



Pension Protection Act of 2006

Summary of Provisions Affecting Multiemployer Plans

PPA: Actuarial Certification Criteria

“Yellow Zone” Endangered

- Not in critical status, and
 - Funded percentage < 80%
- OR
- Accumulated Funding Deficiency (AFD) in current plan year or projected in next 6 years (taking into account PPA amortization extensions)

“Orange Zone” Seriously Endangered

- Not in critical status, and
 - Funded percentage < 80%
- AND
- AFD in current plan year or projected in the next 6 years, taking into account PPA amortization extensions

“Red Zone” Critical

- AFD in the current plan year or projected in the next 3 years (4 years if < 65% funded), without regard to PPA amortization extensions
- OR
- Funded percentage < 65% and fails 7-year solvency test
- OR
- Expected contributions for current plan year do not cover normal cost plus interest on unfunded liability, PV of inactive liability exceeds PV of active liability, and projected AFD in current or next 4 years
- OR
- Fails 5-year solvency test

PPA Annual Timeline

For a plan year beginning January 1, 2010

Event	Deadline	Latest Date
Actuarial certification	90 days into plan year	3/31/2010
Notice to interested parties (endangered or critical only)	30 days after actuarial certification	4/30/2010
Imposition of surcharges (critical status only)	30 days after notice of surcharge is sent to employers (may be later than certification notice)	Depends (likely 6/1/2010)
Adoption of FIP or rehab plan	240 days after due date for actuarial certification	11/26/2010
Send FIP or rehab plan schedules to bargaining parties	30 days after adoption of FIP or rehab plan	12/26/2010 (Sunday)
Funding improvement or rehab period begins	After expiration of contracts covering at least 75% of active participants, not later than first of plan year following second anniversary of adoption of FIP or rehab plan	1/1/2011, 1/1/2012, or 1/1/2013, depending on contract expirations

PPA: “Yellow Zone” (Endangered) Requirements

- **Plan must notify interested parties 30 days after certified endangered**
- **Funding improvement plan (FIP)**
 - Must be adopted by Trustees within 240 days after due date of certification
 - Include options or range of options to improve plan funding
 - Goal is to reduce underfunding by one-third over 10 years
 - Reduce underfunding by one-fifth over 15 years for seriously-endangered plans less than 70% funded
 - Also, avoid accumulated funding deficiencies during funding improvement period
- **Schedules to bargaining parties**
 - Provided by Plan within 30 days after adoption of FIP
 - At least one schedule for increased contributions, one for reduced benefits
- **Funding improvement period**
 - Begins after expiration of contracts covering 75% of active participants (not later than 2 years after adoption of FIP)

PPA: “Red Zone” (Critical) Requirements

- **Plan must notify interested parties 30 days after certified critical**
- **Rehabilitation plan**
 - Must be adopted by Trustees within 240 days after due date of certification
 - Include options to exit critical status in 10 years (or longer if needed)
- **Schedules to bargaining parties**
 - Provided by Plan within 30 days after adoption of rehab plan
 - Preferred schedule (or schedules) and default schedule
 - Default schedule is to reduce benefits (minimum of 1% of contributions)
- **Plan may reduce or eliminate “adjustable” benefits**
 - Includes early retirement subsidies, special death benefits, etc.
- **Surcharges apply to employer contributions**
 - 5% for first year, 10% thereafter
 - Surcharges apply until adoption of contract consistent with rehab plan
- **Rehabilitation period**
 - Begins after expiration of contracts covering 75% of active participants (not later than 2 years after adoption of rehab plan)

Red Zone: Adjustable Benefits

- **Benefits, rights, and features other than accrued benefit payable at normal retirement age may be reduced or eliminated.**
 - Qualified joint and survivor annuity is protected.
 - Benefits in pay status before notice of certification are protected.
 - Adjustable benefits for active and inactive vested participants are not protected.
- **Adjustable benefits include:**
 - Early retirement subsidies
 - 60-month guarantees
 - Disability benefits
 - Subsidized pre-retirement survivor annuities
- **Cannot reduce adjustable benefits until 30 days after notice has been sent to participants and beneficiaries, contributing employers, unions.**

Red Zone: Employer Surcharges

- **Mandatory surcharges apply to employer contributions**
 - 5% of contributions in initial critical year
 - 10% of contributions in subsequent critical years
 - Terminates upon adoption of CBA consistent with rehab plan
- **Surcharge shall not apply until 30 days after employer receives notice.**
 - Notice that the plan is in critical status and surcharges are in effect.
 - PPA does not specify when surcharge notice must be sent.
 - However, model critical status notice includes surcharge notification.
- **Surcharge shall not generate benefit accruals.**

PPA: “Automatic” Amortization Extensions

- **Extends amortization periods for FSA charges up to 5 years.**
 - For example, amortize an experience loss over 20 years instead of 15 years.
- **“Automatic” approval by IRS:**
 - If the plan actuary certifies that:
 - There will be a FSA deficiency in the next 10 years, without the extension.
 - The Trustees have “adopted a plan to improve the plan’s funding status.”
 - The plan is projected to have sufficient assets to pay benefits and expenses.
 - Notice to participants and affected parties has been provided.
 - Extensions cannot be reflected in PPA certifications until “automatic” approval has been granted by the IRS
 - Filing fee is \$9,000.
- **IRS may grant additional extension, up to 10 years in total.**
 - Requires IRS approval
 - Unclear what IRS standards will be for granting such extensions.
- **Cannot be used to avoid Red Zone certification**
 - Per current proposed regulations.

PPA: Increased Disclosures

- **Annual funding notices**

- Send to participants, beneficiaries, employers, unions, and PBGC
- Distribute within 120 days after the end of the plan year for which the notice applies
- Sample of required content:
 - Funded percentage, asset values, liabilities
 - Headcounts for participants and beneficiaries
 - Statement of the plan's funding policy and asset allocation
 - Statement of PPA certified status and progress toward funding improvement / rehab plan

- **Summary plan information**

- Send to participants, beneficiaries, and employers
- Distribute 30 days after due date for “annual report” (i.e., Schedule MB)
- Sample of required content:
 - Contribution schedules
 - List of large employers, withdrawn employers, employers requesting WL assessment
 - Statement of the plan's funding policy and asset allocation
 - Statement of PPA certified status and progress toward funding improvement / rehab plan

PPA: Increased Disclosures (continued)

- **Additional information provided upon request:**
 - Periodic actuarial reports
 - Must have been in the Plan's possession for at least 30 days
 - Actuarial valuation usually finalized 9 to 12 months after plan year begins
 - Quarterly, semi-annual, or annual financial reports
 - Must have been in the Plan's possession for at least 30 days
 - Prepared by any investment manager, advisor, or other fiduciary
 - Application for amortization extension filed with IRS
 - Also includes IRS response, if available