

This update is published by The Law Offices of Ilene H. Ferenczy, LLC to provide information to our clients and friends about recent developments in the benefits community. It is intended to be informational and does not constitute legal advice for any particular situation. It also may be considered to be "attorney advertising" under the rules of certain states.



The Ferenczy Flash

FROM THE LAW OFFICES OF Ilene H. Ferenczy, LLC

The Latest Word in Employee Benefits . . .

GOOD NEWS! WE GOT FUNDING RELIEF FOR DEFINED BENEFIT PLANS!

Late Friday afternoon, President Obama signed the American Workers, State and Business Relief Act (AWSBRA) into law. Among other things, this law provides funding relief to sponsors of defined benefit (DB) pension plans (including cash balance plans). This should be of at least some help to companies that are burdened with contribution increases to their DB plans for 2009 and 2010 (and possibly 2008). The relief is available for any plan year for which the funding period (generally, 8½ months after the plan year end) is still open.

Under the new legislation, there are two types of relief available to plan sponsors, both of which stretch out the time over which certain shortfalls can be spread for funding purposes.

Type 1 Relief: "2 Plus 7" Rule

Under this relief, the company can contribute interest only on its "shortfall amortization base" for 2 years, and then amortize the deficit over 7 years after that.

The shortfall amortization base is generally the difference between the assets in the plan and the value of the benefits earned by participants. So, if the total benefits that have been earned by participants is \$1,000,000, but the assets are only \$900,000, the shortfall amortization base is \$100,000. Normally, that would be amortized over 7 years, which would produce an annual required deposit of \$16,900 (assuming 6% interest). Under the 2 Plus 7 rule, the company would pay interest only (\$6,000) for two years, and then the 7-year amortization beginning in the third year.

Type 2 Relief: "15-Year Rule"

Under this relief method, employers would simply amortize the shortfall amortization base over 15 years, rather than 7. Using our example from above, the payment in the 15 years on that base (in addition to the normal required funding) would be \$9,714.

Other requirements

Additional contributions are required if certain criteria are met. These criteria are likely to apply

only or mostly to larger employers, and relate to situations in which employees are paid in excess of \$1 million (including all compensation, such as regular pay, equity compensation, bonuses, and incentive compensation), the company funds a nonqualified deferred compensation plan for executives, the company issues extraordinary dividends, or the company has excessive stock redemptions.

These special requirements, and the complications that accompany them, will need to be evaluated by your accountants.

In the meantime, if you are experiencing difficulty with funding your DB plan, you should run, not walk, to your actuary, to see if the new law will provide you with the relief you have been seeking.

The American Society of Pension Professionals and Actuaries (ASPPA), an organization in which our Firm is very active, played an integral role in working with Congress to iron out the politics of passing this law. We are grateful to ASPPA, and to the other organizations that worked for the passage of this law on behalf of those of us in the private pension system.

If you have any questions about AWSBRA or your plan, please contact one of us.

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