



RESEARCH MEMO

IRS Releases Guidance on Election and Notice Procedures for Multiemployer Plans Under WRERA

In late 2008, a pension relief act entitled the *Worker, Retiree, and Employer Recovery Act of 2008 (WRERA)* was signed into law. The new law sets out the conditions for multiemployer plans to use an option of keeping their *PPA* funding status the same for another year and allows plans that are in endangered or critical status to extend their rehabilitation period or funding improvement period an additional three years. *WRERA* was discussed in detail in [Client Bulletin 2008-66](#).

The Internal Revenue Service (IRS) just released the first guidance on *WRERA* and the multiemployer elections and notices required under Sections 204 and 205 in [Notice 2009-31](#), available by "[clicking here](#)." Plan professionals will want to read the *Notice* in its entirety as not every detail is discussed herein.

Section 204

Section 204 of *WRERA* provides that a multiemployer plan sponsor may elect to temporarily freeze the plan's funding status (endangered/critical/neither) so that it is the same as the plan's status for the plan year immediately prior to the election year ("prior year").

The sponsor of a multiemployer plan that was in endangered or critical status for the prior year, and for which an election is made under Section 204, is not required to update its funding improvement plan, rehabilitation plan or schedules as otherwise required until the plan year following the election year.

A multiemployer plan for which an election under Section 204 of *WRERA* has been made must be operated in accordance with its funding status as determined pursuant to the election, rather than the funding status certified by the actuary for the election year.

What is the Deadline for a Section 204 Election?

An election under Section 204 must be made by the *later of*:

1. April 30, 2009; or
2. the date that is 30 days after the due date of the annual certification of funding status for the election year.

Note: If the Section 204 election is made prior to submitting the annual certification of the plan's funding status, then the election must be included with the certification that is submitted. If the election is subsequent to submitting the certification, then the election must be submitted not later than 30 days after the date of the election.

Where Should the Section 204 Election be Sent?

The Section 204 election must be sent to the Employee Plans Compliance Unit (EPCU), at the following address, which is the same office the annual certifications are submitted to:

Internal Revenue Service
EPCU
Group 7602
SE:TEGE:EP
Room 1700 – 17th Floor
230 Dearborn Street
Chicago, IL 60604

The election may be submitted electronically in lieu of the address above. Instructions for filing WRERA elections electronically with the EPCU may be found at the IRS website at: <http://www.irs.gov/retirement/article/0,,id=171015,00.html>.

The *Notice 2009-31* lists the required contents on an election under Section 204. These are available by "[clicking here](#)" or at Section IV, Subsection 3 of *Notice 2009-31*.

Is a Section 204 Special Notice Required?

A plan sponsor that elects to freeze the plan's funding status for the election year as neither endangered nor critical must provide a special notice to participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation and the Secretary of Labor.

The special notice must be provided no later than 30 days after the later of:

1. the actuarial certification for the election year; or
2. the date of the election.

Notice 2009-31 lists the items of information the special notice must contain and is available by "[clicking here](#)" or at *Notice 2009-31* Section V. Subsection 2.

Where Should the Section 204 Special Notice be Sent?

The Section 204 special notice must be sent to participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation, and the Secretary of Labor (DOL).

Pension Benefit Guaranty Corporation
Multiemployer Program Division
1200 K Street, N.W., Suite 930
Washington, DC 20005

U.S. Department of Labor
Employee Benefits Security Administration
Public Disclosure Room, N-1513
200 Constitution Avenue, N.W.
Washington, DC 20210

The special notice may be submitted electronically in lieu of the addresses above to multiemployerprogram@pbgc.gov and wreeranotice@dol.gov. If the Plan submits the special notice electronically to the PBGC and the DOL it is still required to send copies to participants, beneficiaries and the bargaining parties.

Section 205

Section 205 of WRERA provides for an elective three-year extension of the funding improvement period or rehabilitation period for multiemployer plans in endangered or critical status for a plan year beginning in 2008 or 2009. Thus, a plan's 10-year funding improvement period or rehabilitation period is extended to 13 years and a 15-year funding improvement period is extended to 18 years.

What is the Deadline for a Section 205 Election?

An election under Section 205 must be made by the *earliest of*:

1. the last day of the plan year as of which the election is being made, or
2. the date a funding improvement plan, rehabilitation plan or update is adopted that takes into account the election.

However, in no event is the election required to be made earlier than April 30, 2009.

Where Should the Section 205 Election be Sent?

The Section 205 election must be sent to the Employee Plans Compliance Unit (EPCU), at the following address, which is the same office the annual certifications are submitted to:

Internal Revenue Service
EPCU
Group 7602
SE:TEGE:EP
Room 1700 – 17th Floor
230 Dearborn Street
Chicago, IL 60604

The election may be submitted electronically in lieu of the address above. Instructions for filing WRERA elections electronically with the EPCU may be found at the IRS website at: <http://www.irs.gov/retirement/article/0,,id=171015,00.html>.

The *Notice 2009-31* lists the required contents on an election under Section 205. These are available by "[clicking here](#)" or at Section IV, Subsection 3 of *Notice 2009-31*.

Is a Section 205 Special Notice Required?

A special notice is not required to be sent under Section 205.

Effect Of the WRERA Election On Form 5500, Schedule MB And Schedule R Filings

Notice 2009-31 states that the instructions in the 2008 Schedule MB, Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information, and by Schedule R, Retirement Plan Information must be revised to take into account a *WRERA* Section 204 election. Under the revised instructions:

- The funding status of the plan that is reported on Schedule MB is the status of the multiemployer plan as certified by the plan actuary without taking into account an election under Section 204 of *WRERA*.
- The plan sponsor must include an attachment to the Schedule R which provides information about the election under Section 204 of *WRERA*, and its effect on the plan's funding status and on the requirement to adopt a funding improvement plan or rehabilitation plan.

For further information regarding *Notice 2009-31* readers may contact Diane S. Bloom, the principal author of the *Notice*, at the Employee Plans taxpayer assistance answering service toll-free at 1-877-829-5500 or by e-mail at RetirementPlanQuestions@irs.gov.

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