

Department of the Treasury  
Internal Revenue Service  
Notice

**Funding relief for multiemployer defined benefit pension plans under the American Rescue Plan Act of 2021**

**Notice 2021-57**

**I. PURPOSE**

This notice provides guidance for sponsors of multiemployer defined benefit pension plans on the elections under sections 9701 and 9702 of the American Rescue Plan Act of 2021, Pub. L. 117-2 , 135 Stat. 4 (the ARP), and the relief provided under section 9703 of the ARP, relating to sections 431 and 432 of the Internal Revenue Code (Code). These provisions permit plan sponsors to:

- Elect to delay designating a plan as being in endangered, critical, or critical and declining status under section 432(b)(3) , as applicable, or to delay updating the plan's funding improvement plan or rehabilitation plan, as applicable;
- Elect to extend the plan's funding improvement period under section 432(c)(4) or the rehabilitation period under section 432(e)(4) , as applicable; and
- Spread certain investment losses and other experience losses related to COVID-19 over a period of up to 30 years in determining charges to the funding standard account under section 431 .

**II. BACKGROUND**

Section 412 of the Code sets forth minimum funding rules that generally apply to pension plans. Section 431 of the Code sets forth the funding rules that apply specifically to multiemployer defined benefit plans. Section 432 of the Code sets forth additional rules that apply to a multiemployer plan that is in endangered status or critical status.<sup>1</sup>

**A. Minimum funding standards under section 431**

Section 412(a)(2)(C) provides that a multiemployer plan is treated as satisfying the minimum funding standard for a plan year if the employers make contributions to or under the plan that, in the aggregate, are sufficient to ensure that the plan does not have an accumulated funding deficiency under section 431 as of the end of that plan year. Section 431(a) provides that the accumulated funding deficiency of a multiemployer plan for any plan year is the amount, determined as of the end of that plan year, equal to the excess (if any) of (1) the total for all plan years of the charges to the funding standard account of the plan under section 431(b)(2) , over (2) the credits to that account under section 431(b)(3) (including employer contributions under section 431(b)(3)(A) ) for those plan years. Pursuant to section 431(b)(2)(B)(iii) , the charges to the funding standard account

include a 15-year amortization of the plan's net experience loss for prior plan years.

Section 431(b)(8) provides two special funding rules available to a multiemployer plan meeting a solvency requirement under section 431(b)(8)(C) . These rules, which were enacted in 2010 to provide funding relief for the investment losses incurred in the first two plan years ending after August 31, 2008, provide for (1) a special amortization rule under section 431(b)(8)(A) , and (2) a special asset valuation rule under section 431(b)(8)(B) .

2

Section 431(b)(8)(A)(i) applies a special amortization rule to the portion of a multiemployer plan's experience loss or gain for a plan year attributable to net investment losses, if any, incurred in either or both of the first 2 plan years ending after August 31, 2008. This portion of the experience loss or gain may be treated as an item separate from other experience losses, to be amortized in equal annual installments (until fully amortized) over the period beginning with the plan year in which that portion was first recognized in the actuarial value of assets and ending with the last plan year in the 30-plan-year period beginning with the plan year in which that portion was incurred. Section 431(b)(8)(A)(ii) provides that this special amortization period cannot be extended under section 431(d) (which permits a plan sponsor to obtain an extension of an amortization period), and any extension granted under section 431(d) prior to the application of the special amortization period may not result in the amortization period exceeding 30 years. Section 431(b)(8)(A)(iii) provides that net investment losses are to be determined in the manner described by the Secretary on the basis of the difference between actual and expected returns (including any difference attributable to any criminally fraudulent investment arrangement that is determined under rules that are substantially similar to the rules that apply for purposes of section 165 ).

Section 431(b)(8)(B)(i) provides a special asset valuation rule permitting a multiemployer plan to change its asset valuation method in a manner that (1) spreads the difference between expected returns and actual returns for either or both of the first 2 plan years ending after August 31, 2008, over a period of not more than 10 years; (2) provides that, for either or both of the first 2 years beginning after August 31, 2008, the value of plan assets at any time is not permitted to be less than 80 percent or greater than 130 percent of the fair market value of the assets at that time; or (3) provides for both (1) and (2). Section 431(b)(8)(B)(ii) provides that, if the special asset valuation rule applies for any plan year, the Secretary will not treat the plan's asset valuation method as unreasonable solely because of the changes described in the preceding sentence and the changes in funding method will be deemed approved by the Secretary. Section 431(b)(8)(B)(iii) provides that if the special amortization rule and the special asset valuation rule both apply for any plan year, the plan must treat any reduction in the plan's unfunded accrued liability resulting from the application of the special asset valuation rule in those years as a separate experience amortization base to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years.

The solvency test of section 431(b)(8)(C) is met for a multiemployer plan only if the plan's actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account the changes in the funding standard account under section 431(b)(8) .

Section 431(b)(8)(D) provides that, if the special amortization rule or the special asset valuation rule applies to a multiemployer plan for any plan year, then a plan amendment increasing benefits may not go into effect during the 2 plan years immediately following that plan year. Section 431(b)(8)(D) provides for an exception to this rule if (1) the plan's actuary certifies that the increase is paid for out of additional contributions not allocated to the plan immediately before the plan's application of the special amortization rule or the special asset valuation rule and that the plan's funded percentage and projected credit balances for those 2 plan years are reasonably expected to be at least as high as they would have been if the benefit increase had not been adopted, or (2) the amendment is required as a condition of qualification under the Code or to comply with other applicable law. The section 431(b)(8)(D) benefit increase restriction applies in addition to any other applicable restrictions on benefit increases.

Section 431(b)(8)(E) provides that the plan sponsor is required to give notice of application of the special rules to plan participants and beneficiaries and the Pension Benefit Guaranty Corporation (PBGC).

Notice 2010-83 , *2010-51 IRB 862* , provides guidance on the application of section 431(b)(8) . Because section 9703 of the ARP provides for the application of a modified version of section 431(b)(8) of the Code for the first 2 plan years ending after February 29, 2020, section III.E of this notice provides that a modified version of the guidance in Notice 2010-83 applies for purposes of section 9703 of the ARP.

## **B. Additional rules under section 432 for multiemployer plans in endangered or critical status**

Section 432(a) provides that certain requirements apply to a multiemployer defined benefit plan that was in effect on July 16, 2006, if, as determined under section 432(b) , the plan is in endangered status, critical status, or critical and declining status (section 432 status). Section 432 does not apply to a multiemployer plan for periods after the plan year of termination within the meaning of section 4041A(a)(2) of ERISA.<sup>3</sup>

### **1. Section 432 status**

Section 432(b)(1) provides that, other than in the case of a plan described in section 432(b)(5) , a plan is in endangered status for a plan year if the plan is not in critical status for the plan year and, as of the beginning of the plan year, the plan's actuary determines that either (1) the plan's funded percentage for such plan year is less than 80 percent, or (2) the plan has an accumulated funding deficiency for the plan year, or is projected to have an accumulated funding deficiency for any of the 6 succeeding plan years, taking into account any extension of amortization periods under section 431(d) . If a plan meets both conditions (1) and (2) described in the preceding sentence, then the plan is in seriously endangered status.

Section 432(b)(2) provides that a plan is in critical status for a plan year if the plan's actuary determines the plan is described in one or more of the following categories as of the beginning of the plan year:

- i. The plan's funded percentage is less than 65 percent, and the sum of the fair market value of plan assets, plus the present value of the reasonably anticipated employer contributions for the current plan year and each of the 6 succeeding plan years (assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years) is less than the present value of all nonforfeitable benefits projected to be payable under the plan during the current plan year and each of the 6 succeeding plan years (plus administrative expenses for such plan years).
- ii. The plan has an accumulated funding deficiency for the current plan year, or is projected to have an accumulated funding deficiency for any of the 3 succeeding plan years (4 succeeding plan years if the funded percentage of the plan is 65 percent or less). For purposes of the prior sentence, any extension of amortization periods under section 431(d) is not taken into account.
- iii. The plan meets the following three factors: (1) the plan's normal cost for the current plan year, plus interest (determined at the rate used for determining costs under the plan) for the current plan year on the amount of unfunded benefit liabilities under the plan as of the last date of the preceding plan year, exceeds the present value of the reasonably anticipated employer and employee contributions for the current plan year; (2) the present value, as of the beginning of the current plan year, of nonforfeitable benefits of inactive participants is greater than the present value of nonforfeitable benefits of active participants; and (3) the plan has an accumulated funding deficiency for the current plan year, or is projected to have such a deficiency for any of the 4 succeeding plan years, not taking into account any extension of amortization periods under section 431(d) .
- iv. The sum of the fair market value of plan assets of the plan plus the present value of the reasonably anticipated employer contributions for the current plan year and each of the 4 succeeding plan years (assuming that the terms of all collective bargaining agreements pursuant to which the plan is maintained for the current plan year continue in effect for succeeding plan years) is less than the present value of all benefits projected to be payable under the plan during the current plan year and each of the 4 succeeding plan years (plus administrative expenses for such plan years).

Section 432(b)(6) provides that a plan is in critical and declining status if the plan meets one or more of the definitions of critical status as described in section 432(b)(2) and the plan is projected to become insolvent within the meaning of section 418E during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2:1 or if the funded percentage of the plan is less than 80 percent).

## **2. Special rules relating to section 432 status**

Section 432(b)(4) provides that the plan sponsor of a multiemployer plan that has not been certified to be in critical status for a plan year but that is projected by the plan's actuary to be in critical status in any of the succeeding 5 plan years may, not later than 30 days after the date of the certification of status for the plan year, elect to be in critical status effective beginning with the plan year in which the election is made. For this purpose, the projection must take into account the rules of section 432(b)(3)(B)(iv) . Under section 432(b)(4) , a

plan that is in critical status as a result of a sponsor election remains in critical status until the plan emerges from critical status in accordance with section 432(e)(4)(B) .

Section 432(b)(5) describes a plan that would be in endangered status for a plan year but for which the plan's actuary certifies that: (1) the plan is projected to not be in endangered status as of the end of the tenth plan year ending after the plan year to which the certification relates; and (2) the plan was not in critical status or endangered status in the immediately preceding plan year.

Section 432(b)(7) , as added by section 9704 of the ARP, provides that a multiemployer plan receiving special financial assistance under section 4262 of ERISA, is deemed to be in critical status for plan years beginning with the plan year in which the effective date for such assistance occurs and ending with the last plan year ending in 2051.

Section 432(e)(4)(B)(i) of the Code provides, as a general rule, that a multiemployer plan in critical status remains in critical status until a plan year for which the plan actuary certifies that: (1) the plan is not described in section 432(b)(2)(A) , (B) , (C) , or (D) for the plan year; (2) the plan is not projected to have an accumulated funding deficiency for that plan year or any of the 9 succeeding plan years; and (3) the plan is not projected to become insolvent within the meaning of section 418E for any of the 30 succeeding plan years. Section 432(e)(4)(B)(ii) provides a special emergence rule for a plan with an automatic amortization extension under section 431(d)(1) . The emergence rules described in section 432(e)(4)(B) also apply to a plan that is in critical status pursuant to a plan sponsor election under section 432(b)(4) . In addition, section 432(e)(9)(J) provides that a plan to which a suspension of benefits under section 432(e)(9) applies may not emerge from critical status under section 432(e)(4)(B) until (1) the plan is no longer certified to be in critical or endangered status, and (2) the plan is projected to avoid insolvency under section 418E .

### **3. Certification and notice of section 432 status**

Under section 432(b)(3)(A) , the actuary for a multiemployer plan must, by the 90th day of each plan year, certify the plan's section 432 status for the plan year to the Secretary of the Treasury and to the plan sponsor. The certification must state whether: (1) the plan is in endangered status for that plan year (or would be in endangered status for that plan year but for section 432(b)(5) ); (2) the plan is or will be in critical status for that plan year or for any of the succeeding 5 plan years; (3) the plan is in critical and declining status for that plan year; or (4) the plan is in neither endangered status nor critical status for that plan year. In the case of a plan that is in a funding improvement or rehabilitation period, the plan actuary must also certify whether the plan is making the scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

Section 432(b)(3)(D)(i) provides that if a multiemployer plan is certified to be in endangered status or critical status for a plan year (or if the plan sponsor elects under section 432(b)(4) for the plan to be treated as in critical status for a plan year), then the plan sponsor must provide notice of the plan's section 432 status to participants and beneficiaries, the bargaining parties, PBGC, and the Secretary of Labor, not later than 30 days

after the date of the certification. In addition, in any case in which a plan sponsor elects to be in critical status for a plan year under section 432(b)(4) , the plan sponsor must notify the IRS of the election not later than 30 days after the date of certification (or any other time as prescribed in regulations or other guidance). Section 432(b)(3)(D)(ii) provides that if the plan is or will be in critical status, the notice must explain the rules under which adjustable benefits, as defined in section 432(e)(8) , may be reduced. Section 432(b)(3)(D)(iii) provides that a plan sponsor must notify the bargaining parties and PBGC if the plan would be in endangered status but for the application of section 432(b)(5) . Section 432(b)(3)(D)(v) provides that if a multiemployer plan will be in critical status for any of 5 succeeding plan years (but not for the current plan year) and the plan sponsor has not made an election to be in critical status for the plan year under section 432(b)(4) , the plan sponsor must notify PBGC of the projected critical status not later than 30 days after the date of the certification.

#### **4. Adoption and update of funding improvement plan or rehabilitation plan**

Section 432(c)(1)(A) provides that, if a plan is in endangered status (including seriously endangered status), the plan sponsor must adopt a funding improvement plan no later than 240 days after the date the plan's actuary is required to make a certification of the plan's section 432 status for the plan year. As described in section 432(c)(1)(B)(i) , the funding improvement plan must be reasonably expected to enable the plan to achieve certain funding improvements by the end of its 10-year funding improvement period (or 15-year funding improvement period for a plan in seriously endangered status). Similarly, section 432(e)(1)(A) provides that the sponsor of a plan that is in critical status must adopt a rehabilitation plan no later than 240 days after the date the plan's actuary is required to make a certification of the plan's section 432 status for the plan year. As described in section 432(e)(1)(B)(i) , the rehabilitation plan must be reasonably expected to enable the plan to emerge from critical status by the end of its 10-year rehabilitation period (with alternative approaches available if the plan sponsor determines, as described in section 432(e)(3)(A)(ii) , that the plan cannot reasonably be expected to emerge from critical status by the end of the rehabilitation period using all reasonable measures).<sup>4</sup>

Under section 432(c)(6) , the plan sponsor of a multiemployer plan in endangered status must update the funding improvement plan and schedule of contribution rates annually to reflect the experience of the plan. Similarly, under section 432(e)(3)(B) , the plan sponsor of a multiemployer plan in critical status must update the rehabilitation plan and schedule of contribution rates annually. The plan sponsor must include the update to the funding improvement plan or rehabilitation plan with its filing of the plan's annual report under section 104 of ERISA.

#### **C. Applicability of excise tax under section 4971**

Section 4971(a) and (b) of the Code imposes an excise tax on an employer responsible for contributing to or under a plan if the plan has an accumulated funding deficiency. Section 4971(g) provides special rules that apply with respect to a multiemployer plan in critical or endangered status. Under section 4971(g)(1)(A) , no excise tax is imposed under section 4971(a) or (b) for a taxable year with respect to a plan in critical status for



the plan year that ends with or within the taxable year. However, under section 4971(g)(3) , if a plan in seriously endangered status fails to meet the applicable benchmarks by the end of the funding improvement period, or if a plan in critical status either fails to meet the requirements of section 432(e) by the end of the rehabilitation period or has received a certification under section 432(b)(3)(A)(ii) for three consecutive years that the plan is not making scheduled progress in meeting its requirements under the rehabilitation plan, then the plan is treated as having an accumulated funding deficiency for purposes of section 4971 . A plan described in the preceding sentence will be treated as having an accumulated funding deficiency for the last plan year in the funding improvement, rehabilitation, or 3-consecutive-year period, as applicable, and for each succeeding plan year until those benchmarks or requirements are met. The amount of the deemed accumulated funding deficiency is equal to the greater of the amount of the contributions necessary to meet those applicable benchmarks or requirements, or the amount of such accumulated funding deficiency without regard to this special rule.

### **III. GUIDANCE**

#### **A. Election under section 9701 of the ARP**

Section 9701 of the ARP permits a multiemployer plan sponsor to make an election relating to the certification and update requirements under section 432 of the Code for certain plan years. Section 9701(a)(1) of the ARP provides that, notwithstanding the actuarial certification of the plan's section 432 status under section 432(b)(3) of the Code for the plan year, a multiemployer plan sponsor may make an election (freeze election) under which the plan's section 432 status for a plan year (election year), is the same as the plan's section 432 status for the preceding plan year. A multiemployer plan sponsor may make a freeze election for the first plan year beginning on or after March 1, 2020, or the next succeeding plan year.

If a freeze election applies to a multiemployer plan for a plan year (that is, the plan year is an election year), then the plan's section 432 status for the preceding year applies for the plan year (elected section 432 status), and the plan must be operated in accordance with the elected section 432 status for that plan year, rather than the plan's section 432 status as certified by the plan's actuary under section 432(b)(3) of the Code for that plan year. Thus, for example, if a plan has been certified to be in critical status for a plan year (but was certified to be in a different section 432 status for the preceding year), and the plan sponsor makes a freeze election for the plan year, then the plan is not treated as being in critical status for the election year. Because the plan is not treated as being in critical status for the election year, the plan sponsor is not required to adopt a rehabilitation plan in that year and cannot assess employer surcharges under section 432(e)(7) , reduce adjustable benefits under section 432(e)(8) , or restrict lump sum distributions under section 432(f)(2) .<sup>5</sup>

Section 9701(a)(2) of the ARP provides that the sponsor of a multiemployer plan for which a freeze election is made for a plan year, and that was in endangered status or critical status for the preceding year, is not required to update its funding improvement plan, rehabilitation plan, or schedules as otherwise required under section 432(c)(6) or (e)(3)(B) of the Code until the plan year following the election year. Thus, for example, if a multiemployer plan for which a freeze election is made was certified as being in critical status in both the

election year and the preceding year, then the plan sponsor is not required to update the plan's rehabilitation plan for the election year. However, the actuary for a multiemployer plan that is in a funding improvement period or rehabilitation period must certify whether the plan is making the scheduled progress under its funding improvement plan or rehabilitation plan, as applicable, regardless of whether the plan year is an election year.

If elections under section 9701(a) of the ARP are made for 2 plan years, then the plan's section 432 status for both years is the plan's section 432 status for the plan year immediately preceding the first election year. Thus, for example, if the sponsor of a multiemployer plan with a plan year beginning on April 1 makes freeze elections for both the plan year beginning April 1, 2020, and the plan year beginning April 1, 2021, then the plan's section 432 status for both plan years is the plan's section 432 status for the plan year beginning April 1, 2019. This is true even if the plan's actuary had previously certified the plan's section 432 status for the plan year beginning on April 1, 2020.

Section 9701(b) of the ARP provides that if a multiemployer plan has, without regard to a freeze election, been certified by the plan actuary to be in critical status for the election year, then the plan is treated as a plan in critical status for that year for purposes of applying the minimum funding requirement under section 412(b)(3) of the Code and the section 4971(g)(1)(A) exception to the excise tax on an accumulated funding deficiency under section 4971(a). Accordingly, the minimum funding requirements do not apply for a plan year with respect to such a plan for which a freeze election is made.

## **B. Election under section 9702 of the ARP**

Section 9702 of the ARP provides that the sponsor of a multiemployer plan in endangered status or critical status for a plan year beginning in 2020 or 2021 may make an election (extension election) under which the plan's funding improvement period or rehabilitation period, whichever is applicable, is extended by 5 years. Section 9702 of the ARP also provides that a plan's eligibility to make an extension election is made taking into account the plan's section 432 status, as determined after application of section 9701 of the ARP.

If the sponsor of a multiemployer plan that is in endangered status or critical status for a plan year beginning in either 2020 or 2021 makes an extension election then, for purposes of section 432 of the Code, the plan's funding improvement period or rehabilitation period, whichever is applicable, is extended by 5 years. For example, if a multiemployer plan's section 432 status for the 2021 plan year is endangered (taking into account any freeze election under section 9701(a)(1) of the ARP), and the plan sponsor makes an extension election, then the funding improvement period is extended by 5 years. Thus, if the plan's funding improvement period (as determined taking into account an election under section 205 of WRERA) ends on the last day of the 2022 plan year (assuming the plan does not change from endangered status at an earlier date), and the plan sponsor timely elects to extend the funding improvement period in accordance with section 9702 of the ARP, then the funding improvement period is extended so that it ends on the last day of the 2027 plan year (assuming that the plan does not change from endangered status at an earlier date). Although a sponsor may make an extension election for either the 2020 plan year or the 2021 plan year, only one extension election



may be made.

A plan sponsor should take into account the interaction between sections 9701(a) and 9702 of the ARP in choosing whether to elect the relief provided under either section. For example, if the sponsor of a plan that was in neither endangered status nor critical status for the 2020 plan year, but that is certified to be in endangered status for the 2021 plan year, makes a freeze election for the 2021 plan year, then the sponsor could not elect under section 9702 of the ARP to extend the plan's funding improvement period. The sponsor cannot make an extension election because the extension election is available only in the case of a plan that is in endangered status for a plan year that begins in 2020 or 2021 (and section 9702 of the ARP provides that the determination of the plan's status is made after application of section 9701 of the ARP).

## **C. Timing and submission of elections under sections 9701 and 9702 of the ARP**

### **1. Timing of elections**

Section 9701(c)(1)(A) of the ARP provides that a freeze election under section 9701(a) must be made at the time and in the manner that the Secretary of the Treasury or the Secretary's delegate may prescribe and, once made, may be revoked only with the consent of the Secretary. Under section 9702(b)(1) of the ARP, an election to extend a plan's funding improvement period or rehabilitation period, as applicable, must be made at the time, and in the manner and form as the Secretary of the Treasury or the Secretary's delegate may prescribe, in consultation with the Secretary of Labor.

If a freeze election changes a plan's section 432 status for a plan year, the freeze election must be made within 30 days after the plan actuary certifies the plan's section 432 status (or, if earlier, 30 days after the due date for that certification under section 432(b)(3)(A) of the Code). If a freeze election does not change a plan's section 432 status for a plan year, the freeze election must be made by the last day of the election year. Pursuant to the authority in section 9702(b)(1) of the ARP to specify the time and manner of an extension election, an extension election must be made by the last day of the election year. However, a freeze election or an extension election will be treated as timely if it is made by December 31, 2021.

### **2. Submission of elections to the IRS**

Section 9701(c)(1)(B) of the ARP provides that if a freeze election is made for a plan year before the annual certification of the plan's section 432 status for that plan year is submitted to the Secretary (or the Secretary's delegate), then the election must be included with the submission of the certification. If the election is made after the submission of the certification, then the election must be submitted to the IRS not later than 30 days after the due date for making the election.

Pursuant to the authority in section 9702(b)(1) of the ARP, an extension election must be submitted to the

Secretary (or the Secretary's delegate) under the same rules that apply for a freeze election. If more than one election is made for a plan (for example, freeze elections are made for two election years, or a freeze election and an extension election are both made for a plan year), the elections may be included in a single submission.

The following submission procedures apply if a freeze election or extension election is made after the plan's annual certification is submitted to the IRS Employee Plans Compliance Unit (EPCU). A plan sponsor may submit the election by email (EPCU@IRS.GOV), e-fax (855-215-7122), or regular mail at the following address:

Internal Revenue Service  
Employee Plans Compliance Unit  
Group 7602 (TEGE:EP:EPCU)  
230 S. Dearborn Street  
Room 1700 -17th Floor  
Chicago, IL 60604

An election must include each of the following items of information, as applicable:

- i. Name, address, telephone number, and Employer Identification Number (EIN) of the plan sponsor.
- ii. Name, plan EIN (if different from sponsor EIN), and plan number of the plan for which the election is being made.
- iii. A statement that the election is intended to be an election under either section 9701 or section 9702 of the ARP.
- iv. A statement of the plan year for which the election is being made.
- v. The section 432 status of the plan for the election year taking the freeze election into account.
- vi. Whether the election is contingent on the resolution of arbitration regarding the election.
- vii. The signature of an authorized trustee who is a current member of the board of trustees that is the plan sponsor.

### **3. Election subject to arbitration**

If, as of the otherwise applicable deadline for making a freeze election or extension election, a plan sponsor has been unable to reach agreement as to whether to make an election so that the decision must be resolved through an arbitration process, there is no extension of the deadline for making the election. However, a plan sponsor in this situation may make an election that is contingent on the resolution of the arbitration and indicate that contingency as required under section III.C.2.vi of this notice.

### **4. Revocation of election**

Pursuant to this notice, revocation of a freeze election or extension election is automatically approved if the revocation request: (1) is submitted to IRS EPCU in accordance with the instructions provided in section III.C.2 of this notice; (2) satisfies the conditions described in either paragraph (i) (revocation of election contingent on outcome of arbitration) or (ii) (revocation of freeze election in other circumstances) of this section III.C.4, as applicable; and (3) in the case of a freeze election, satisfies the conditions under paragraph (iii) of this section III.C.4.

- i. If the freeze election or extension election was made contingent on the resolution of arbitration, and the result of the arbitration is to not make that election, the plan sponsor must submit the request to revoke the election within 30 days following the resolution of the arbitration and include a copy of the arbitration ruling.
- ii. If the freeze election was a freeze election that was not made contingent on the resolution of arbitration, the plan sponsor must submit the request to revoke the election by the due date for the adoption of a funding improvement plan, rehabilitation plan, or update, whichever is applicable, for the election year after taking the revocation into account.
- iii. The additional requirements that must be satisfied for the revocation of a freeze election are—
  - a. The plan sponsor must have complied with the requirements of section 432(d)(1) and (2) or section 432(f)(1) and (3) , as applicable, determined as though a freeze election had never been made; and
  - b. Notice of the plan's certified section 432 status for the election year must be provided no later than 30 days after the request for revocation is submitted. This notice must satisfy the requirements of section 432(b)(3)(D) , include a statement that the election was revoked and, in the case of a freeze election revoked on account of arbitration, explain the consequences of the revocation.

Although a request to revoke either a freeze election on an extension election will not be automatically approved in circumstances other than those set forth in this section III.C.4, the IRS may approve a revocation request that is made in accordance with the private letter ruling request procedures under Rev. Proc. 2021-1 , 2021-1 IRB 1 , or its successors.

#### **D. Notice requirements for section 9701 election**

Section 9701(c)(2) of the ARP provides special notice rules that apply when an election is made to freeze a plan's section 432 status. In the case of a plan that has been certified to be in endangered status or critical status for a plan year, but that is in neither endangered status nor critical status as a result of the freeze election, the plan sponsor must provide the notice described in section 9701(c)(2)(A) of the ARP to the participants and beneficiaries, the bargaining parties, PBGC, and the Department of Labor (DOL) in lieu of the notice that is otherwise required under section 432(b)(3)(D) of the Code. Section 9701(c)(2)(A) of the ARP provides that the notice must include such information about the election as the Secretary (in consultation with the Secretary of Labor) may require. In the case of a plan that has been certified to be in critical status but is in

endangered status as a result of a freeze election, section 9701(c)(2)(B) of the ARP requires the plan sponsor to provide the notice that would have been provided if the plan had been certified to be in endangered status in lieu of the notice that is otherwise required under section 432(b)(3)(D)(ii) of the Code.

The notice required under section 9701(c)(2)(A) of the ARP must be written in a manner calculated to be understood by the average employee to whom the notice applies. The notice must include each of the following items of information, as applicable:

- i. The name of the plan, the EIN of the plan sponsor, the EIN of the plan (if different from the EIN of the plan sponsor), and the plan number.
- ii. A statement that a freeze election has been made under the American Rescue Plan Act of 2021 to treat the plan as being neither in endangered nor critical status and the year or years to which the election applies.
- iii. The plan's endangered or critical status for the election year (or election years) as certified by the plan's actuary (that is, the plan's status in each election year if no freeze election were made).
- iv. An explanation that: (1) the freeze election applies for the current plan year (and the immediately preceding year, if applicable); and (2) if the plan is in endangered or critical status for the following plan year, the plan sponsor will provide notice of the plan's section 432 status (that is, endangered or critical) for that following year, that steps will have to be taken to improve the plan's funded situation, and that those steps may include increases in contributions and reductions in future benefit accruals.
- v. Solely in the case of a plan that was certified to be in critical status for the election year, an explanation that, if the plan is in critical status for the following year, the steps that will have to be taken to improve the plan's funded situation will include a surcharge on employer contributions and the suspension of the payment of lump sums and similar accelerated distributions for individuals who commence receiving benefits after notice is provided of the plan's critical status, and may include amendments to reduce early retirement benefits or other adjustable benefits for those individuals.
- vi. Information on how to obtain additional information about the election from the plan administrator, including a telephone number, address, and email address (if appropriate).

In accordance with section 9701(c)(2)(A)(ii) of the ARP, if the freeze election is made before the date the annual certification of the plan's section 432 status is submitted to the IRS, then this notice must be furnished no later than 30 days after the date of the certification. If the election is made after the date the annual certification is submitted to the IRS, then this notice must be provided no later than 30 days after the date of the election. The notice to participants and beneficiaries must be provided either in the form of a paper document or in an electronic form that satisfies the requirements of § 1.401(a)-21 of the Income Tax Regulations.

The notice that must be submitted to PBGC should be sent to the following address:

Pension Benefit Guaranty Corporation Multiemployer Program Division

1200 K Street, N.W., Suite 930  
Washington, D.C. 20005

Alternatively, the notice to PBGC may be submitted electronically to [multiemployerprogram@pbgc.gov](mailto:multiemployerprogram@pbgc.gov).

The notice that must be submitted to DOL should be sent to the following address:

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

Alternatively, the notice may be submitted electronically to DOL in accordance with instructions posted on the Employee Benefits Security Administration website at [www.dol.gov/ebsa](http://www.dol.gov/ebsa). Notices received by DOL will be available for public inspection at the Public Disclosure Room, and accessible electronically at that same website.

### **E. Special funding rules under section 9703 of the ARP**

Section 9703(a)(2) of the ARP amended section 431(b)(8) of the Code to provide a modified version of the special amortization rule under section 431(b)(8)(A) and the special asset valuation rule under section 431(b)(8)(B) for a multiemployer plan that meets the solvency test under section 431(b)(8)(C). Specifically, section 431(b)(8)(F)(i) allows a multiemployer plan sponsor to apply either the special amortization rule or the special asset valuation rule (or both) with respect to certain experience losses that are incurred in either or both of the first 2 plan years ending after February 29, 2020. Section 431(b)(8)(F)(ii) allows experience losses related to the virus SARS-CoV-2 or coronavirus disease 2019 (COVID-19) incurred during one of those 2 plan years to be added to those investment losses. The experience losses related to COVID-19 (COVID-19 losses) include experience losses related to reductions in contributions, reductions in employment, and deviations from anticipated retirement rates, as determined by the plan sponsor. For purposes of this relief, the IRS is required to rely on the plan sponsor's calculations of plan losses unless such calculations are clearly erroneous.

Section 431(b)(8)(B)(iii) provides that if both the special amortization rule of section 431(b)(8)(A) and the special asset valuation rule of section 431(b)(8)(B) apply for a plan year, then the plan is required to treat any reduction in the plan's unfunded accrued liability resulting from the application of the special asset valuation rule as a separate experience amortization base to be amortized in equal annual installments (until fully amortized) over a period of 30 plan years. However, section 431(b)(8)(F)(iii) provides that the rule under section 431(b)(8)(B)(iii) applies for a plan year even if the special amortization rule under section 431(b)(8)(A) does not apply for that year.

Under section 431(b)(8)(F), the special amortization rule under section 431(b)(8)(A) or the special asset valuation rule under section 431(b)(8)(B) may be applied with respect to net investment losses that are incurred in either or both of the first 2 plan years ending after February 29, 2020 without regard to whether the

relief provided under section 432(b)(8) was previously applied. However, these special funding rules are not available in the case of a plan to which special financial assistance is paid under section 4262 of ERISA.

The relief provided under section 431(b)(8)(F) of the Code is effective for the first day of the first plan year ending on or after February 29, 2020, except that any application of the special funding rules that affects the plan's funding standard account for the first plan year beginning after February 29, 2020, is disregarded for purposes of applying section 432 to that plan year. However, the restriction on plan amendments increasing benefits in section 431(b)(8)(D) is effective on the date of enactment of the ARP (March 11, 2021).

### **1. Application of the special amortization rule and special asset valuation rule**

If, pursuant to section 431(b)(8)(F) , a plan is applying the special amortization rule of section 431(b)(8)(A) to either or both of the first 2 plan years ending after February 29, 2020, then the COVID-19 losses for that plan year are added to the net investment losses for the plan year. The sum of those losses for a plan year is treated as an item separate from other experience losses to be amortized in equal annual installments (until fully amortized) over an extended amortization period. The extended amortization period begins with the plan year in which that portion of the net investment loss is first recognized in the actuarial value of assets and ends with the last plan year in the 30-plan-year period beginning with the plan year in which the net investment loss is incurred. The guidance provided in section III.A of Notice 2010-83 applies with respect to the treatment of net investment losses for purposes of the special amortization rule, except that: (1) February 29, 2020, is substituted for August 31, 2008, in the definition of eligible loss year, and (2) the COVID-19 losses for an eligible loss year are added to the eligible net investment loss described in Q&A A-5 of Notice 2010-83 for that year before applying the rules of Q&A A-3 and Q&A A-4 of that notice for a year.

If, pursuant to section 431(b)(8)(F) , a plan is applying the special asset valuation rule of section 431(b)(8)(B) with respect to net investment losses incurred in either or both of the first 2 plan years ending on or after February 29, 2020, then the guidance on the special asset valuation rule provided in section III.V of Notice 2010-83 applies, except that: (1) February 29, 2020, is substituted for August 31, 2008, in Q&AV-3, and (2) the amortization period applicable to the change in unfunded accrued liability attributable to the change in asset valuation method described in Q&A V-4 is 30 years, even if the plan sponsor decides not to use the special amortization rule of section 431(b)(8)(A) . Note that COVID-19 losses are not included in the eligible net investment losses described in Q&AV-1 of Notice 2010-83 .

Section 431(b)(8)(C) , as applied under section 9703(a)(2) of the ARP, describes the solvency test that a multiemployer plan must meet in order for either the special amortization rule or the special asset valuation rule, or both, to apply to losses incurred in either or both of the first 2 plan years beginning on or after February 29, 2020. The guidance on the solvency test provided in section III.S of Notice 2010-83 also applies in determining a multiemployer plan's solvency through the end of the amortization period for purposes of applying the special funding rules, except that if the multiemployer plan sponsor decides to apply only the special asset valuation rule under section 431(b)(8)(B) of the Code, then the period for determining the plan's



solvency is 30 years.

The application of the special rules must be taken into account in any contemporaneous or subsequent certification of status required under section 432(b)(3) and in any contemporaneous or subsequent required adoption or update of a funding improvement plan or rehabilitation plan. The guidance on certification of status under section 432 provided in section III.C, Q&As C-1 through C-3, of Notice 2010-83 applies for purposes of this certification requirement.

## 2. Examples of special amortization rules

### *Example 1*

Assume that the sponsor of a multiemployer plan that uses the calendar year as its plan year and has a beginning of year valuation date decides to apply the special amortization rule in section 431(b)(8)(A) in order to extend the amortization period for the eligible net investment loss of \$1,000,000 incurred in the plan year beginning January 1, 2020. The valuation interest rate for the plan is 7 percent. Assume that \$100,000 of the net investment loss is first reflected in the January 1, 2021 actuarial valuation. The plan has a total net experience loss in 2020 that is first reflected in the January 1, 2021 actuarial valuation of \$3,000,000. In addition to the \$100,000 of eligible net investment losses reflected in the actuarial value of plan assets as of January 1, 2021, the total net experience loss includes \$900,000 of COVID-19 related losses from reductions in contributions and employment. The following table sets forth the components of the experience loss:

		<b>Amounts (Dollars)</b>
(1)	Total net experience gain (or loss) in 2020 reflected in actuarial valuation as of January 1, 2021	(\$3,000,000)
(2)	Portion of 2020 eligible net investment loss reflected in actuarial value of plan assets as of January 1, 2021	(\$100,000)
(3)	Portion of net experience loss attributable to COVID-19 losses	(\$900,000)
(4)	Portion of net experience loss not attributable to 2020 eligible net investment loss or COVID-19 losses	(\$2,000,000)

Under section 431(b)(2)(B)(iii), amortization of the experience loss of \$3,000,000 would be over 15 plan years at \$307,835 per year (that is, \$3,000,000/9.745468). Under the special amortization rule, the experience loss

of \$3,000,000 is bifurcated into two pieces: (a) the portion attributable to the 2020 eligible net investment loss (\$100,000) is added to the additional COVID-19 losses (\$900,000), resulting in an amortization charge base of \$1,000,000, and (b) the remaining loss, resulting in an amortization charge base of \$2,000,000. The \$1,000,000 loss is amortized over the 29-year period ending in 2049 (which is the 30th plan year of the 30-plan year period that began in 2020, the plan year in which the loss was incurred), resulting in an amortization charge of \$76,120 per year (that is,  $\$1,000,000/13.137111$ ), and the remaining \$2,000,000 is amortized over a period of 15 years, resulting in an amortization charge of \$205,224 per year ( $\$2,000,000/9.745468$ ).

The combined amortization charges are \$281,344 annually for the first 15 plan years (that is,  $\$76,120 + \$205,224$ ), and \$76,120 annually for the succeeding 14 plan years. This results in a reduction in amortization charges of \$26,491 (that is,  $\$307,835 - \$281,344$ ) during those first 15 plan years and an increase in amortization charges of \$76,120 per year for each of those succeeding 14 plan years, as contrasted with the schedule of charges under section 431(b)(2)(B)(iii) (that is, level charges of \$307,835 over 15 plan years).

### **Example 2**

The facts are the same as in *Example 1*, except that the plan has a total net experience loss in 2020 of \$400,000 that is first reflected in the January 1, 2021 actuarial valuation.

Under section 431(b)(2)(B)(iii), amortization of the net experience loss of \$400,000 would be over 15 plan years at \$41,045 per year (that is,  $\$400,000/9.745468$ ). Under the special amortization rule, the experience loss of \$400,000 is bifurcated into two pieces: (a) the portion attributable to the 2020 eligible net investment loss and COVID-19 losses, resulting in an amortization charge base of \$1,000,000, and (b) an offsetting credit base, resulting in an amortization credit base of \$600,000. The \$1,000,000 loss is amortized over the 29-year period ending in 2049 (which is the 30th plan year of the 30-plan year period that began in 2020, the plan year in which the loss was incurred), resulting in an amortization charge of \$76,120 per year (that is,  $\$1,000,000/13.137111$ ), and the amortization credit base is amortized over a period of 15 plan years, resulting in an amortization credit of \$61,567 per year ( $\$600,000/9.745468$ ).

The combined amortization charges are \$14,553 annually for the first 15 plan years (that is,  $\$76,120 - \$61,567$ ), and \$76,120 annually for the succeeding 14 plan years.

### **Example 3**

The facts are the same as in *Example 1*, except that the plan has a total net experience gain in 2020 of \$100,000 that is first reflected in the January 1, 2021 actuarial valuation.

Under section 431(b)(3)(B)(ii), amortization of the total net experience gain of \$100,000 would be over 15 plan years at \$10,261 per year (that is,  $\$100,000/9.745468$ ). Under the special amortization rule, the total net experience gain of \$100,000 is bifurcated into two pieces: (a) the portion attributable to the 2020 eligible net

investment loss and COVID-19 losses, resulting in an amortization charge base of \$1,000,000, and (b) an offsetting gain base, resulting in an amortization credit base of \$1,100,000. The \$1,000,000 loss is amortized over the 29-year period ending in 2049 (which is the 30th plan year of the 30-plan year period that began in 2020, the plan year in which the loss was incurred), resulting in an amortization charge of \$76,120 per year (that is,  $\$1,000,000/13.137111$ ), and the credit base is amortized over a period of 15 plan years, resulting in an amortization credit of \$112,873 per year (that is,  $\$1,100,000/9.745468$ ).

The combined amortization credits are \$36,753 annually for the first 15 plan years (that is,  $\$76,120 - \$112,873$ ), and the amortization charges are \$76,120 annually for the succeeding 14 plan years.

#### **Example 4**

The facts are the same as in *Example 1*. For the January 1, 2022 actuarial valuation, an additional \$100,000 of the 2020 eligible net investment loss is reflected in the actuarial value of plan assets as of January 1, 2022.

The additional \$100,000 attributable to the 2020 eligible net investment loss reflected in the actuarial value of plan assets as of January 1, 2022, is amortized over the 28-year period ending in 2049 (which is the 30th plan year of the 30-plan year period that began in 2020, the plan year in which the loss was incurred), resulting in an amortization charge of \$7,700 per year (that is,  $\$100,000/12.986709$ ) and is added to the existing amortization charges.

### **3. Restriction on benefit increases**

Under section 431(b)(8)(D), if either or both special funding rules apply for any plan year, a special restriction on benefit increases applies, in addition to any other applicable restrictions on benefit increases. The guidance on restrictions on plan amendments increasing benefits provided in section III.R of Notice 2010-83 also applies to benefit restrictions described in section 431(b)(8)(D) with respect to eligible loss years for which the relief for COVID-19 losses applies, except that "March 11, 2021" (the date of enactment of the ARP) is substituted for "June 5, 2010." Thus, benefit increases that went into effect before March 11, 2021, are not subject to the restriction under section 431(b)(8)(D). Benefit increases that are effective on or after March 11, 2021, are subject to the restriction, even if adopted before that date.

### **4. Decision to apply special funding rules**

The guidance on the decision to apply the relief provided in section III.D of Notice 2010-83 applies with respect to the decision to apply either or both of the special funding rules, except that in lieu of the deadline described in Q&A D-2 of that notice, the decision must be made by the deadline described for a freeze election or extension election in section III.C.1 of this notice.

Under section 431(b)(8)(E) , the sponsor of a multiemployer plan to which either or both of the special funding rules apply must give notice of application of the special rules to plan participants and beneficiaries. In addition, the plan sponsor must inform PBGC of the application of the special funding rules in such form and manner as the Director of the PBGC may prescribe. The guidance on providing the notice to participants, beneficiaries, PBGC and DOL provided in section III.N of Notice 2010-83 applies for purposes of the notice requirement in section 431(b)(8)(E) , except that "January 31, 2022" is substituted for "January 18, 2011" in Q&A N-6 and the addresses in section III.D of this notice should be used.

## **5. Reporting requirements**

If a plan sponsor decides to apply either or both of the special funding rules under section 431(b)(8) for a plan year after the filing of a Form 5500 (Annual Return/Report of Employee Benefit Plan) and Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information) for that plan year that did not reflect the application of the special funding rules, an amended Form 5500 may be filed with a revised Schedule MB showing the corrected information for that year. If an amended Form 5500 and Schedule MB are not filed for that plan year, the Schedule MB filed for a subsequent plan year that is no later than the plan year beginning in 2021 must include an attachment showing how the information on a Schedule MB filed for any previous plan year would have differed if it had reflected application of the special funding rules (to the extent applicable) for that previous plan year. The attachment described in the instructions for Line 9f of the Schedule MB is an appropriate means for providing an explanation of this difference. These reporting options also apply if the plan sponsor decides to apply either or both of the special funding rules under section 431(b)(8) for a plan year and a Form 5500 and Schedule MB were filed for that plan year that reflected application of the special funding rules, but the calculations were different from the calculations required by this notice.

## **IV. Paperwork Reduction Act**

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507 ).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The OMB control number for this notice is 1545-2300.

The collections of information are in section III of this notice. Specifically, section III.C describes procedures for submitting elections under section 9701 and section 9702 of the ARP to the IRS and on the revocation of an election. Section III.D provides guidance on the notice required if an election under section 9701 is made. Section III.E.5 provides guidance with respect to reporting a decision to apply the relief described in section 9703 of the ARP. These collections of information are mandatory for those plan sponsors making an election and providing the related notices and filings. The likely respondents are sponsors of multiemployer defined

benefit retirement plans.

Because the relief under the ARP is available only for two years, these collection of information estimates apply only in 2021 and 2022. The estimated number of respondents for each collection was determined using the database for the Form 5500 , Schedule MB for 2019, which is the last year for which the data is complete. The database for the Form 5500 , Schedule MB for 2020, though incomplete, has been used to confirm some of this information. The hourly burden of the collection of information was determined using the burden information reported in Notice 2009-31 , 2009-16 IRB 856 (sections 9701 and 9702 ), and Notice 2010-83 (section 9703 ), which imposed burdens substantially similar to the burdens imposed in this notice. No estimate for the cost burden is available.

<b>Statutory source</b>	<b>Number of respondents per year</b>	<b>Hourly burden</b>	<b>Total burden</b>	<b>Cost per year</b>
Section 9701 of the ARP	277	1 hour <sub>6</sub>	277 hours	N/A
Section 9702 of the ARP	145	1 hour	145 hours	N/A
Section 9703 of the ARP and section 432(b)(8) of the Code	515	55 minutes (.92 hour)	474 hours	N/A
<b>Total</b>	<b>937</b>		<b>896 hours</b>	

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 .

## V. Drafting Information

The principal author of this notice is Diane S. Bloom of the Office of Associate Chief Counsel, Employee Plans, Exempt Organizations, and Employment Taxes. For further information, please contact Ms. Bloom at (202) 317-6700. This telephone call is not toll-free.

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1 Sections 304 and 305 of the Employee Retirement Income Security Act of 1974, Pub. L. 93 406 , as amended (ERISA), provide rules that are parallel to the rules under §§ 431 and 432 of the Code, respectively. Pursuant to section 101 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App., the Secretary of the Treasury has interpretive jurisdiction over the subject matter of this notice for purposes of ERISA as well as the Code. Thus, this notice also applies to the provisions of §§ 304(b)(8) and 305 of ERISA.

fn

2 See § 211(a)(2) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Pub. L. 111-192 .

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3 See § 301(c) of ERISA, which provides that part 3 of title I of ERISA, including the minimum funding rules parallel to sections 412 , 431 , and 432 of the Code, applies until the last day of the plan year in which the plan terminates within the meaning of section 4041A(a)(2) of ERISA. The Secretary of the Treasury has interpretive jurisdiction over the minimum funding rules in Part 3 of title I of ERISA pursuant to section 101 of Reorganization Plan No. 4 of 1978.

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4 Section 205 of the Worker, Retiree, and Employer Recovery Act of 2008, Pub. L. 110-458 (WRERA), provided for an elective extension of the funding improvement period or rehabilitation period for multiemployer plans in endangered status or critical status for a plan year beginning in 2008 or 2009.

fn

5 However, PBGC has informed the Treasury Department and IRS that, under section 4262(b)(1)(C) of ERISA, the determination of a plan's eligibility for special financial assistance is based on the plan's certified section 432 status, rather than its elected section 432 status.

fn

6 The burden imposed is increased to 2 hours to include the hourly burden for revoking an election in accordance with section III.C.4 of this notice. The estimated number of respondents for this additional collection is 1.