HARBRIDGE CONSULTING GROUP

Client Alert
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Summary of Key Provisions of the Worker, Retiree, and Employer Recovery Act of 2008

The Worker, Retiree, and Employer Recovery Act of 2008 (the "Act") was signed by former President Bush on December 23, 2008. The Act makes technical corrections to the Pension Protection Act of 2006 (PPA) and provides funding relief for defined benefit plans in response to the economic crisis.

This alert discusses the key provisions of the Act affecting single-employer defined benefit plans.

Technical Corrections

Asset Smoothing

For funding purposes, a plan's assets can be determined by averaging those assets over the 24-month period immediately preceding the valuation date. The resulting average must be within the range of 90%-110% of the market value of plan assets on the valuation date.

Technical Correction - Under the Act, effective for all plan years beginning on or after January 1, 2008, plans are permitted to include expected earnings when calculating the value of plan assets under the averaging method. The earnings assumption used cannot exceed the third segment rate used for funding purposes.

Comment – This method will reduce the impact of the 2008 market turmoil on the 2009 funding requirements. However, most plans adopting this method will see the average of assets limited by 110% of the market value of plan assets.

Use of the averaging method in 2009 would require the plan sponsor to either elect to recalculate the 2008 funding requirements utilizing the averaging method or request approval for the change in the asset method for 2009. The IRS is expected to grant broad approval for a 2009 method change, but have not yet released any guidance on this.

Involuntary Payout of Small Lump Sums

Under PPA, plans that have an adjusted funding target attainment percentage (AFTAP) less than 80% are subject to limitations on the amount of lump sum payments (or other accelerated payment methods) that can be made from the plan and plans that have a adjusted funding target attainment percentage (AFTAP) less than 60% are restricted from paying lump sum payments from the plan regardless of the size of the lump sum amount.

Technical Correction – The Act excludes benefit payments that are allowed to be paid without consent from the participant from the benefit restrictions and limitations.

Comment – Plans will be able to continue to make involuntary distributions to participants regardless of the funded status of the plan.

Plan Expenses

Under PPA, the funding rules did not permit the inclusion of an expense load when determining the target normal cost for the plan year.

Technical Correction– Effective for plan years beginning after December 31, 2008, the target normal cost must include the amount of the expenses expected to be paid from plan assets during the plan year.

Comment – A Plan Sponsor can elect to apply this provision for the 2008 plan year.

Funding Relief

Adjustment to PPA Funding Transition Rule

PPA allowed a phase-in of the 100% funding target for plans that were not subject to the Deficit Reduction Contribution rules in 2007 and that continued to meet the phase-in funded percentages for years 2008-2010 (92% for 2008, 94% for 2009, 96% for 2010). Plans that failed to meet the phase-in percentage for any year were required to determine the funding shortfall amount based on the full 100% funding target.

Relief - Under the Act, plans that were not subject to the Deficit Reduction Contribution rules in 2007 would be able to determine the funding shortfall amount based on the transition percentages for 2008-2010 regardless of the plan's actual funded target percentage for the year.

Comment –Plan sponsors eligible for the transition relief need only fund using 92% of the funding target liability for 2008 instead of 100%. Similarly, 94% and 96% would apply in years 2009 and 2010, respectively.

Temporary Provision Regarding Benefit Restrictions

Under PPA, plans that have an adjusted funding target attainment percentage (AFTAP) less than 60% are subject to a mandatory freezing of benefit accruals under the plan effective as of the first day of the plan year.

Relief – For plan years beginning in the period October 1, 2008 to September 30, 2009, the determination of whether a plan is required to freeze benefit accruals is based on the AFTAP for the prior year but only if such AFTAP would be greater than that for the current plan year.

Comment – The certified AFTAP for 2009 will still be used to determine if other benefit restrictions or limitations apply (i.e. payment of lump sum amounts).

Please contact your Harbridge consultant if you have any questions or if you wish to discuss how these provisions will impact your plan.