

SECTION 1. PURPOSE

This revenue procedure describes the procedure by which the plan sponsor of a multiemployer pension plan may request and obtain approval of an extension of an amortization period in accordance with § 431(d) of the Internal Revenue Code of 1986 (Code).

SECTION 2. BACKGROUND INFORMATION

.01 Statute— Section 431(d) was added to the Code as part of a significant revision of the funding rules for qualified pension plans under § 401(a) made by the Pension Protection Act of 2006 (PPA). Parallel provisions to § 431(d) can be found at section 304(d) of the Employee Retirement Income Security Act of 1974 (ERISA). The Secretary of the Treasury has interpretive and enforcement jurisdiction over both provisions.

Section 431(d)(1) provides that if the plan sponsor of a multiemployer plan submits to the Secretary of the Treasury an application for an extension of the amortization period for any unfunded liability, and includes the certification by the plan's actuary described in § 431(d)(1)(B), the Secretary shall extend the amortization period for the period (not in excess of 5 years) requested in the application. An extension under § 431(d)(1) is referred to as an automatic extension. In addition, § 431(d)(2)(A) provides that the plan sponsor of a multiemployer plan may submit an application for an extension of the amortization period for an unfunded liability, and the Secretary may extend the amortization period for a period of time not in excess of 10 years less the number of years of any automatic extension with respect to such unfunded liability, if the Secretary makes the determination described in § 431(d)(2)(B). An extension under § 431(d)(2) is referred to as an alternative extension. Section 431(d)(3) requires that an applicant provide notice of the extension request to each affected party described in section 4001(a)(21) of ERISA.

Before amendment by PPA, § 412(e) of the Code and § 304(a) of ERISA provided that the period of years required to amortize any unfunded liability of any plan may, upon application by the plan sponsor, be extended for a period up to 10 years. Those provisions were replaced with new § 431(d) of the Code and new section 304(d) of ERISA, effective for plan years starting after December 31, 2007.

Effective for plan years starting after December 31, 2007, there is no provision in the Code for single employer plans to receive an extension of the amortization period for any unfunded liability.

SECTION 3. APPLICATIONS TO EXTEND AN AMORTIZATION PERIOD – IN GENERAL

.01 Who may submit— A request for approval to extend the period of years required to amortize any unfunded liability must be submitted by the plan sponsor (i.e., the board of trustees of the plan, and referred to in this revenue procedure as the applicant, or Board) or by an authorized representative of the applicant. The request must be signed by an authorized trustee who is a current member of the Board or by an authorized representative of the applicant who either must be identified in (a), (b), or (c) of subsection 9.02(11) of Rev. Proc. 2008-4, 2008-1 I.R.B. 121, or must be an enrolled actuary within the meaning of § 7701(a)(35). Where an authorized representative signs the request or will appear before the Service in connection with the request, a Form 2848, Power of Attorney and Declaration of Representative, must be submitted with the request. An individual is not an authorized representative of the applicant merely on account of being an administrator or trustee of the plan.

.02 Submission.—Applications to extend an amortization period must be submitted to:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

The user fee required by Rev. Proc. 2008-8, 2008-1 I.R.B. 240, or its successors, must be sent with such requests.

.03 Necessary Procedural Documents.—A request will not be considered unless it complies with (1) and (2) below.

(1) The request must contain a declaration in the following form: “Under the penalties of perjury, I declare that I have examined this request, including accompanying documents, and to the best of my knowledge and belief, the facts presented in support of the request are true, correct, and complete.” This declaration must be signed by an authorized trustee who is a current member of the Board. The signature of an individual with a power of attorney will not suffice for the declaration. See § 9.02(13) of Rev. Proc. 2008-4.

(2) Because an application for an extension constitutes a request for a ruling, compliance with § 6110 is also required. Section 601.201 of the Statement of Procedural Rules sets forth the requirements applicable to requests for rulings

and determination letters which are subject to § 6110. Section 601.201(e) furnishes specific instructions to applicants.

The applicant must provide with the request either a statement of proposed deletions and the statutory basis for each proposed deletion, or a statement that no information other than names, addresses, and taxpayer identifying numbers need be deleted.

.04 Notification.--The applicant must provide a copy of a written notification to each employee organization representing employees covered by the plan, to each contributing employer, and to each participant, beneficiary, and alternate payee of the plan, that an application for an extension of the amortization period under § 431(d) has been submitted to the Service. The original of this notice must bear a signature by an authorized trustee who is a current member of the Board and must be in substantially the form set forth in the Model Notice found in the Appendix A to this revenue procedure. The Service does not require the applicant to furnish any information in addition to that required by the Model Notice in the Appendix A to plan participants, beneficiaries, alternate payees, or employee organizations as part of the extension application process, but additional information may, of course, be provided by the applicant pursuant to the collective bargaining process or otherwise.

The notice must be hand-delivered or mailed to the last known address of each employee organization, participant, beneficiary, and alternate payee (within the meaning of § 414(p)(8)) within 14 days prior to the date of the application. Alternatively, the notice may be delivered electronically in accordance with the requirements of § 1.401(a)-21 of the Income Tax Regulations. Merely posting the notice on a bulletin board is not sufficient to satisfy this notice requirement. If the applicant makes a reasonable effort to carry out the provisions of this paragraph, then failure of an employee organization, participant, beneficiary, or alternate payee to receive the notice will not cause the applicant to fail the notice requirement.

The application must state the method used by the applicant to satisfy this notice requirement.

.05 Providing Information.--Employers who have difficulty in furnishing the information specified in this revenue procedure may call the Employee Plans Customer Assistance Service at 1-877-829-5500 (a toll-free number), or write for guidance to the following address:

Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA:T:A2
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

In appropriate instances, pre-submission conferences may be afforded in addition to conferences available under Rev. Proc. 2008-8.

.06 Coordination of Extension Applications.—The total period of extensions permitted under paragraphs (1) and (2) of § 431(d) of the Code is limited to 10 years. Section 4 of this revenue procedure relates to automatic extensions under § 431(d)(1). Section 5 of this revenue procedure relates to alternative extensions under § 431(d)(2). An automatic extension for a plan may not exceed 5 years. An alternative extension may be for up to 10 years less any automatic extension approved. An applicant requesting both types of extension may do so in a single application. However, such a submission must include the information specified in section 4.01 below (including the actuarial certification described in section 4.01(4)), the information required in section 5.01 below and a completed copy of the checklist that appears as Appendix B of this revenue procedure. Such a combined application will be considered a single ruling request. If the applicant requests both types of extensions in a single application, the Service may approve the automatic extension without approving the alternative extension.

.07 Interim Effect of Application.--Whether the Service has ruled on the application does not affect the 90 day deadline for certification under § 432(b)(3) of the Code. In making this certification, the actuary should not take into account any extension application under § 431(d) before the application receives a favorable ruling.

SECTION 4—APPLICATION FOR AUTOMATIC EXTENSION

.01 Information to be provided.--The applicant must furnish the following information:

1. The unfunded liability for which an extension of the amortization period is requested.
2. The length of the extension of the amortization period being requested (up to a maximum of 5 years).
3. Whether a prior application for an amortization extension (automatic or alternative) was submitted, whether an application was granted under § 412(e) with respect to the prior 15 plan years, and whether the plan is in endangered or critical status as determined under section 432(b)(3) in the first plan year for which the extension is requested.
4. A certification by the plan's actuary that, based on reasonable assumptions:
 - (i) absent the extension for which the plan is applying, the plan would have an accumulated funding deficiency in the current plan year or any of the 9 succeeding plan years,
 - (ii) the plan sponsor has devised a plan to improve the plan's funding status,

- (iii) the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period as extended, and
- (iv) the notice required under § 431(d)(3)(A) has been provided, in accordance with § 3.04 this revenue procedure.

.02 Ruling.--Upon receipt of the application with the necessary information, and verification that the criteria stated above have been met, the Secretary shall issue a statement to the applicant providing approval for the requested extension.

.03 Applicable Period.--The procedures of this § 4 shall not apply with respect to any application submitted after December 31, 2014, in accordance with § 431(d)(1)(C).

SECTION 5—APPLICATION FOR ALTERNATIVE EXTENSION

.01 Information to be provided.--The applicant must furnish appropriate evidence that the extension of the amortization period would carry out the purposes of ERISA and PPA and would provide adequate protection for the participants and their beneficiaries, and that the failure to permit the extension would (I) result in a substantial risk to the voluntary continuation of the plan, or a substantial curtailment of pension benefit levels or employee compensation, and (II) would be adverse to the interests of the plan participants in the aggregate. What constitutes appropriate evidence will depend on the facts and circumstances of each case. A response must be furnished for each of the paragraphs (1) through (6) below. In certain cases, some of the material described in paragraphs (1) through (6) may be inapplicable, unavailable, inappropriate or burdensome to furnish. In such cases, the applicant must furnish a statement indicating why the material for a particular paragraph is inapplicable, unavailable, inappropriate or burdensome.

(1) General facts concerning the participating employers.

A brief statement should be submitted concerning: (a) the history of the contributing employers and the industry or industries covered by the plan; (b) the ownership of the principal employers (as identified below) and any recent or contemplated changes (such as acquisitions, mergers, discontinuances of operations) which might have a bearing on the employers' organizations or general financial condition; (c) any recently withdrawn principal employers with the withdrawal liability amounts and dates applicable; and (d) a general description of the financial state of the industry in which employees covered by the plan are employed.

(2) The financial condition of the principal employers.

For purposes of this revenue procedure, the principal employers are those employers who are (1) directly represented on the applicant board of trustees or (2) made or are required to make five percent or more of the total required contributions under the collective bargaining agreements relating to the plan for which the extension is requested. Each of the principal employers must submit the latest available annual financial report of the employer and each of the other entities included within the controlled group of which the employer is a member. This submission must include at least the balance sheet, profit and loss statement, cash flow statement, and notes to the financial statement. Recent interim financial reports for each of the controlled group members, if available, must also be submitted along with an interim financial report covering the corresponding period for the previous year. If the employer submits financial reports to the Securities and Exchange Commission, these reports must be submitted for the same period as the annual financial report. Preferably, the financial report should include certified financial statements. If certified financial statements have not been prepared, an uncertified report is acceptable. If neither certified nor uncertified reports are available, a copy of the company's latest available federal income tax return, including all of the supporting schedules, must be submitted. The required financial information of the principal employers should be submitted directly from each employer to the Service at the following address, at the same time that the application is made:

Employee Plans
Internal Revenue Service
Commissioner, TE/GE
Attention: SE:T:EP:RA
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

(3) Information concerning the extension of the amortization period.
Information concerning the extension of the amortization period must include the following.

1. The unfunded liability for which an extension of the amortization period is requested.
2. The reasons why an extension of the amortization period is needed.
3. The length of the extension of the amortization period desired (up to a maximum of 10 years less any automatic extension).
4. Information concerning the actions taken by the applicant to reduce the plan's unfunded liability before the request for an extension has been made. Such actions would include the reduction of future plan benefit accruals and increases in employer contribution rates. Also describe any

benefit reductions, contribution rate increases, or other actions that are intended to be taken in the future.

5. Projections of (i) funding standard account credit balance/accumulated funding deficiencies, (ii) actuarial value of assets and market value of assets, (iii) current liabilities, and (iv) funding ratios, for the length of the extension of the amortization period requested and for the period 10 years afterwards. For example, if the applicant requests an extension of 10 years (including a five-year automatic extension), the projections must be for a 20-year period. These projections must be prepared by an enrolled actuary.

6. The plan year for which the extension is requested, i.e., the first plan year for which the extension of the amortization period will be reflected in the determination of the minimum funding standard for the plan (e.g., 1/1/2008—12/31/2008).

The Service may request additional information as needed.

(4) Facts concerning the pension plan. For each pension plan for which an extension is requested, the following information must be supplied.

1. The name of the plan, the plan's identification number, and file folder number (if any).
2. The date the plan was adopted.
3. The effective date of the plan.
4. The classes of employees covered.
5. The number of employees covered.
6. A copy of the current plan document and the most recent summary plan description.
7. A copy of the most recent determination letter issued to the plan.
8. A brief description of all plan amendments adopted during the year for which the extension is requested and the previous four years which affect plan costs, including the approximate effect of each amendment on such costs.
9. The most recent actuarial report plus any available actuarial reports for the preceding two plan years. Also, if not shown in that report, the present value of accrued benefits, present value of vested benefits, and fair market value of assets (excluding contributions not yet paid).
10. A description of how the plan is funded (i.e., trust fund, individual insurance policies, etc.).
11. A list of the contributions actually paid in each month, from the twenty-fourth month prior to the beginning of the plan year for which the extension is requested through the date of the request and the plan year to which the contributions were applied, with the employee contributions and the employer contributions listed separately.

12. The approximate contribution required to meet the minimum funding standard. For defined benefit plans, this amount must be determined by the plan's enrolled actuary.

13. A copy of the most recently completed Annual Return/Report of Employee Benefit Plan (Form 5500 series, as applicable) and in the case of a defined benefit plan, a copy of the corresponding Actuarial Information schedule (Schedule B of Form 5500 for plan years beginning before 2008, or Schedule MB for plan years beginning after 2007).

14. A copy of each ruling letter that waived the minimum funding standard during the last 15 plan years, a statement of the amount waived for each plan year, and a statement of the outstanding balance of the amortization base for each waived funding deficiency. The outstanding balance of the amortization base for each waiver is to be calculated as of the first day of the plan year for which an extension is being requested.

15. A copy of each ruling letter that granted under § 431(d) or under § 412(e) of the Code as in effect prior to January 1, 2008, an extension of time to amortize any unfunded liability which became applicable at any time during the last 15 plan years.

16. A copy of the certification of whether or not the plan is in critical status or endangered status, in accordance with the requirements of § 432(b)(3), for the first plan year for which the extension is requested.

17. A copy of any funding improvement plan or rehabilitation plan to which the plan is currently subject in accordance with § 432, or to which the plan has been subject at any time within the 10 years preceding the date of this application and all updates to the funding improvement plan or rehabilitation plan.

(5) Other information.

1. Describe the nature of any matters pertaining to the plan which are currently pending or are intended to be submitted to the Service, the Department of Labor or the Pension Benefit Guaranty Corporation.

2. Furnish details of any existing arbitration, litigation, or court procedure which involves the plan.

.02 Checklist.--A checklist has been provided in Appendix B for the convenience of the applicant submitting the request. The checklist must be signed by the applicant or authorized representative and dated and placed on top of the request.

SECTION 6. DEADLINE FOR REQUESTING AN EXTENSION

All extension requests must be submitted by the last day of the first plan year for which the extension is intended to take effect. The Service will consider applications for extensions submitted after this date only upon a showing of good cause. In seeking an extension of an amortization period with respect to a plan

year which has not yet ended, the applicant may have difficulty in furnishing sufficient current evidence in support of the request. For this reason, it is generally advised that a request not be submitted earlier than 90 days prior to the end of the plan year for which the extension is requested. This 90 day period does not apply to applications for an automatic extension. Section 431(d)(2)(C) of the Code requires that the Service act on the submission within 180 days of receiving an application for extension. An application will not be considered received until the applicable information required as stated in sections 4.01, 5.01, and 5.02 of this revenue procedure has been received. The Service will provide notification to the applicant of the date upon which it has full receipt of required information. The Service will close the file on a submission for which not all of the required documentation is provided in a timely manner without issuing a ruling.

SECTION 7. BANKRUPTCY PETITIONS

If significant number of employers or any of the principal employers file a bankruptcy petition after the request for an extension of an amortization period is submitted to the Service, the applicant must provide to the Service an update to the information required to be submitted in § 5 of this revenue procedure, especially the financial information in sections 5.01(2) and (3).

SECTION 8. EFFECTIVE DATE

This revenue procedure is effective for all ruling requests received with respect to plan years starting after December 31, 2007.

SECTION 9. EFFECT ON OTHER REVENUE PROCEDURES

Rev. Proc. 2008-4 is modified to the extent that this revenue procedure provides special procedures for issuing rulings with respect to requests for an extension of an amortization period.

Rev. Proc. 2004-44, 2004-2 C.B. 134, is superseded effective for applications submitted with respect to plan years starting after December 31, 2007.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1890

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 collection of information in this revenue procedure is in §§ 3, 4 and 5 and Appendix B. This collection of information is required to evaluate, process and obtain approval of the request for an extension of an amortization period. This information will be used to make determinations on extensions of the amortization period under § 431(d). The likely respondents are businesses or other for-profit institutions and nonprofit institutions.

The estimated total annual reporting/recordkeeping burden is 2500 hours.

The estimated annual burden per respondent/recordkeeper varies from 71 to 129 hours, depending on individual circumstances, with an estimated average burden of 100 hours. The estimated number of respondents/recordkeepers is 25.

The estimated annual frequency of responses is one.

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 26 U.S.C. § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Tony Montanaro of the Employee Plans, Tax Exempt and Government Entities Division. Questions about this revenue procedure and its application may be directed by email to RetirementPlanQuestions@irs.gov

APPENDIX A: MODEL NOTICE

MODEL NOTICE OF APPLICATION FOR AN EXTENSION OF AN AMORTIZATION PERIOD TO EMPLOYEE ORGANIZATIONS (UNIONS), PARTICIPANTS, BENEFICIARIES, AND ALTERNATE PAYEES

This notice is to inform you that an application for an extension of an amortization period for unfunded liability under § 431(d) of the Internal Revenue Code (Code) and § 304(d) of the Employee Retirement Income Security Act of 1974 (ERISA) has been submitted by [INSERT APPLICANT'S NAME] to the Internal Revenue Service (Service) for the [INSERT PLAN NAME] for the plan year beginning [INSERT DATE].

Under § 431(d)(3)(B) of the Code and § 304(d)(3)(B) of ERISA, the Service will consider any relevant information submitted concerning this application for an extension of the amortization period for unfunded liability. You may send this information to the following address:

Director, Employee Plans
Internal Revenue Service
Attn: SE:T:EP:RA:T:A2
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Any such information should be submitted as soon as possible after you have received this notice. Due to the disclosure restrictions of § 6103 of the Code, the Service can not provide any information with respect to the extension request itself.

In accordance with § 104 of ERISA, annual financial reports for this plan, which include employer contributions made to the plan for any plan year, are available for inspection at the Department of Labor in Washington, D.C. Copies of such reports may be obtained upon request and upon payment of copying costs from the following address:

Public Disclosure Room
Room N-1513
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

In addition, pension plan actuarial information filed for 2008 and later plan years filed with the Department of Labor may be obtained at <http://dol.gov/ebsa/actuarialsearch.html>.

As required by § 104(b)(2) of ERISA, copies of the latest annual plan report are available for inspection at the principal office of the plan administrator, who is located at [INSERT ADDRESS]. As required under § 101(k)(1) of ERISA, copies of periodic actuarial reports, quarterly, semi-annual, or annual financial reports, and copies of any application for extension under § 304 of ERISA or § 431(d) of the Code may be obtained upon request and upon payment of a copying charge of [INSERT CHARGES] by writing to the plan administrator at the above address.

The following information is provided pursuant to § 304(d)(3) of ERISA and 431(d)(3) of the Code:

Present Value of Vested Benefits \$_____

Present Value of Benefits, calculated as though the plan terminated
\$_____

Fair Market Value of Plan Assets \$_____

The above present values were calculated using an interest rate or rates of [INSERT INTEREST RATE(S)].

[SIGNATURE OF APPROPRIATE OFFICER OF THE PLAN SPONSOR]
[INSERT NAME]
[INSERT TITLE]

APPENDIX B. REQUEST FOR ALTERNATIVE EXTENSION OF AN AMORTIZATION PERIOD CHECKLIST

IS YOUR SUBMISSION COMPLETE?

Instructions

The Service will be able to respond more quickly to your request for an alternative extension of an amortization period if it is carefully prepared and complete. To ensure your request is in order, use this checklist. Answer each question in the checklist by inserting Y for yes, N for no, or N/A for not applicable, as appropriate, in the blank next to the item. Sign and date the checklist (as applicant or authorized representative) and place it on top of your request.

You must submit a completed copy of this checklist with your request. If a completed checklist is not submitted with your request, substantive consideration of your submission will be deferred until a completed checklist is received.

_____ 1. If you want to designate an authorized representative, have you included a properly executed Form 2848 (Power of Attorney and Declaration of Representative)?

_____ 2. Have you satisfied all the requirements of Rev. Proc. 2008-4 or its successors (especially concerning signatures and penalties of perjury statement)? (See § 3.03(1))

_____ 3. Have you included statement of proposed deletions? (See § 3.03(2))

_____ 4. Have you included the user fee required under Rev. Proc. 2008-8 or its successors? (See § 3.02)

_____ 5. Have you included a copy of the written notification that an application for an extension of an amortization period has been submitted and a statement that such notice was hand delivered or mailed to each employee organization, participant, beneficiary and alternate payee? (See § 5.02 and Appendix A)

_____ 6. Have you included the general facts concerning the employer? (See § 5.01(1))

_____ 7. Have you included a description of the industry's financial condition? (See § 5.01(2))

_____ 8. Have you included information concerning the extension of the amortization period? (See § 5.01(3))

_____ 9. Have you included information concerning the pension plan?
(See § 5.01(4))

_____ 10. Have you included information concerning other matters
pertaining to the plan? (See § 5.01(5))

Signature

Date

Typed or printed name of person signing checklist

Title or Authority