

Publications

IRS Guidance on Funding Relief and Elections Under the American Rescue Plan Act of 2021

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On July 30, the Internal Revenue Service issued [Notice 2021-48](#), providing guidance on how plans should implement the funding relief provisions contained in the American Rescue Plan Act of 2021 (“ARPA” or “Act”). Below we summarize the key components of this relief.

Importantly, there are several situations where Form 5500 filings can affect how the ARPA relief applies to a plan. Working with plan actuaries, plan sponsors should consider how they wish to apply the ARPA relief, and ensure that their Form 5500 for the 2020 plan year is consistent with the intended approach to applying the relief.

Background

ARPA included two key changes to the determination of minimum required contributions for qualified defined benefit plans.

- [Amortization period for unfunded liabilities](#). Previously, underfunding was required to be fully repaid within seven years. ARPA extended that period to fifteen years. Additionally, a “fresh start” of the unfunded liability amortization occurs in the first year that this provision is in effect.
- [Interest rates for determining benefit liabilities](#). Prior to ARPA, the interest rates could not be outside of a “corridor” that was 85% to 115% (for 2021) of the 25-year average of prior interest rates. ARPA tightened the “corridor” to 95% to 105%, and also provided that the 25-year average of interest rates cannot be less than 5%. In most cases, these updates will provide material funding relief to defined benefit plans.

Although ARPA was enacted on March 11, 2021, certain provisions of the Act can apply retroactively at the option of the plan sponsor, which may provide relief to sponsors who experienced financial hardship due to the COVID-19 outbreak. IRS Notice 2021-48 provides guidance on (1) how to make the ARPA relief elections, (2) what elections are available with respect to credit balances, (3) how to reflect those elections in plan operation (primarily with respect to AFTAP restrictions under Internal Revenue Code (“Code”) section 436), and (4) how to report and disclose the effect of ARPA provisions.

ARPA Elections for Funding Relief

1. Amortization Period Election:

The extension of amortization periods (from seven years to fifteen years) applies for all plan years beginning after December 31, 2021. At the plan sponsor's election, this relief can be applied retroactively, starting for plan years beginning after December 31, 2018.

To elect to apply the 15-year amortization period for years before 2022, the plan sponsor provides a written notice (signed and dated) to the enrolled actuary and the plan administrator. The election must include the following details:

- (1) Plan name;
- (2) Plan number;
- (3) Name of the plan sponsor;
- (4) The plan sponsor's mailing address;
- (5) The plan sponsor's employer identification number; and
- (6) The first plan year for which the 15-year amortization period will apply.

Form 5500 Deemed Election: If a Form 5500^[1] is filed for a plan year beginning in 2019, 2020, or 2021, and the Schedule SB reflects the 15-year amortization period, then the plan sponsor is deemed to have elected to apply it beginning with the first plan year for which the 15-year amortization is used on the filing. The IRS provides two examples:

- If the attachment to the Schedule SB for the 2020 plan year reflects 14 years remaining in the amortization period for base established for the 2019 plan year, the plan sponsor will be deemed to have elected to apply the 15-year period beginning with the 2019 plan year.
- Alternatively, if the attachment to the Schedule SB for the 2020 plan year reflects only one shortfall amortization base with 15 years remaining in the amortization period, the plan sponsor will be deemed to have elected to apply the 15-year period beginning with the 2020 plan year.

Presumably, this deemed election is irrevocable because the guidance does not provide a way to modify this deemed election by filing an amended Form 5500 (unlike the segment rate election described below).

Notably, the guidance does permit a plan sponsor to elect to apply the 15-year amortization relief to a plan year even if the Form 5500 has already been filed for that year without taking into account the relief.

2. Segment Rate Election:

The ARPA relief related to interest rates (providing a floor on the 25-year averages, and extending the "corridor" for interest rates) by default will be applicable to plan years beginning after December 31, 2019. A plan sponsor can make an election to waive this relief with respect to the 2020 or 2021 plan years either (1) for all purposes, or (2) just for purposes of applying the funding-related plan restrictions under Code section 436. Some plan sponsors may wish to *not* apply the relief retroactively, to avoid the need for retroactive corrections to prior plan operations.

To elect out of the segment rate relief, the process is very similar to the amortization period election. The plan sponsor provides a written notice (signed and dated) to the enrolled actuary and the plan administrator. The election must include the following details:

- (1) Plan name;
- (2) Plan number;
- (3) Name of the plan sponsor;
- (4) The plan sponsor's mailing address;
- (5) The plan sponsor's employer identification number;

(6) If the election is made for a plan year beginning in 2020, a statement of whether the election not to use the relief applies for all purposes, or solely for purposes of determining the AFTAP under Code section 436; and

(7) If the election is made for a plan year beginning in 2021, a statement of whether the election not to use the relief applies for all purposes, or solely for purposes of determining the AFTAP under Code section 436.

Form 5500 Deemed Election: If a Form 5500 is filed for the plan year beginning in 2020, and line 21a of the Schedule SB reflects interest rates *disregarding* the ARPA relief, the sponsor is deemed to have elected to disregard the ARPA relief for all purposes under the plan for that year. This deemed election can be revoked if an amended Form 5500^[2] is filed by December 31, 2021, reflecting the use of the ARPA rates. If the election is not revoked by the December 31, 2021 deadline, it becomes irrevocable.

Cash Balance Plans – Potential Impact of ARPA Election: Cash balance plans that provide an interest crediting rate based upon the Code section 430 funding segment rates are likely to be affected by this ARPA relief. By changing how the Code section 430 rates are determined, ARPA can also change the interest crediting rate that is ultimately applied for interest credits under a cash balance plan. The IRS guidance states that an election not to apply the ARPA relief *for funding purposes* will also apply to the *interest crediting rate*. However, if a plan opts out of the ARPA relief for 2020 and 2021 for all purposes, the new ARPA rates will first apply to the interest crediting rate in 2022.

For plans that do not opt out of the ARPA rates in 2020 and 2021, the plan administrator may apply a reasonable interpretation of the plan terms for when the change takes effect. The IRS guidance states that it is reasonable to use the ARPA rates for interest crediting periods ending on or after March 11, 2021, and pre-ARPA rates for interest crediting periods ending prior to March 11, 2021.

3. ARPA Election Deadlines:

The elections above (other than a deemed election for the 15-year amortization period), must be made by the later of (1) the last day of the plan year beginning in 2021, or (2) December 31, 2021.

Effects on Credit Balances

Generally, the elections with respect to a plan's prefunding balance or funding standard carryover balance are irrevocable and must be made timely. For example, if a plan sponsor makes contributions in excess of the minimum required contribution, it must make an election within 8½ months of the end of the plan year in order for the excess to be applied toward the prefunding balance. However, the funding relief provided by ARPA can apply retroactively, such that these deadlines would have already passed. The IRS Notice provides relief for how some elections can be made:

Adding a Prefunding Balance: Previously, this election would have been due by 8½ months after the end of the plan year. If a plan is applying the ARPA relief retroactive to 2019, 2020, or 2021, the IRS will allow an election to increase the prefunding balance if it is made by December 31, 2021. The increase can be up to the amount by which the actual contributions exceeded the minimum required contributions (after applying the ARPA relief). The election is made by sending written notice to the plan administrator and enrolled actuary (just like ordinary elections under the usual Code section 430(f) rules).

Revoking a Prior Election to Use a Credit Balance: If a plan used a credit balance to satisfy the minimum required contribution in 2019 or 2020, that election can be revoked if the balance would no longer be needed after applying the ARPA relief (and the plan elects to apply such relief). The election will be valid if written notice is sent to the plan administrator and enrolled actuary no later than December 31, 2021.

Revoking a Prior Election to Reduce a Credit Balance: If a plan voluntarily reduced a credit balance as of the first day of a plan year beginning in 2020 or 2021, that election can be revoked (in full or in part) if the sponsor applies the ARPA relief for minimum funding purposes to either of those years. The election will be valid if written notice is sent to the plan administrator and enrolled actuary no later than December 31, 2021.

Redesignation of Contributions to Next Year

A plan sponsor may choose to redesignate all or a portion of a contribution that was originally designated as applying for the plan year beginning in 2019 or 2020 as a contribution for the immediately succeeding plan year. Redesignation is only permitted if the original contribution could have been designated for the succeeding year (*i.e.*, it falls within the timing rules for contributions for that year, and

is not subject to the allocation rules if there are unpaid minimum required contributions). Redesignation is also only permitted if the original designation was made on a Schedule SB filed on or before October 15, 2021.

We note that redesignating a contribution to the next plan year will change the asset value for the next plan year for various purposes, including (but not limited to) the determination of variable-rate premiums payable to the PBGC, and determining whether the plan is eligible to use its credit balances to meet the minimum required contribution. Before redesignating contributions to the succeeding plan year, a sponsor should carefully review the full implications of that decision to avoid triggering any unexpected consequences.

Updated AFTAP Certifications

The ARPA funding relief provisions may have a material impact on a plan's previously-certified AFTAP (*i.e.*, plan operations would have been different based upon the subsequent AFTAP determination). Usually, a material change in the AFTAP can disqualify a plan, but the IRS has provided relief for the changes due to the ARPA relief. The guidance also allows plan sponsors to choose whether to apply a revised AFTAP retroactively and prospectively, or prospectively only.

Prospective AFTAP Application: For sponsors that do not elect to apply the change in the AFTAP retroactively (for 2020 or 2021), if the AFTAP is certified for 2020 or 2021 no later than December 31, 2021, then any change in the revised AFTAP will be deemed to be immaterial. That plan would only need to operate in accordance with the revised AFTAP certification prospectively.

Retroactive AFTAP Application: Similar to the prospective application of the AFTAP, an AFTAP that is recertified by December 31, 2021 will also be deemed to be an immaterial change if the sponsor has elected to follow the AFTAP rules retroactively, and then actually conforms the plan operations to that retroactive effective date (consistent with the correction procedures in the guidance).

Plan Corrections for Retroactive AFTAP: If a sponsor applies the ARPA funding relief retroactively, and does not opt out of having the relief apply for purposes of Code section 436, then the AFTAP may retroactively change. This could cause certain funding restrictions to be retroactively lifted, requiring prior benefits to be restored. The IRS provides some relief for how those benefits can be restored for plans that apply the AFTAP retroactively.

- **"UCE" Benefits:** If a plan offers unpredictable contingent event benefits and an event triggering those benefits has occurred, those benefits must become payable retroactive to the period in which those benefits would have been payable under the terms of the plan.
- **Plan Amendments:** If a plan amendment was restricted due to the AFTAP in 2020, then the plan amendment must automatically take effect as of the first day of that plan year (or, if later, the original effective date of the amendment).
- **Prohibited Payments:** If a plan was restricted from paying lump sums (or any other prohibited payment), the plan has taken adequate corrective action if it makes the prohibited payment available to participants or beneficiaries who would have been eligible for the prohibited payment on or after the application of the initial restriction (*e.*, when the first AFTAP was certified).
- **Benefit Accruals:** If a plan was restricted from providing benefit accruals due to the initial AFTAP, the plan has taken adequate corrective action if it restores those benefits (*e.*, disregards the prior AFTAP that caused the accruals to cease).
- **New Elections:** For restoring benefits that may have affected participants' benefit elections during the period when the AFTAP restrictions were applied, the correction method depends on whether or not the payments have already commenced:
 - **Payments not yet Commenced:** In the case of a participant or beneficiary who, as a result of any of the changes described in this section, is entitled (1) to increased benefits, (2) to benefits payable at a special early retirement date, or (3) to benefits payable in a different form of payment (and who elects such different form of payment, with spousal consent, if applicable), the IRS allows them to be provided the benefit increases, or other form of payment, commencing with a new prospective annuity starting date.
 - **Payments have Commenced:** If payments have already commenced, the corrective action is to provide the participant or beneficiary with (1) future benefit payments that are paid in the same manner and amount as if the participant or beneficiary had begun receiving the corrected payment at the time payments originally commenced, and (2) a make-up payment for past underpayments. The make-up payment for past underpayments (1) is equal to the aggregate difference between the past payments actually received and the amounts that would have been received by the participant or beneficiary had the benefit commenced in the correct form of payment at the original commencement date, plus interest to the date of the correction (in accordance with EPCRS), and (2) may be paid as either (i) a single-sum payment, or (ii) an actuarially equivalent increase in the amount of future benefit payments.

AFTAP Contributions Recharacterized: If a contribution was made to avoid the Code section 436 restrictions, but the contribution would not have been required if ARPA was in effect (consistent with the sponsor's elections for when the relief applies), then that contribution can be recharacterized as a general funding contribution and applied towards the plan's minimum funding obligation. As noted below, however, these contributions cannot be recharacterized if doing so would trigger the application of Code section 436 restrictions.

General Limitation – Relief Cannot Impose Restrictions: Any of the actions in the IRS Notice intended to implement the ARPA relief cannot be used if they would result in the *imposition* of any of the funding restrictions under Code section 436.

Reporting Requirements – Changes for 2019 Plan Year

Revised Contributions: The ARPA relief may affect a plan's minimum required contribution, excess contributions, and unpaid minimum required contributions for 2019. These changes can be reported (with the ARPA revisions) on the appropriate places of the 2020 Schedule SB. For example, reporting of excess contributions for the 2019 plan year on lines 11a and 11b of the 2020 Schedule SB can be updated to reflect the ARPA relief (similarly, unpaid minimum required contributions for 2019 on line 28). Alternatively, the 2019 changes can be reported by filing an amended Form 5500 for the 2019 year. If any contributions are redesignated from one year to another, then amended Form 5500 filings are required for both of the affected plan years.

Credit Balance Elections: If, as noted above, a sponsor makes an election to revise the application of the plan's credit balances (prefunding balance or funding standard carryover balance), the revised item should be reported on the 2020 Schedule SB (even if the revised 2019 number is not the same as reported on line 35 of the 2019 Schedule SB). While not explicitly stated in the guidance, it would likely be appropriate to include a reconciliation of the 2019 and 2020 figures in the attachments.

Excise Taxes for Unpaid Minimum Required Contributions: If a plan sponsor reported an unpaid minimum required contribution (Form 5330) and paid the excise tax based upon the amount owed before the application of the ARPA relief, the sponsor can file an amended Form 5330 and obtain a refund of the overpayment. The IRS also notes that if a sponsor expects that an unpaid minimum required contribution will be eliminated by the ARPA relief, the Form 5330 should not be filed. However, we note that the IRS will generally send a notice of tax due if the Schedule SB indicates that there is an outstanding unpaid minimum required contribution. That sponsor should not file a Form 5330 if they think the ARPA relief will fully eliminate the missed contribution, but should provide the IRS an explanation if the IRS sends any notice of excise tax due for the missed contributions. If the sponsor does not think the ARPA relief will fully eliminate the missed contributions, the sponsor should file a Form 5330 as soon as possible to reflect the appropriate missed contributions, reflecting the ARPA relief, in order to avoid interest charges and penalties.

Reporting Requirements – Changes for 2020 Plan Year

Most plans will not have submitted their Form 5500 for the 2020 plan year at this time. Those plans should report the 2020 plan year information based on whether they are applying the ARPA provisions for that year. Plans that have already filed their 2020 Form 5500 can submit an amended Form 5500 to make any application changes due to the ARPA relief. Alternatively, a plan sponsor could choose to apply the rules for 2019 changes (as described above) when they file the 2021 Form 5500 (*i.e.*, report the updated numbers next year, even if they do not align with the numbers already reported on the 2020 Form 5500 already submitted).

Observations

The ARPA funding provisions reflect significant changes in this area – perhaps the most significant since the 2006 PPA funding rules. Plan sponsors should be hearing from their plan actuaries soon as to the initial impact and possible elections. This alert is intended to provide helpful background to plan sponsors understanding the changes, the impact of various choices, and the short and long-term effects on their plans.