

Proposed Regulations on Minimum Required Contributions for Single Employer Defined Benefit Plans

On April 11, the IRS issued proposed regulations on minimum required contributions for single employer defined benefit plans under the funding rules of the Pension Protection Act of 2006 (PPA). Importantly, this long-awaited guidance contains rules on required quarterly contributions, leaving sponsors of calendar year plans only two business days to determine and deposit the first 2008 plan year required quarterly amount (if applicable) which is due April 15.

Proposed Regulations

The proposed regulations reflect the minimum contribution requirements set forth under PPA, and provide details with regard to quarterly contribution requirements, liquidity shortfalls, short plan years, airline funding relief, funding waivers, and excise taxes applicable for delinquent contributions. This guidance is proposed to apply beginning with 2009 plan years, but may be relied upon for 2008 plan year determinations.

The proposed regulations provide important guidance for plan sponsors regarding quarterly contributions –

- A sponsor can elect to use all or a portion of a plan's available carryover or prefunding balance to satisfy a quarterly installment, provided that the plan's funded ratio for the preceding year was at least 80%. The amount of the carryover or prefunding balance so used is accumulated from the valuation date to the due date of the installment at the plan's effective interest rate for the plan year. Sponsors would need to make a written election to use a balance for this purpose by the due date for the applicable quarterly contribution to avoid the consequences of late quarterly payments (which might include notice to the PBGC and an increase in the minimum required contribution for the year).

BUCK COMMENT. *Carryover balances that were surrendered by election or were deemed to be surrendered in order to avoid 2008 funding restrictions cannot be used to meet a required quarterly installment.*

- The 2008 required quarterly installments are equal to 25% of the lesser of (i) 100% of the 2007 minimum contribution calculated at the *end* of the 2007 plan year, and (ii) 90% of the 2008 minimum required contribution under Section 430(a) calculated at the *beginning* of the 2008 plan year. As in the past, the minimum contributions are determined without regard to the use of any prefunding/carryover/credit balances.

BUCK COMMENT. *Importantly, the required quarterly payments are not subject to any further interest adjustments (i.e., they are not adjusted for interest to roll them forward to each of the required due dates).*

- If PPA technical corrections are passed, the IRS has indicated its intent to issue guidance that will exempt plans that are 100% funded for 412(l)(7) current liability as of the first day of the 2007 plan year. For this purpose, assets would likely be defined as the actuarial value of assets, constrained to a 90%/110% corridor around market value, then reduced by the credit balance. The credit balance may be reduced by carryover balances that are surrendered as of the first day of the 2008 plan year, presumably with interest discounting at the valuation interest rate for 2007.

BUCK COMMENT. *If technical corrections are not passed or do not address this question, for the quarterly contribution due April 15 and subsequent payments, plan sponsors will be forced to rely on good-faith compliance with the statute. An exemption calculated as indicated above would almost certainly be treated by the IRS as good-faith compliance.*

Conclusion

These proposed regulations provide important guidance, but provide very little time for calendar year plan sponsors to determine and deposit their first 2008 quarterly installment. Buck's consultants can discuss these proposed regulations with you, and help determine your plan's required contribution amounts.

This Newsflash is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.