Transcript for Single and Multiemployer Pension Plans

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Moderator: Ladies and gentleman, thank you for standing by, welcome to Single and Multiemployer Pension Plans phone forum. At this time, all participants are in a listen-only mode. As a reminder, today's call is being recorded. I would now like to turn the conference over to your host, Mr. John Schmidt. Please go ahead sir.

J. Schmidt: Thanks and hi, everyone. I'm John Schmidt the staff assistant with customer education outreach for IRS employee plans. We'd like to welcome you all to our phone forum on Funding Standards and Relief for Single and Multiemployer Pension Plans. Today, we'll be hearing from Tonya Manning and Adrien LaBombarde, who are experienced IRS actuaries within employee plans. They're both involved in reviewing ruling requests, participating in regulation projects, and assisting practitioners and IRS personnel with technical questions.

I'd like to point out a few things before we start. Everyone registered for this forum will receive a certificate of completion by e-mail approximately one week after the forum. You must attend the entire live forum to receive that certificate. Enrolled agents, enrolled retirement plan agents, and enrolled actuaries are entitled to continuing professional education credit for this session.

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While visiting our Website, you might also want to subscribe to our free electronic newsletters. The link for newsletters is also in the left-hand navigation bar. We have two newsletters, the *Retirement News* for employers, small employers, for small employers sponsoring a retirement plan and the *Employee Plans News* for retirement plan professionals. We use these newsletters and Webpage to get the latest information to you. So because of that, I urge you to check them out, often.

Without further ado, here's our first speaker, Tonya Manning.

T. Manning: Thank you very much. Hello, everyone. Good morning or afternoon, depending on where you're dialing in from. We are now going to be on slide two if you're following along with the handout that was provided for this phone forum. This slide explains what we're going to be discussing today. Adrien and I will be focusing on the funding relief provided in the Pension Relief Act of 2010.

I will be covering the provisions that apply to single-employer plans. And then Adrien will discuss the provisions for multiemployer plans. We will each be talking about guidance that has already been issued in Notice 2011-3 and 2010-83 and will also give you an idea of what to expect in upcoming guidance.

Before I dive into the single-employer portion of the presentation, I will warn you there is a lot of information, if you haven't figured that out already. I will be going through it fairly quickly. Some of the slides I will spend more time on than others. I do hope that you appreciate all the information provided as a reference for you and that it will be beneficial. I will try to focus on what I think is most important, where there has been a lot of questions, and what is in the Notice that I think it is important that you pay attention to.

So with that, we'll move on to slide three, and here I have listed out what the key provisions of the Act are as they relate to single-employer plans. Four areas were primarily addressed. The first one is the alternative amortization schedules, which is the portion of the relief that seems to get the most attention. This is where plan sponsors are allowed to extend the period that they're paying off shortfall bases versus what they would otherwise be allowed to do. This has the effect of decreasing minimum required contributions or, basically, spreading contributions out over a longer period of time. There are also provisions that allow for relief from benefit restrictions that would otherwise apply. We'll talk about that a little bit later in the presentation.

Also, certain charitable organizations were provided relief on their ability to use credit balances where otherwise they might be restricted due to their funded status. And finally, for plans defined as eligibly charity plans in the Act, these plans are now required to have a delayed effective date for the main provisions of the Pension Protection Act of 2006 and we'll touch on that briefly, as well, later on in the presentation.

Looking at slide four, there has been one notice that has provided guidance related to the Pension Relief Act and single-employer plans - Notice 2011-3. This was actually issued in December of 2010 and covered various topics related to the Act, including how to make an election to extend a base's amortization, and how to notify participants, beneficiaries and the PBGC of that election. It also provided detail about exactly how to calculate the shortfall amortization installments under the two options for amortization schedules. Mergers and acquisitions were touched upon, as well as reporting requirements for the Schedule SB and some transition rules.

As I go through the Pension Relief Act for single-employer plans, you should note that I'm going to go through this by topic. So I'll explain what the provisions are and try to highlight what was provided in the guidance in Notice 2011-3, while also informing you of what to expect in upcoming guidance. So I will be doing this by topic - not reviewing the Act, then the Notice, and then an update on future guidance. Hopefully, it will be clear to you as we go through each of these items.

Looking at slide five, as I mentioned, the very first part of the Act, the one that's gotten the most attention, is the alternatives amortization schedules. And the general rules are that a plan sponsor can elect to use an alternative amortization schedule, basically spreading out payments, or shortfall amortization installments, for a base over a longer period of time than would otherwise be allowed. They can do this for up to two years out of the years 2008 through 2011. Those two years do not have to be consecutive.

There are two options for doing this: a 15-year option and what is referred to as the 2 plus 7 option, where there's only interest paid for the first two years. Now, if you do elect to apply the relief for two years, those two years must use the same option for the amortization method. So if you choose the 15-year option for one year, then you have to use the 15-year option for the second year.

The relief is available not just for plans subject to the Pension Protection Act, but also for plans with what we refer to as a 'delayed effective date'. These are plans are still under the old funding rules, or pre-PPA rules, and have different rules for applying the funding relief. The rules have the same effect in decreasing the minimum required contribution in the short-term. This is done by adjusting the 412(l) calculations. In future guidance, we will provide detail on how these rules work. Although the Act does give some explanation, you can look for more guidance on this in the future.

Looking at slide six, the 2 plus 7 amortization schedule was explained in the Act, but in the Notice there's much more detail explaining exactly how these calculations should be done and there's an example in the Notice that I recommend you review. One of the big questions prior to the Notice was exactly how you calculate the interest only payments for the first two years. The Notice explains that you simply take the shortfall amortization base and multiply it by the effective interest rate for the election year. For the remaining seven years, calculate the installments using the funding interest rate, spreading the present value over those years.

For the 15-year amortization schedule, the installments are basically calculated the same as the last 7 installments in the 2 plus 7 option, using that funding interest rate. Now here's an important point: not surprisingly, some plan sponsors who are interested in alternative amortization schedules are also interested in funding waivers. And, as you probably know, funding waiver requests are reviewed based on facts and circumstances. Please note, an election for an alternative amortization schedule is a fact and circumstance that would be considered in conditions for approval for a funding waiver. So it's important that you are aware of this if you are considering requesting a funding waiver, in addition to an election for an alternative amortization schedule.

Going on to slide seven, as I mentioned, a plan sponsor can elect an alternative amortization schedule; however, there is an installment acceleration amount which might have to be added to the plan's minimum required contribution so that there is a greater minimum required contribution than there would be if simply reflecting the relief election.

This only comes into play if the plan sponsor has "excess compensation or extraordinary dividends or stock redemptions," as defined in the Act. During what's defined as a "restriction period" (a certain period of time after the election made), if the plan sponsor is deemed to have excess compensation or extraordinary dividends or stock redemptions, then there's, in essence, a claw back on the relief that's provided so that the minimum required contribution is increased based on, dollar for dollar, the amount of excess compensation, extraordinary dividends, or stock redemptions.

Now the good news is that the increase that is added back to the minimum required contribution is going to generally be done such that the minimum required contribution doesn't exceed what would have otherwise been required had the plan sponsor not elected funding relief for that year. We'll talk a little bit more about that later. Also, note that when you are calculating quarterly contributions for a plan, the installment acceleration amounts are ignored. However, they must be considered in what I call the plan's "residual contribution": the 9-15 contribution for a calendar-year plan or the plan's "makeup contribution".

You should think about these installment acceleration amounts as just an additional component of the minimum required contribution for the plan. If you think about it that way, you'll understand that if you contribute both the shortfall amortization installments and normal cost, plus the installment acceleration amounts, that simply means that you're meeting your minimum required contribution. It doesn't mean that you're exceeding it. So, any amount that's contributed toward the installment acceleration amount is not going to be added to your pre-funding balance. However, they can be satisfied just as any other part of the minimum required contribution by applying the plan's credit balance. When I refer to credit balance here, I am talking about the plan's pre-funding balance plus its carryover balance. I'm using the old term "credit balance", which may include both of those components, depending on what applies for a particular plan.

Okay, going on to slide eight, in Notice 2011-3 we tried to provide a little bit more clarity on these installment acceleration amounts. A large portion of the questions that we have received so far have been around exactly how to determine these installment acceleration amounts.

That, I believe, was pretty well clarified in the Notice. One of the biggest questions was exactly how these installment acceleration amounts are determined so that they are increasing the minimum required contribution while making sure the payments don't exceed what would have otherwise been required to be paid for the shortfall amortization base.

The example that's included in the Notice helps explain how related present values are calculated and how the later shortfall amortization installments might have to be either removed or decreased so that the total payment toward that shortfall amortization base doesn't exceed what the unadjusted base amounts would have otherwise required. So, again, I refer you to those examples. In the examples, you are basically going to go to the end of the stream of the shortfall amortization installments for the base, and then begin decreasing or removing installments, moving backwards, until everything balances out and you've, in a sense, not overpaid.

Another thing that was addressed in the Notice was what if you have multiple plans. The installment acceleration amount for the plan year is going to be allocated among those plans, prorated based on the relief that is provided in the first year on the shortfall amortization installments. So, if you have a $10 decrease for one plan and a $90 decrease for another plan for a total $100 decrease, you're going to prorate the installment acceleration amount by 10% and 90%, accordingly.

Going on to slide number nine, another question that came up, which was clarified in the Notice, was what happens if you elect an alternative amortization schedule for two plan years? How do you apply the installment acceleration amount? Let me give you an example to explain how that works.

In my example, let's say that a plan sponsor elected relief in 2009 and 2010. And then in 2011 the plan sponsor has $1 of excess compensation. So, the shortfall amortization installments established in 2009 and 2010 are each increased by that $1. As a result, the overall minimum required contribution is increased by $2. This is an important point. If you have two election years, make sure you understand how any excess compensation or shareholder payments are going to apply and that you adjust the minimum required contribution accordingly.

On slide ten, we won't dwell on this too much since it is essentially a summary of what was actually in the Act. Excess compensation is defined as, basically, the sum of individual employees' taxable compensation that is over a million dollars and the excess dividends redemptions or share purchases over the earnings before interest, taxes, depreciation and amortization. There are some exceptions that we'll talk about in a minute. But do note that both of these items are determined for the controlled group. This is an area of complexity for plan sponsors who have complex business structures or operations.

Going on to slide 11, the Notice first clarifies that excess compensation includes amounts payable to former employees. And secondly, it clarifies that excess compensation excludes amounts that are paid to non-resident aliens for services outside the U.S. Those are two situations that we did get some questions on and we cleared those up in the Notice. Also, excess compensation does include amounts that are set aside or reserved to fund non-qualified deferred compensation. These amounts should be included in determining excess compensation at the fair market value and they should be included when the amounts are actually set aside.

We have also gotten some questions about qualified plan payments and whether those should be considered in determining excess compensation. Qualified plan payments were not specifically addressed in the Notice, but we would like to point out that, while they are taxable compensation, they are not compensation from the employer. .

Slide 12 talks a little more about the exclusions for excess compensation. Compensation is excluded if it's associated with services performed before March 1, 2010. If an employee receives a bonus, or something similar, that is paid in 2010 that is not easily associated with services for January and February, versus services for March through the end of the year, then you just simply allocate the payment based on months. This slide also repeats what I said earlier about non-qualified deferred compensation funding, and also mentions other items, like stock options, where the exclusion may be based on what was in effect on March 1, 2010.

Slide 13. The Notice also talked about the requirement to include all members of the plan's controlled group, as I mentioned earlier. But, looking at the second bullet, the excess shareholder payment amount is based on dividends declared during the year, regardless of when they're paid. And similarly, it's based on stock redeemed during the year, regardless of when announced. The EBITDA should be determined for the fiscal year ending with or during the prior plan year, but not less than zero.

Now looking at slide 14, this gets into the list of exclusions to excess shareholder payments provided in the Act that was repeated and clarified in the Notice. Looking near the end of the very last bullet, distributions of stock are generally not considered dividends. We give you some code sections for you to look at in that regard.

Going on to slide 15, this is looking at mergers and acquisitions. I will try to explain this using an example. Let's say you have a Company A and a Company B and each of these were in a separate controlled group. But they merge and become part of the same controlled group. Company A had elected to extend the amortization period for a base prior to the merger. But, Company B had not. So, for these two plan sponsor, one had elected relief, one didn't.

If you have an installment acceleration amount following this merger, you don't have to look at the excess compensation and shareholder payments for Company B in determining if there is an installment acceleration amount due to Company A's election that happened prior to the merger. However, if both companies elected relief prior to the merger, then the determination of any installment acceleration amounts should be done on a combined basis, just the same as if the companies were from the same controlled groups before and after the merger. This is important to note.

Going on to slide 16, now we're going to get into some of the actionable items that were included in the Notice or simply 'things that you need to take care of', if you will. The first thing is that you have to make an actual election for the amortization relief. We'll talk about that in a little bit more detail later. One of the critical days is January 31, 2011, when the relief elections were due for 2009 and 2010. I realize that date has passed, but make sure that, if you have not taken care of making an election for 2009 and 2010, you're aware that you've already missed the opportunity for those years. Also, the notification to the PBGC was due the later of 30 days after the date of the election or January 31, 2011. Now, there's one date, in the third bullet, that has not passed, but is next Monday. Participant notification of elections is due by May 2, 2011. That's coming right up, so pay attention to that date.

We'll talk a little bit more about Schedule SBs in a minute. So we'll just go on to slide 17. Looking at elections, the Notice did clarify that these elections must be in writing, signed and dated. And they should be provided both to the enrolled actuary for the plan and the administrator for the plan.

There's some required content that's outlined in the Notice. I'll refer you to the Notice for the details and a list of all the elements that should be included. Now, an important note is in the second bullet. Once these elections are made, they cannot be revoked without the consent of the Secretary of Treasury, and also only after consultation with the PBGC. So, these are 'sticky' elections and getting them revoked requires formal consent.

Looking at the due date in the last bullet, you have that January 31st date mentioned earlier, and generally prospectively, either the last day of the plan year or 30 days after the valuation date.

Looking at slide 18, this is talking about notifying participants if there is an election for an alternative amortization schedule. That deadline is the May 2nd date mentioned earlier that's coming up, or, if later, 120 days after the end of the plan year for which the election is made.

There are a couple of exceptions where you don't have to provide a notification to certain participants. Generally, the notifications should go to all participants and beneficiaries, but there is an exception for individuals who are no longer participants or beneficiaries before the notice is provided and for individuals who first became a participant after the last day of the plan year ending before the notification is due.

The Notice states that you can provide this notification at the same time as other notices, for example the notice required under ERISA §101(f). But, they do need to be separate items. Notice 2011-3 also lists the required content and provides some good examples of how these notifications should work. So, hopefully, you've looked at those examples, especially if you are currently preparing notices that are due next Monday.

Going on to slide 19, in addition to participants, you have to notify the PBGC of an election to extend an amortization period. That deadline is the later of 30 days after the election is made or January 31, 2011. You need to provide the PBGC with a copy of the plan sponsor election provided to the EA and to the plan administrator. Instructions on how these notifications are to be made to the PBGC is provided in the Notice. We’ve provided you with a little bit of information here on the slide, but you should go to the Notice for more details.

Going on to slide number 20, this is regarding Schedule SB reporting requirements. We've certainly gotten a lot of questions about what to do when filing Schedule SBs for plan years where amortization relief was elected. For example, what should be done for a plan year where amortization relief is elected but the Schedule SB was already filed before the Act was passed or the guidance in Notice 2011-3 came out, so the plan sponsor was not able to effectively put all the pieces together before filing.

If a plan sponsor elected an alternative amortization for '08 or '09, but the Schedule SB didn't reflect that or it reflected it, but it wasn't quite consistent with the guidance that was provided in Notice 2011-3, then the plan sponsor has the option to file an amended Schedule SB. This is an option, but is not required. If an amended Schedule SB is not filed, then the next Schedule SB filed needs to reflect the extended amortization election, and this should be reflected no later than the 2010 filing. The differences resulting from the election and what was filed in the past needs to be explained in an attachment.

Another question that we have received is what about Form 5330s - are those required? Well, that depends. The answer is “no” if the Schedule SB for a year where there was an election, was filed and it showed an unfunded minimum required contribution, but that's all going to be worked out and eliminated due to the relief election. Or, let's say you filed a Schedule SB for a plan year where you are going to elect relief, but you didn't know exactly how to do this, so you showed an unfunded amount on the form. But that's all going to be taken care of and explained in the next filing. Then, “no”, a Form 5530 is not required to be filed.

However, a filing is required if you expect to still have an unfunded minimum required contribution when, later on, you do have an election or a corrected amortization schedule reflected. So in other words, if once you go back and follow the guidance, you're still going to have an unfunded amount, that’s a situation where a Form 5330 is required, and also excess taxes are going to be due and should be paid as soon as possible.

Going on to slide 21, talking about transition rules. If a plan sponsor elected an alternative amortization schedule before the Notice was provided (recognizing that there was, of course, some time between the Act passing and when the Notice was provided), that election is still valid. It still stands and it cannot be revoked without consent. It's just as ‘sticky’ as if it were dated after the Notice came out.

The plan sponsor still has to notify participants and the PBGC, and with the same deadlines applying that we've talked about earlier. And also, that notification should include all the required information, as explained in the Notice, even if the information wasn't included in the original election. So, just because you elected before the Notice 2011-3 was issued, it doesn't get you out of all of the Notice’s requirements. You may have some things that you need to go back and take care of.

Going on to the next two slides: slides 22 and 23. Here we're going to talk about credit balances. And there were certainly questions about what to do with credit balances because, if you change your minimum required contribution, you're going to change either how much credit balance you needed to meet your minimum required contribution or how much credit balance you've created when you exceeded your minimum required contribution. Slide 22 is dealing with the second situation that I just explained. This is dealing with how much you add to your credit balance if you have an election for an extended amortization schedule and, as a result, have a lower minimum required contribution.

First, suppose you have a standing election to always add as much as possible to a plan’s prefunding balance. Then, any additional excess contribution that is created (because the plan now has a lower minimum required contribution due to an election for relief) is automatically added to the prefunding balance.

However, a plan sponsor can elect to temporarily suspend that standing election to avoid increasing the prefunding balance by the additional amount created by the relief. It's going to automatically be added to the prefunding balance UNLESS you elect out of that standing election. This is just for this particular situation where the relief decreases a prior plan year's minimum required contribution and there is a standing election, as described earlier.

The due date for this type of opt-out election is the same due date that applies for other credit balance elections, or March 31, 2011 if later.

Looking at slide 23, this slide deals with elections for applying the credit balance to meet the minimum required contribution. Let's say, you have a standing election where you're going to apply the credit balance to meet your minimum required contribution. If such an election is in place and the minimum required contribution got reduced, retroactively, because you elected funding relief, then that's going to automatically reduce the amount of the credit balance applied and increase the remaining credit balance.

Again, similar to the prior slide, the plan sponsor can elect to temporarily suspend that standing election and avoid the increase in the remaining credit balance. But here's the important difference. If a standing election is not in place, the plan sponsor can still revoke a 'specific' election to apply the credit balance, but only to the extent that the amount applied exceeds the entire minimum required contribution. So, if you didn't have a standing election and you made an election to apply a specific amount, you can go back and adjust that specific amount, but only so that the amount of credit balance you're applying does not exceed the minimum required contribution after reflecting funding relief. That's an important distinction. The due dates for this type of election is the same as noted in the prior slide.

Moving on to slide 24, I want to give you some caution when you're looking at these transition rules as they relate to credit balances. And the caution is, when you're going back in time and changing your credit balances, you've got to be very aware of what the impact is going to be on the adjusted funding target attainment percentage (or AFTAP), and how a change in the AFTAP will impact the benefit restrictions under Section 436.

So, before you make any election to go back and change what happened in the past with your credit balance, be sure you understand what that's going to mean for your section 436 benefit restrictions. Note that any change in your AFTAP because of a change in your elections is not deemed immaterial. It's not an immaterial change. So, that could create some problems if this change in your credit balance takes the plan into a different range for the benefit restrictions. Be very, very careful with that.

Going on to slide 25, slides 25, 26, and 27 are about the eligible charity plans. This section of the Act has certainly generated a lot of questions. Let me talk just a little bit about what eligible charity plans are, first. On slide 25, an eligible charity plan is a plan that's maintained by more than one employer and each of those employers is a section 501(c)(3) charitable organization. Note that these employers do not have to be in the same controlled group. There has been some confusion with certain organizations about whether they qualify as an eligible charity plan, so the classification is not entirely intuitive. Some organizations had to do some analysis in order to decide if they are an eligible charity plan. If the plan is an eligible charity plan, then the plan get's what's referred to as a 'delayed effective date' such that PPA sections 430 and 436 do not apply until 2017, or earlier if the plan is no longer an eligible charity plan.

Looking at slide 26, the delayed effective date only applies if the plan was in existence June 26, 2005, was an eligible charity plan then, and it continues to be one. The second bullet is the most important point one on slide 26. The delayed effective date is mandatory. That means plans don't have an option. If a plan is an eligible charity plan then there is a delay in the plan's effective date for PPA sections 430 and 436. And these rules are also retroactive, so they are undoing 2008 and 2009 calculations and restrictions. Note, there is an option to stick with PPA for 2008 and then pop back out in 2009. Biggest point here - the rules are retroactive and mandatory.

Slide 27, Future Guidance. Future guidance from the Service will explain how these rules should work for an eligible charity plan. There's definitely some clarity needed around the congressional intent with regards to these types of plans and there is hope for technical corrections, but guidance is moving forward in the world as we know it today, which is without technical corrections. Guidance will cover many things, such as how do you deal with the fact that you have an accumulated a funding deficiency for '08 and '09 when you go back and change the funding rules, how do credit balances work, etc. There are lots of questions that will be addressed in the guidance, as well as those around section 436 restrictions. Not only are there complications with the funding requirements, but there's also complications with benefit restrictions that were applied when these plans thought that they were subject to PPA section 436 and now, retroactively, they're not.

Looking at slide 28, we're moving on from eligible charity plans. There's a provision in the Act where there could be a suspension of certain benefit restrictions. The rules require a plan to go back and use the AFTAP for what we call a 'lookback plan year' to determine if certain benefit restrictions apply. If the lookback AFTAP is a higher percentage than the AFTAP that would otherwise apply for the plan year, then the lookback AFTAP is used instead. The lookback AFTAP is only applied when determining if there is a restriction on Social Security leveling options or if there is a restriction on benefit accruals. If so, these restrictions are removed.

The lookback AFTAP rule is applied for plan years between October 1, 2008 until September 30, 2010. The last bullet is an important point. This rule is retroactive and required, as with eligible charity plans. It is not optional and it's completely independent of any elections related to amortization extensions.

Slide 29, there will be guidance on the suspension of benefit restrictions, and a good amount of guidance regarding eligible charity plans – that is a big portion of what we're working on. We're also working on guidance related to exactly how you undo the past for an individual whose benefit normally would be eligible to be paid as a Social Security level option, but the participant's benefit was originally restricted under section 436, and now with the Act's retroactive and mandatory provisions, the plan has to allow the social security leveling option . Also, there will be guidance on how you restore accruals.

There have been questions about the impact of the benefit restrictions relief on 2011 AFTAPs. Our current understanding and interpretation is that a 2011 presumed AFTAP should not be based on what we are referring to as a lookback AFTAP. But, instead, the lookback AFTAP only applies for the period that was outlined in the ACT - 10/1/08 to 9/30/2010 - and would not go forward into 2011. There's also going to be some transition rules that will be addressed.

I'm running out of time, and I've got only one more slide - slide 30. As I mentioned earlier, there is relief for credit balance restrictions for certain 501(c)(3) organizations. There might be a little bit of guidance issued on this, but we think these provisions are, for the most, part fairly straight forward.

And with that, I'm going to pass it off to Adrien and he's going to talk about multiemployer plans and the relief provided to those plans.

A. LaBombarde: Thank you Tonya. We're going to start with a brief introduction of material I'm going to cover on slide 31. Funding relief for multiemployer plans was first introduced in WRERA, which permitted the plan to freeze its 423 status before 2009 as based on 2008, its status that would have had during 2008. Further, relief from the funding rules that are under the Pension Protection Act of 2006, the funding rules that are provided for multiemployer plans under section 431 was provided by the Pension Relief Act of 2010.

Guidance on PPA funding relief for multiemployer plans under both WRERA and PRA has been provided by the IRS and that will lead me into a brief summary on that guidance on slide 32.

We have Notice 2010-83, which gives substantive guidance on PRA's relief of the funding rules under section 431 of the Code. We'll have a few words, not much since most of the actions on this should be behind most plans at this point, but I'll have a few words relating to Notice 2010-56 relating to coordination of Form 5500 filings with the plan's election of PRA relief.

And then I'll have some comments about the several key issues raised in proposed regulations under section 432. And I will also touch briefly on regulatory guidance and several other items during the course of our discussion depending on the time that I spend with any of the other materials here.

PRA permits a multiemployer plan to elect any or all of several relief measures for either or both of the first two plan years that end after August 31, 2008. Each such plan year I'll be referring to as an "eligible loss year." With the calendar years being commonplace I'm going to be speaking in terms of the 2008 eligible loss year or the 2009 eligible loss year.

Obviously if you have a non-calendar plan you need to make the appropriate shift in accordance with the August 31, 2008 date that is used as a reference point. PRA Relief is completely optional and voluntary at the election of the plan. A plan may elect one PRA relief measure without being forced to elect the other PRA relief measures and PRA relief may be elected for either or both eligible loss year. So you actually have quite a number of elections different elections that can be made for a multiemployer plan under PRA.

The two main relief measures involve extended amortization periods for net investment losses attributable to an eligible loss year and relaxed asset valuation rules. When we speak to the asset valuation relief rule that particular rule itself includes two separate relief measures. First, an extended smoothing period for net investment losses arising during either or both eligible loss year. And secondly, an expanded market corridor that can be used for either or both of the eligible loss years. As with the main relief measure a plan may elect to use either or both of these asset valuation relief rules

Up to slide 34, a multiemployer plan is eligible to elect PRA funding relief only if the plan satisfies a solvency test determined at the time the relief is being elected and we'll touch on the solvency test a little bit more detail later in the presentation. If a multiemployer plan elects PRA funding relief then a special restriction against benefit increases applies in addition to any other applicable benefit restrictions. We'll also speak to the benefit restrictions, the special benefit restrictions under PRA funding relief a little bit later. A multiemployer plan that elects PRA funding relief must also provide notice of this election to plan participants and beneficiaries as well as to the PBGC.

Let's get into a little bit of the detail on the funding relief under slide 35. Notice 2010-83 provides substantive guidance on PRA relief for multiemployer plans. First, PRA permits a multiemployer plan to elect extended amortization periods to be used with respect eligible net investment loss for either or both eligible loss year.

In general, you're going to be determining the eligible net investment loss at the end of an eligible loss year and you're going to determine it on a market value basis. That is, as the excess of the expected market value of the plan assets over the market value of the plan assets. For this purpose you're going to determine the expected value of the plan assets as of the end of the eligible loss year as equal to the market value of the plan assets at the beginning of the year, plus contributions that are made during the year minus disbursements that are made during the year.

With all of these adjusted to the end of the year at the plans valuation rate and that should give you the expected value. You then determine the difference between the expected value and the actual value and that will get you the eligible net investment loss. Note that the relief is available not solely for the loss of market value such as virtually all plans had during the 2008 eligible loss year, but rather for a net investment loss such as when plan assets earn a positive return but that return is less than the plans valuation rate which was the case for many plans during their 2009 eligible loss year.

Frequently, I was hearing practitioners or plans speak as though the relief was being extended essentially for the 2008 year when the asset returns were negative. In fact, many plans will be able to make use of this for both 2008 and 2009 so that even though 2009 generally saw positive returns if those positive returns were less than the plans valuation rate that plan is still going to have a net loss for that year for which relief would be available. So for example, if the plans valuation rate is 7% and the plans asset return was a negative 20% for 2008 followed by a positive 5% for 2009 PRA relief could be elected for either year or for both years since each of those years had an eligible net loss.

Moving on to slide 36, if a plans assets valuation method relies on the difference between an actual and expected market return, this is rare, but it is in use by some plans than the eligible net invest loss is equal to that actual return minus the expected return. This is a variance from the basic market value method that will be in use for most of the plans for determining the eligible net investment loss.

If the plan uses a valuation date that's other than the first day of the plan year or the last day of the plan year then the calculation of the net investment loss should be made on the basis of determinations that are made as of the plans evaluating date. Any losses that are treated as a theft loss under section 165 are included as eligible net investment losses.

Now let's move on to slide 37, and I'm going to talk a little bit on slide 37 the detail that I'm going to be talking about can be found within the Notice 2010-83 which I would commend to your reading and study on this. But I'm going to go through some of this in a little bit of detail. I'll spend a little bit more time on this slide because this is critical to the setting up and the use of the extended amortization periods that are under PRA.

When a plan elects PRA amortization relief for an eligible net investment loss first you have to calculate the loss which we've done with the market value basis of expected minus actual. The loss must then be allocated to a series of years generally according to the plan's asset valuation method. For example, if the eligible net investment loss for 2008 was calculated and relief was elected with respect to 2008 that might then be recognized into the plans actuarial value of assets over five different years beginning in 2009.

So the loss was suffered in 2008. It is then recognized into the asset value of the plan according to the plan asset valuation method and for many plans this might bring it into the asset value over the course of five years beginning in 2009. For each of those years in which the eligible net investment loss is being recognized the experienced gain or loss for that year needs to be bifurcated into at least two parts, at least three parts if you do this recognition for both 2008 and 2009. But you're going to have at least two parts.

First you have the part attributable to the portion of the net investment loss that is being recognized in that year. And again, if you're recognizing this for 2008 and 2009 than you're going to have two different segments of the portion of experienced gain or loss that's attributable to this net investment loss that's being recognized.

You then have the portion of experiencing gains or losses that's attributable all other gains and losses. These may be liability gains and losses related to mortality. They may be gains or losses related to experience with respect to the turnover in the plan. They may be some asset gain or losses that are still being recognized into the asset value from years prior to 2008. They may be experienced gains or losses related to assets returns after 2009. So you have the portion that is related to 2008. You may have the portion related with respect to 2009 for each of the years for which the relief has been elected. And then you have all other gains or losses that are the remaining portion of the amount that's being recognized as experienced gains or losses.

For a recognition year, the portion of experienced gains or losses that is attributable to an eligible net investment loss is then amortized. You set up an amortization base and it's amortized over a period based on how soon after the eligible loss year the recognition year is. For the first recognition year that amortization base has an amortization period of 29 years. For each later recognition year, the amortization period for that new year's amortization base is one less than the relief period used for the previous year.

So for example, if the plan elected relief for 2008 and we're looking at the 2011 funding requirements than the eligible net investment losses from 2008 would be amortized over 27 years because this is the third year since the first portion of losses that were recognized in 2009 would have gotten a 29 year period. In 2010 it would have gotten a 28 year period. So the portion that's recognized for the calculations that we'll be doing for 2011 will be using a amortization based that wills then be amortized over 27 years. All of the previously established amortization bases of course retain their original amortization period. You're simply setting up a new amortization base each year and then using the period attributable to that particular year.

Let's move onto slide 38. The plan has to elect either the prospective or retrospective method in order to determine how much of the eligible net investment loss is recognized in a particular year. Now what's happening here is typically the asset valuation methods would have the period over which asset gains and losses are smoothed. Very, very rarely, if ever, have plans had a way of allocating these amounts by year.

And we now need to be allocating how much of the gain or loss was coming through into allocable to 2008, how much of it is allocable to 2009 and we need to segregate that out and establish a separate amortization base with respect to each one of those pieces. In attributing that in coming up with the attribution, Notice 2010-83 stipulates one or the other of two particular methods either the prospective method or the retrospective method.

When a plan chooses the prospective method they're essentially locking in, in advance, how the recognition is going to emerge in the future years. Based on the plan’s valuation rate you're basically looking at what the expected returns are going to be in future years and you pass through the plans valuation methodology, the net investment loss that occurred in 2008 or in 2009 and pass that through the methodology into the future years you know in advance at the time that you've made the election how those amortization bases are going to emerge.

The retrospective method simply waits each year until you see what the returns are in the future years because then you're looking at the net investment loss that occurred in 2008 or in 2009 and based on the returns that come out after that fact, after each one of those eligible loss years that may determine how you're then allocating the loss in those years through the actuarial method of the plan into a particular year in order to establish an amortization base.

Let's say that we determined in 2010 that a plan has a net experience gain the net result of all portions of recognized asset gain or loss for all earlier years taking into account for the 2010 actuarial asset value combined with all non-asset experience gains or losses such as mortality gains or losses and losses arising from plan turnover, for 2011 funding that 2010 experienced loss would then be segregated first into the portion or portions attributable to 2008 or 2009 relief elections.

That portion would then get the PRA extended period or periods then the remaining portion of the experienced gains would be amortized over 15 years as required under section 431. This is how you coordinate the PRA bases that you've determined under either the prospective or retrospective method with the way in which the amortization of the remaining portion goes under the normal rules under inspection 431 over 15 years.

Now of course, you only get amortization relief if you're using a plan that has a funding method that determines such experience gains or losses. If the plan doesn't use such a funding method the plan may change its funding method to a suitable method you get automatic approval for that. Any change in unfunded accrued liability arising from such a change gets amortized over 10 years.

Moving to slide 39, the multiemployer plan may elect to recognize eligible net investment losses over a period of up to 10 years separately from the period over which any other gains or losses are being recognized under the plan’s funding method. This is the first measure of asset valuation relief. Typically plans have been amortizing or recognizing asset gains or losses over periods of something such as five years. This would give you the possibility of going up to 10 years.

IRS approval of the use of the asset smoothing period relief is not required as long as the plan’s existing funding methods spreads recognition of gains or losses on a level basis over a fixed period of years. Separately for either or both eligible loss years a plan may elect to permit the actuarial value of assets to be as high as 130% of the fair market value and this is separate from the other asset relief. You can elect it separately; you don't have to. Election of this asset relief is automatically approved.

Notice that election of this relief does not affect the recognition of the portions of the eligible net investment loss that are used to set up the extended relief amortization basis on the amortization relief which we discussed earlier. Those are to be determined under the plan’s existing asset methodology without taking into account any asset smoothing change or any extended corridor into account.

Election of either or both asset relief measures constitutes a change in funding method for which the change in unfunded accrued liability attributable to the change is 10 years if the plan elects only asset smoothing relief, or over 30 years if the plan is also elected the amortization extension relief.

To move quickly to slide 40, and touching briefly on this eligibility for PRA relief requires actuarial certification of satisfaction by the plan of a solvency test. For election of amortization of extension relief for a period for examination of plan solvency is 30 years beginning with the eligible loss year. For election of only asset valuation Relief this period extends through the 10 year period over which the change in unfunded accrued liability is being amortized.

Let's go to slide 41 and look at the timing of solvency certification. The solvency test is determined prior to making a formal decision to elect relief. If the plan passes the solvency test as of the time the decision is made the plan is deemed to pass the test as of any prior year. Notice that means PRA was brought into account and was made effective essentially after many of the facts had occurred from many of these plans.

So even if a plan might not have been able to pass the solvency test when funding may have been at its lowest levels at the close of the 2008 year, you can elect relief with respect to 2008 year if the solvency test is met when the relief decision is actually made. The solvency certification must rely on the same actuarial basis that is being used by the plan actuary for the plans zone certification status under section 432 for the plan year in which the solvency certification is used.

Turning to slide 42, if the new PRA relief amortization base is established for a plan year during which a portion of eligible net investment loss is being recognized then special benefit restrictions apply during the next two years. During those two years following the establishment of amortization base which you're using extended amortization on it during the following two years the plan is generally prohibited from any plan amendment increasing benefits.

Exceptions of this rule are if the benefit increases are required by law or if the benefit increase is funded through additional contribution and the plans funded percentage and projected credit balances for the two plan years for those two plan years are reasonable expected to be at least this high as they would have been absent the amendment. Now any benefit increases that had gone into effect prior to June 25, 2010 are also exempt even if 2008 losses retroactively are elected with respect to the amortization relief for 2009.

And before I leave that slide, notice that this is - we're going to come back in a sense swing back around this when we speak to revocation or ... to use the amortization because notice the triggering event on this is the establishment, not the election of the relief. It's when you establish an amortization base for which you are going to be using the extended relief. And so, if a plan is going along and gets to a point with improving markets or other improving conditions where they're not sure that they any longer want to be using the extended amortization and, in particular, the benefit restrictions these restrictions against benefit improvements become a problem, then a plan can elect to revoke any future amortization. Of course, that two year period is going to extend beyond the point of the last time that an amortization basis was established.

Moving to slide 43, election of PRA relief must be made as a formal decision using the plans normal procedures. The deadline for election for PRA relief is the deadline for the plans 432 certification for 2011 or the actual certification if earlier than that deadline, in no even later than June 30, 2011. And there is an extension of that deadline in the event of trustee deadlock of the relief decision if that has been submitted to arbitration: then the deadline is extended to 30 days following the arbitration of the dispute.

Now as I mentioned on the previous slide a plan may opt to elect to cease using previously elected PRA amortization relief. For example, as I mentioned to relieve the plan of the benefits increase restriction. If a plan opts out of the PRA relief no further PRA amortization basis was to be established and you can't go out and come back in. Once you go out and opt out, you're out. You can't then pick it up again as the market drops down again unless Congress gives a new relief measure.

If the plan opts out, no future amortization basis would be established; all existing PRA amortization bases continue to be amortized according to their established schedules; and again as I mentioned to those that the benefit increase restrictions do remain intact for two years following the last year for which a PRA amortization basis was established. So at the point that a plan decides to opt out they still have two years running on any benefit restrictions before they can come back in.

I'm going to zip past the slide 44 on the notification requirements. Much of that material is very similar to the material that Tonya has spoken of with respect to single-employer plans and I would point you to Notice 2010-83 for details on content and the like.

I guess there's one particular point that I will draw attention to on the PBGC notice. The PBGC notice must include a copy of the participant notice. The timing of the PBGC notice versus the participant notice makes is such that in some cases you're going to have situations where you may be including a copy of that participant notice in your PBGC notice before you've even given the participant notice to the participants. That's the hang-up that at least something must be given to the PBGC. That's not to say that you can't make any changes after the participant notice after it's been given to the PBGC. You're still going to have to satisfy the requirements with respect to what would be in that notice where that notice will be provided to the plan participant.

We're drawing near the close here. Let me at least point your attention to, I've gone through all the substance of details of what I wanted to go through. To slide 45 which talks about section 432 implications: Notice 2010-83 does go through the details of the fact that a plan does have to take the PRA elections into account and any subsequent 432 status of the certifications, but the plan does have the option of redetermining previous status certification.

The rules for multiemployer plans are similar to the rules that Tonya described for 5500, that's our slide 46; that is to say that you don't need to amend a previously filed 5500 in order to elect the relief power if you do not amend it than on a subsequent form 5500 you should provide details with respect to what the changes would have been on the previous 5500 had you elected relief before the 5500 was done.

I'm going to skip very quickly over slides 47 and 48. These were just slides that were if we had the time I was going to be reminding everybody of what calendar we're looking at in terms of events that you're looking at with respect to section 432 certifications and 432 events.

That's a general slide that's simply a general calendar. Let's go to slide 49 and 50 and I think probably in the interest of time I guess the one thing I want to say with respect to slide 49 and 50 because these were if we had the time, I wanted to touch on a couple of issues that are being addressed.

In proposed regulations these are not necessary specifically related to the relief so let me just point to the issues that are bulleted there as things we're looking at and I apologize for not having sufficient time to going into a little bit more detail about exactly what's there, but these at least point to some of the issues that we're looking at in proposed regulations where we're looking at it very carefully with providing further guidance with respect to the issues that plans are looking at with or without relief on the funding rules.

But with that, we're near the top of the hour so I'm going to turn it back over to John Schmidt and thank you for your attention and your attendance today.

J. Schmidt: Great. I'd like to thank our speakers, Tonya and Adrien, for putting together today's presentation. These kinds of efforts do not happen without their willingness to speak and hard work. Finally, I'd like to thank you, the many hundreds of callers for taking the time out of your busy schedules and I just want to let you know that we in employee plans continue to get good reviews on these phone forums and hope to continue them into the foreseeable future. So thanks to all and have a good afternoon.

Moderator: And this does conclude our conference for today. Thank you for your participation and for using AT&T Teleconference Service. You may now disconnect.