



AMERICAN ACADEMY *of* ACTUARIES

*Objective. Independent. Effective.™*

July 22, 2021

Carol Weiser  
Benefits Tax Counsel  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Rachel Leiser Levy  
Associate Chief Counsel  
Internal Revenue Service  
1111 Constitution Ave NW  
Washington, DC 20224

Eric Slack  
Director, Employee Plans  
Internal Revenue Service  
999 North Capital St NE  
Washington, DC 20002

(Submitted electronically)

**Re: Guidance relating to the American Rescue Plan Act of 2021**

Dear Ms. Weiser, Ms. Levy, and Mr. Slack:

On behalf of the American Academy of Actuaries<sup>1</sup> Pension Committee, I am writing to share our thoughts on critically needed guidance relating to the single-employer funding relief provisions in the American Rescue Plan Act of 2021 (ARPA). As you know, ARPA made significant changes to the plan funding rules that sponsors can elect to apply retroactively as far back as 2019. ARPA has an immediate impact on quarterly contributions, funding balance management and benefit restrictions. Some plan sponsors have already had to grapple with these effects when making their April 15 contributions, while other sponsors with non-calendar-year plans have had to make year-end funding decisions and request adjusted funding target attainment percentages (AFTAPs) from their actuaries.

The following areas are those where plan sponsors are most in need of guidance, in order of decreasing priority:

**Funding balance and contribution management**

Retroactive elections to reflect ARPA's shortfall amortization and interest rate relief will likely significantly reduce many plans' minimum required contributions for prior plan years. To give sponsors the greatest benefit from these reductions, we suggest that sponsors that made cash contributions or funding balance elections to satisfy the pre-ARPA requirements—including deemed elections to avoid Internal Revenue Code (IRC) Section 436 benefit restrictions—should

---

<sup>1</sup> The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, object expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

be allowed to make retroactive funding balance elections to optimally manage the plans' funding balances. This would include the ability to create a funding balance with contributions in excess of the revised minimum requirement, to revoke previously made elections in excess of the new minimum, or to waive funding balances.

Any new prefunding balance should be available for use in the plan year after it is created; e.g., if excess contributions relating to 2019 give rise to a new prefunding balance, the balance should be created retroactively as of the first day in the 2020 plan year, and the sponsor could use that prefunding balance to meet the 2020 funding requirements.

Similarly, we suggest that sponsors be given the discretion to reattribute previously made contributions to earlier or later plan years as the sponsor determines to be most effective. Additionally, sponsors could apply to the minimum requirement any contributions made to avoid a Section 436 benefit restriction that wouldn't exist under the relief.

These elections would be permitted for all years starting with the first year the sponsor elects relief; sponsors that defer relief until 2022 would not be permitted to make elections after the ordinary deadlines. Sponsors making these elections would refile a Form 5500 and a Schedule SB to reflect the changes.

We recommend that the deadline for these elections for the 2019 and 2020 plan years be the end of the 2021 plan year or six months after guidance is issued, if later. For the 2021 plan year, we recommend sponsors have until the normal deadline for funding balance elections, or until six months after guidance is issued, if later.

### **Making ARPA elections**

Sponsors need guidance on how to make elections relating to ARPA. We assume that written notification to the plan's enrolled actuary and perhaps the plan administrator, as appropriate, will be required and sufficient. Sponsors will need sufficient time to work through the complicated decision tree of interacting, overlapping elections, so we suggest that the deadline for elections for the 2019 and 2020 plan years be no earlier than the end of the 2021 plan year, or six months after guidance is issued, if later. To accommodate sponsors that may be constrained by year-end deadlines, you could grant sponsors flexibility to change any election made before guidance is issued and up to 90 days afterward, even if a Form 5500 has been filed based on that election. Sponsors need a reasonable period to refile Forms 5500 and Schedules SB (or to file amended forms) to report changes made to previous years based on new ARPA elections. For 2021 plan year elections, a reasonable deadline might be the date the Form 5500 is filed, or six months after guidance is issued, if later.

Sponsors also need clarity on electing interest rate relief. The statutory language is ambiguous as to whether sponsors may elect relief starting in 2020, 2021, or 2022—and if so, whether elections may be made for each year individually—or whether sponsors may choose only between reflecting relief starting in 2020 or 2022, but not 2021. We believe that legislative intent was to allow sponsors a single election to start relief in any of the three applicable years. An interpretation of that assessment would be appreciated.

Lastly, to minimize disruption to plan administration, it would be helpful for you to indicate that sponsors may make elections to ignore relief solely for purposes of Section 436 benefit restrictions for 2020 and 2021.

### **Section 436 benefit restrictions and AFTAP certifications**

Plan sponsors have the choice to reflect or ignore ARPA for Section 436 purposes for years before 2022 (assuming forthcoming guidance permits this election to be made separately for 2020 and 2021). We recommend that plan sponsors choosing to reflect ARPA before 2022 be allowed to apply the new level of restrictions with full retroactive effect to the date of the original AFTAP certification, or prospectively only from the date of the revised certification.

Plan sponsors choosing to apply ARPA retroactively for Section 436 presumably will need new AFTAP certifications to support any changes in benefit restrictions. We recommend that sponsors be given 90 days past the deadline for making ARPA elections to receive new AFTAP certifications reflecting revised liabilities, assets and funding balances, and that any required changes to participants' benefits in connection with the revised AFTAP certifications be permitted to be made in accordance with the general correction principles of the Employee Plans Compliance Resolution System's Self-Correction Program.

### **Relief from late-payment penalties**

In 2021, plan sponsors cannot know with certainty what their contribution requirements will be until guidance is issued and their actuaries can recalculate their valuation results for 2019 and 2020. But many plan sponsors have already had to make contributions or funding balance elections based on their interpretation of ARPA's provisions. If these interpretations turn out to be wrong, sponsors might be faced with penalties for late contributions. Penalties could also apply if a sponsor used the pre-ARPA rates to discount a contribution deferred in accordance with the CARES Act,<sup>2</sup> and later elected to use ARPA rates for 2020 or 2021. We believe it would be appropriate to grant sponsors a waiver of any penalties due to actions taken in accordance with a good-faith interpretation of ARPA (including penalties arising from the change in interest rates applied to contributions deferred in accordance with the CARES Act). The waiver could be conditioned on a correction of any insufficient contributions within a reasonable period (such as 60 days) following the issuance of guidance.

### **Expected return on plan assets**

Section 430(g)(3)(B) limits the assumed earnings rate specified by an actuary for calculating the actuarial asset value to the third segment rate applicable under section 430(h)(2)(C)(iii). We believe the law would provide that the higher ARPA rate will apply automatically for an employer that elects the relief before 2022 but would appreciate confirmation on this point to eliminate any uncertainty.

---

<sup>2</sup> The 2020 Coronavirus Aid, Relief, and Economic Security Act.

The Pension Committee appreciates your consideration of this letter. Please contact Philip Maguire, the Academy's pension policy analyst ([maguire@actuary.org](mailto:maguire@actuary.org)), if you have any questions or would like to arrange a convenient time to discuss these comments further.

Sincerely,

Elena Black, MAAA, FSA, EA, FCA, CFA, PhD  
Vice Chairperson, Pension Committee  
American Academy of Actuaries