is projected to have a deficiency within the next six years. A plan that is less than 80 percent funded *and* is projected to have an accumulated funding deficiency is considered to be "seriously endangered." Endangered plans must adopt a funding improvement plan, which contains options for a plan to attain a certain increase in the plan's funding percentage, while avoiding accumulated funding deficiencies.[23] A multiemployer plan is considered to be in critical status if, for example, the plan is less than 65 percent funded and the sum of the fair market value of plan assets, plus the present value of reasonably anticipated employer and employee contributions for the current plan year and each of the next six plan years is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the next six years (plus administrative expenses).[24] Plans in critical status must develop a rehabilitation plan containing options to enable the plan to cease being in critical status by the end of the rehabilitation period, generally 10 years. The rehabilitation plan may include reductions in plan expenditures and future benefit accruals. Employers may also have to pay a surcharge in addition to other plan contributions.[25]

[22] Subject to an exception, an "accumulated funding deficiency" is defined as the amount, determined as of the end of the plan year, equal to the excess (if any) of the total charges to the funding standard account (an account all multiemployer plans are required to have) of the plan for all plan years ... over the total credits to such account for such years." See 26 U.S.C. § 431(a).

[23] 26 U.S.C. § 432(b)(1).

[24] See 26 U.S.C. § 432(b)(2) for other ways in which a plan may be considered in critical status.

[25] 26 U.S.C. § 432(e).

Table 1. General Characteristics of Plans in Endangered or Critical Status under Internal Revenue Code Section 432

	Endangered Status	Critical Status
Criteria	Less than 80% funded, *or* Has an accumulated funding deficiency for the plan year, or is projected to have a deficiency within the next 6 years, taking into account any extension of amortization periods approved by the Treasury Secretary ("seriously endangered" plans meet both criteria)	Less than 65% funded, and the sum of the fair market value of the plan assets plus the reasonably anticipated contributions to the plan (for the current plan year and the next 6 years) is less than the value of the benefits expected to be paid (plus administrative expenses), *or* Has an accumulated funding deficiency for the current plan year, not taking into account any amortization extension period, or the plan is projected to have a deficiency for any of the next 3 years, or 4 years if the plan is less than 65% funded, *or* (1) The normal cost for the plan year, plus interest for the current plan year on the amount of unfunded benefit liabilities under the plan, exceeds the present value of the reasonably anticipated contributions for the current plan year, (2) the present value of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants, *and* (3) the plan has an accumulated funding deficiency for the current plan year, or is projected to have a deficiency for any of the next 4 years (not taking into account amortization period extensions), *or* Sum of the fair market value of plan assets plus the present value of the reasonably anticipated contributions for the current plan year and each of next 4 years is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the next four years (plus administrative expenses).
Required Actions	Adoption of a **funding improvement plan**, which includes options for a plan to attain a certain increase in the plan's funding percentage, while avoiding accumulated funding deficiencies over a funding improvement period. The funding improvement period is, in general, 10 years for endangered plans, and 15 years for seriously endangered plans.	Adoption of a **rehabilitation plan**, which includes options to enable the plan to cease being in critical status by the end of the rehabilitation period, generally 10 years. The rehabilitation plan may also include reductions in plan expenditures, future benefit accruals, or increases in contributions. Imposition of a surcharge on employers, under which employers are obligated to pay 5% of the contribution otherwise required to be made. In the case of succeeding plan years in which the plan is in critical status, the surcharge is 10% of the contributions otherwise required.
Penalties under Internal Revenue Code Section 4971(g)	Employers failing to make a contribution as required under a funding improvement plan may be subject to an excise tax equal to the amount of the required contribution. Seriously endangered plans failing to meet benchmarks laid out by the funding improvement plan by the end of the funding improvement period are treated as having an accumulated funding deficiency in an amount equal to the greater of the amount of the contributions necessary to meet such benchmarks, or the amount of the plan's existing accumulated funding deficiency.	Employers failing to make a contribution as required under a rehabilitation plan may be subject to an excise tax equal to the amount of the required contribution. Plans in critical status failing to meet rehabilitation plan requirements are treated as having an accumulated funding deficiency in an amount equal to the greater of the amount of the contributions necessary to meet such requirements, or the amount of the plan's existing accumulated funding deficiency. Multiemployer plans that fail to adopt a rehabilitation plan within a specified time period may be subject to an excise tax which is the greater of 5% of the accumulated funding deficiency, or $1,100 for each day during the taxable year between the date when the rehabilitation plan was required to be adopted, and the date it was adopted. This tax must be paid by each plan sponsor.

Each year, a plan's actuary must certify whether or not the plan is in endangered or critical status. Under section 204 of WRERA a sponsor of a multiemployer defined benefit pension plan may elect for the status of the plan year that begins during the period between October 1, 2008 and September 30, 2009, to be the same as the plan's certified status for the previous year. Accordingly, if a plan was not in endangered or critical status for the prior year, the sponsor may elect to retain this status and may avoid additional plan funding requirements. A plan that was in endangered or critical status during the preceding year does not have to update its funding improvement plan, rehabilitation plan, or schedule information until the plan year following the year that the plan's status remained the same. However, for plans that are in critical status, the Act clarifies that the freezing of the certification status does not relieve the plan from certain requirements.[26]

Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status

Section 432 of the Internal Revenue Code provides that a multiemployer plan that is in endangered or critical status must meet certain additional funding requirements. In general, endangered plans must adopt a funding improvement plan, and critical plans must adopt a rehabilitation plan.[27] Under both a funding improvement and a rehabilitation plan, there is a 10-year period under which a plan must meet a certain funding percentage. Seriously endangered plans have 15 years to improve their funding percentage. Section 205 of WRERA provides that a plan sponsor of a plan in endangered or critical status may elect, for a plan year beginning in 2008 or 2009, to extend the funding improvement period or the rehabilitation period by three years, to 13 years instead of 10 years. Plans in seriously endangered status have a funding improvement period of 18 years, rather than 15 years. The provision gives plans more time to meet their funding obligations. An election must be made by the plan in order to take advantage of this relaxed funding requirement.

Technical Corrections to the Pension Protection Act of 2006

WRERA made several technical corrections to the Pension Protection Act of 2006 (PPA). Some of the corrections are effective as if they were enacted as part of the PPA, while other provisions are to be applied prospectively. The technical corrections include the following:

Rollovers to Non-Spouse Beneficiaries

In general, distributions from retirement plans or accounts are subject to tax in the year they are distributed. Prior to the PPA, in the event that a participant died, distributions from the retirement

---

[26] For example, plans in critical status will still be subject to an excise tax if there is a failure to make certain plan contributions.

[27] See notes 22-25 *supra* and accompanying text.

plan of a participant could transfer (or "rollover") into a surviving spouse's IRA tax-free.[28] This rollover scheme was not available to non-spouse beneficiaries. Under section 402(c)(11) of the Internal Revenue Code, as created by the PPA, certain tax-qualified plans (e.g., a 401(k)) could offer a direct rollover of a distribution to a nonspouse beneficiary (e.g., a sibling, parent, or a domestic partner). The direct rollover must be made to an individual retirement account or annuity (IRA) established on behalf of the designated beneficiary that will be treated as an inherited IRA.[29] As a result, the rollover amounts would not be included in the beneficiary's income in the year of the rollover.

The Internal Revenue Service had previously taken the position that section 402(c)(11) permitted, but did not require, plans to provide this type of rollover option.[30] Section 108(f) of the WRERA clarifies that distributions to a nonspouse beneficiary's inherited IRA are to be considered "eligible rollover distributions,"[31] and plans are thus required to allow these beneficiaries to make these direct rollovers.[32] Plans must also provide direct rollover notices in order to maintain plan qualification.[33] This provision is effective for plan years beginning on January 1, 2010.

Missing Participants Program

In general, an employer that chooses to terminate a fully funded defined benefit plan must comply with certain requirements with regard to participants or beneficiaries whom the plan administrator cannot locate after a diligent search.[34] For these individuals, a plan administrator may either purchase an annuity from an insurer or transfer the missing participant's benefits to the PBGC. Prior to the PPA, the missing participant requirements only applied to single-employer plans. The PPA amended these requirements to apply to multiemployer plans, defined contribution plans, and other plans that do not have termination insurance through the PBGC. Section 104(e) of WRERA specifies that the missing participant requirements apply to plans that at no time provided for employer contributions.[35] WRERA also narrows the missing participant requirements to defined contribution plans (and other pension plans not covered by PBGC's termination insurance) that are qualified plans. The requirements of this section take effect as if they were included in the PPA.

Lump-Sum Payments for Underfunded Plans

Under the funding rules created by the PPA, single-employer defined benefit plans that fall below certain funding levels are subject to several additional requirements. One of these requirements prevents plans that have a funding percentage of less than 60 percent from making "prohibited

[28] See 26 U.S.C. § 402(c)(9).

[29] It should be noted that a nonspouse beneficiary may also acquire an IRA (in a trustee to trustee transfer) due to an IRA owner's death as an "inherited" IRA, under which the beneficiary may not make contributions, or rollover amounts into or out of the IRA. See 26 U.S.C. § 408(d)(3)(C).

[30] *See, e.g.,* Notice 2007-7, 2007-5 I.R.B. 395 (Jan. 29, 2007).

[31] An eligible rollover distribution is any distribution to the plan participant or IRA owner, but does not include certain periodic distributions, required minimum distributions, or hardship distributions. 26 U.S.C. § 402(c)(4).

[32] 26 U.S.C. § 402(c)(11)(A).

[33] 26 U.S.C. §402(f).

[34] 29 U.S.C. § 4050(a)(1).

[35] 26 U.S.C. § 4050(d)(4)(A)(ii).

payments," (i.e., certain accelerated forms of distribution, such as a lump sum payment) to plan participants. Current law also specifies that if the present value of a participant's vested benefit exceeds $5,000, the benefit may not be immediately distributed without the participant's consent.[36]Accordingly, if the vested benefit is less than or equal to $5,000 this consent requirement does not apply.[37] Section 101 of WRERA amends the definition of "prohibited payment" to exclude benefits which may be distributed without the consent of the participant.[38] As a result, lump sum payments of $5,000 or less may be paid by an underfunded plan that is otherwise precluded from paying larger lump sum distributions. This amendment applies to plan years beginning in 2008.

Disclosure Requirements for Distress/Involuntary Terminations

Under ERISA, pension plans must meet extensive notice and reporting requirements that disclose information about the plan to participants and beneficiaries as well as government agencies. Among these disclosures is a requirement that a terminating single-employer defined benefit plan provide "affected parties"[39] with certain information required to be submitted to the Pension Benefit Guaranty Corporation (PBGC). [40] Section 105 of WRERA clarifies that in order for a plan to terminate in a distress termination, a plan administrator must not only provide affected parties with information that the administrator had to disclose to the PBGC along with the written notice of intent to terminate, but also certain information that was provided to the PBGC after the notice was given.[41] This information may include a certification by an enrolled actuary regarding the amount of the current value of the assets of the plan, the actuarial present value of the benefit liabilities under the plan, and whether the plan's assets are sufficient to pay benefit liabilities. [42]

Further, in an involuntary termination, certain confidentiality provisions exist that prevent the plan administrator or sponsor from providing information about the termination in a form which includes any information that may be associated with, or identify affected parties. Section 105 of WRERA extends this confidentiality protection disclosure of this information by the PBGC.

Selected Other Provisions of WRERA

Other notable provisions included in WRERA are the following:

---

[36] 26 U.S.C. §411(a)(11).

[37] Joint Committee on Taxation, *supra* note 18, at 3.

[38] 29 U.S.C. § 1056(g)(3)(E); 26 U.S.C. § 436(d)(5).

[39] An affected party means, with respect to a plan, each plan participant, beneficiary (either of a deceased participant or alternate payee under a qualified domestic relations order), an employee organization, and the PBGC. An affected party may designate (in writing) for another person to receive any notice required to be provided to the affected party. 29 U.S.C. § 4001(21).

[40] For more information the PBGC's role in single employer plan terminations, see CRS Report RS22624, *The Pension Benefit Guaranty Corporation and Single-Employer Plan Terminations*, by Jennifer Staman and Erika Lunder.

[41] Joint Committee on Taxation, *supra* note 18, at 7.

[42] 29 U.S.C. § 1341(c)(2).

Rollover of Amounts Received in Airline Carrier Bankruptcy to Roth IRAs

Roth IRAs, a type of individual retirement arrangement, are a popular retirement savings vehicle.[43] While contributions to a Roth IRA are not deductible, qualified distributions[44] from a Roth IRA are not included in an individual's gross income. Roth IRAs are subject to certain contribution limitations, however, these limitations do not apply to qualified rollover contributions.[45] Section 125 of the WRERA permits a "qualified airline employee"[46] who receives an "airline payment amount"[47] to transfer any portion of this amount to a Roth IRA as a qualified rollover contribution. This transfer must occur within 180 days of receipt of the amount (or, if later, within 180 days of the enactment of WRERA). Thus, if such amounts are transferred to the former employee's Roth IRA, the employee may benefit, as qualified distributions from Roth IRAs are tax free. This section also provides that certain income limitations placed upon Roth IRA qualified rollover contributions should not apply to this transfer.[48]

Determination of Plan Assets to Account for Expected Earnings

In order to determine the minimum required contribution that must be made to a single-employer defined benefit plan, and the extent (if any) to which a plan is underfunded, the value of plan assets must be determined. For purposes of the minimum funding rules, the value of the plan's assets is, in general, the fair market value of the assets.[49] However, the Internal Revenue Code, as amended by the PPA, permits plans to calculate the value of the assets by averaging fair market values, but only if (1) the averaging method is permitted under regulations, (2) the calculation is not over a period of more than 24 months, and (3) the averaged amount cannot result in a determination that is at any time less than 90 percent or more than 110 percent of fair market

---

[43] For a general discussion of Roth IRAs, see CRS Report RL30255, *Individual Retirement Accounts (IRAs): Issues and Proposed Expansion*, coordinated by Thomas L. Hungerford and Jane G. Gravelle, and CRS Report RL31770, *Individual Retirement Accounts and 401(k) Plans: Early Withdrawals and Required Distributions*, by Patrick Purcell.

[44] Qualified distributions are any payment or distribution—(i) made on or after the date on which the individual attains age 59 1/2 , (ii) made to a beneficiary (or to the estate of the individual) on or after the death of the individual, (iii) attributable to the individual's being disabled (within the meaning of section 72(m)(7) [26 U.S.C. § 72(m)(7)]), or (iv) which is a qualified special purpose distribution. 26 U.S.C. § 408A(d)(2).

[45] A "qualified rollover contribution" may be made to a Roth IRA from another Roth IRA, as well as from a traditional IRA, or from an "eligible retirement plan," such as a 401(k), 403(b), or 457 plan if certain requirements are met. See 26 U.S.C. § 408A(e).

[46] A "qualified airline employee" is defined in section 125 of WRERA as an employee or former employee of a commercial passenger airline carrier who was a participant in the carrier's qualified defined benefit plan that was terminated or became subject to certain relaxed funding requirements as set forth in section 402(b) of the Pension Protection Act of 2006.

[47] An "airline payment amount" is defined by WRERA as "money or other property which is payable by a commercial passenger airline carrier to a qualified airline employee– (i) under the approval of an order of a federal bankruptcy court in a case filed after September 11, 2001, and before January 1, 2007, and (ii) in respect of the qualified airline employee's interest in a bankruptcy claim against the carrier, any note of the carrier (or amount paid in lieu of a note being issued), or any other fixed obligation of the carrier to pay a lump sum amount." An airline payment amount does not include any amount payable on the basis of the carrier's future earnings or profits.

[48] Under 26 U.S.C. § 408A(c)(3)(B), a taxpayer is not allowed to make a qualified rollover contribution to a Roth IRA from an eligible retirement plan other than a Roth IRA during any taxable year if, for that taxable year, (i) the taxpayer's adjusted gross income exceeds $ 100,000, or (ii) the taxpayer is a married individual filing a separate return.

[49] 26 U.S.C. § 430(g)(3)(A).

value.[50] This averaging method may be more beneficial for plan sponsors in an economic downturn, as an averaging approach can produce lower asset values when asset values are rising, and higher asset values when asset values are decreasing.[51] Section 121 of WRERA provides that plans using the averaging method must adjust such averaging to account not only for the amount of contributions and distributions to the plan, but also for expected investment earnings, subject to a cap.[52] It has been noted that this provision could result in smaller underfunded amounts and, therefore, smaller required contributions.[53]

Plan Asset Valuation for Airline Plans

The PPA created certain relaxed funding requirements for defined benefit plans maintained by a commercial airline or an airline catering service. Under the PPA, plan sponsors of these plans could elect to amortize unfunded plan liabilities over an extended period of 10 years, or may instead follow special rules that permit these plan sponsors to amortize unfunded liabilities over 17 years. Plan sponsors selecting the17-year amortization period, referred to by the Act as an "alternative funding schedule," had to comply with certain benefit accrual requirements, which included freezing some of the benefits offered under the plan and eliminating others.[54] In determining the minimum required contribution to the plan each year for purposes of these special rules, the PPA provided that the value of plan assets generally is the fair market value of the assets. Section 126 of WRERA provides that plans following the alternative funding schedule may determine the value of plan assets in the same manner as other single-employer plans. Thus, plans can use a fair market value determination, or they may use the averaging method as laid out in Section 430(g)(3) of the Internal Revenue Code.[55]

Author Contact Information

Jennifer Staman
Legislative Attorney
jstaman@crs.loc.gov, 7-2610

[50] 26 U.S.C. § 430(g)(3)(B).

[51] See Lynn A. Cook, Minimum Funding: What if Technical Corrections Passes? Or Doesn't?, BNA Tax &Accounting, Insights and Commentary, *available at* http://www.bnatax.com/tm/insights_cook.htm.

[52] 26 U.S.C. § 430(g)(3)(B); 29 U.S.C. § 1083(g)(3)(B).

[53] *See* Andrea L. Ben-Yosef, *President Signs Pension Funding Relief and Technical Corrections Bill (H.R. 7327)*, BNA Pension and Benefits Daily (Dec. 24, 2008).

[54] Section 402 of the PPA.

[55] See notes 49-53 *supra* and accompanying text.