

AMERICAN JOBS AND CLOSING TAX LOOPHOLES ACT OF 2010

SEC. 311. OPTIONAL USE OF 30-YEAR AMORTIZATION PERIODS.

(a) ELECTIVE SPECIAL RELIEF RULES.—

(2) IRC AMENDMENT.—

Section 431(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

(8) ELECTIVE SPECIAL RELIEF RULES.—

Notwithstanding any other provision of this subsection—

(A) AMORTIZATION OF NET INVESTMENT LOSSES.

(i) IN GENERAL.

The plan sponsor of a multiemployer plan with respect to which the solvency test under subparagraph (B) is met may elect to treat the portion of any experience loss or gain for a plan year that is attributable to the allocable portion of the net investment losses incurred in either or both of the first two plan years ending on or after June 30, 2008, as an experience loss separate from other experience losses and gains to be amortized in equal annual installments (until fully amortized) over the period—

- (I) beginning with the plan year for which the allocable portion is determined, and
- (II) ending with the last plan year in the 30-plan year period beginning with the plan year following the plan year in which such net investment loss was incurred.

(ii) COORDINATION WITH EXTENSIONS.

If an election is made under clause (i) for any plan year—

- (I) no extension of the amortization period under clause (i) shall be allowed under subsection (d), and
- (II) if an extension was granted under subsection (d) for any plan year before the plan year for which the election under this subparagraph is made, such extension shall not result in such amortization period exceeding 30 years.

Attachment Client Bulletin 2010-39

(iii) DEFINITIONS AND RULES.

For purposes of this subparagraph—

(I) NET INVESTMENT LOSSES.—

(aa) IN GENERAL.

The net investment loss incurred by a plan in a plan year is equal to the excess of—

(AA) the expected value of the assets as of the end of the plan year, over

(BB) the market value of the assets as of the end of the plan year,

including any difference attributable to a criminally fraudulent investment arrangement.

(bb) EXPECTED VALUE.—

For purposes of item (aa), the expected value of the assets as of the end of a plan year is the excess of—

(AA) the market value of the assets at the beginning of the plan year plus contributions made during the plan year, over

(BB) disbursements made during the plan year.

The amounts described in subitems (AA) and (BB) shall be adjusted with interest at the valuation rate to the end of the plan year.

(II) CRIMINALLY FRAUDULENT INVESTMENT ARRANGEMENTS.—

The determination as to whether an arrangement is a criminally fraudulent investment arrangement shall be made under rules substantially similar to the rules prescribed by the Secretary for purposes of section 165.

(III) AMOUNT ATTRIBUTABLE TO ALLOCABLE PORTION OF NET INVESTMENT LOSS.—

The amount attributable to the allocable portion of the net investment loss for a plan year shall be an amount equal to the allocable portion of net investment loss for the plan year under subclauses (IV) and (V), increased with interest at the valuation rate determined from the plan year after the plan year in which the net investment loss was incurred.

(IV) ALLOCABLE PORTION OF NET INVESTMENT LOSSES.—

Except as provided in subclause (V), the net investment loss incurred in a plan year shall be allocated among the 5 plan years following the plan year in which the investment loss is incurred in accordance with the following table:

Plan year after the plan year in which was incurred the net investment loss	Allocable portion of net investment loss
1st	1/2
2nd	0
3rd	1/6
4th	1/6
5th	1/6

(V) SPECIAL RULE FOR PLANS THAT ADOPT LONGER SMOOTHER PERIOD.

If a plan sponsor elects an extended smoothing period for its asset valuation method under subsection (c)(2)(B), then the allocable portion of net investment loss for the first two plan years following the plan year the investment loss is incurred is the same as determined under subclause (IV), but the remaining 1/2 of the net investment loss is allocated ratably over the period beginning with the third plan year following the plan year the net investment loss is incurred and ending with the last plan year in the extended smoothing period.

(VI) SPECIAL RULE FOR OVERSTATEMENT OF LOSS.

If, for a plan year, there is an experience loss for the plan and the amount described in subclause (III) exceeds the total amount of the experience loss for the plan year, then the excess shall be treated as an experience gain.

(VII) SPECIAL RULE IN YEARS FOR WHICH OVERALL EXPERIENCE IS GAIN.—

If, for a plan year, there is no experience loss for the plan, then, in addition to amortization of net investment losses under clause (i), the amount described in subclause (III) shall be treated as an

Attachment Client Bulletin 2010-39

experience gain in addition to any other experience gain.

(B) SOLVENCY TEST.—

(i) IN GENERAL.—

An election may be made under this paragraph if the election includes certification by the plan actuary in connection with the election that the plan is projected to have a funded percentage at the end of the first 15 plan years that is not less than 100 percent of the funded percentage for the plan year of the election.

(ii) FUNDED PERCENTAGE.—

For purposes of clause (i), the term 'funded percentage' has the meaning provided in section 432(i)(2), except that the value of the plan's assets referred to in section 432(i)(2)(A) shall be the market value of such assets.

(iii) ACTUARIAL ASSUMPTIONS.—

In making any certification under this subparagraph, the plan actuary shall use the same actuarial estimates, assumptions, and methods as those applicable for the most recent certification under section 432, except that the plan actuary may take into account benefit reductions and increases in contribution rates, under either funding improvement plans adopted under section 432(c) or under section 305(c) of the Employee Retirement Income Security Act of 1974 or rehabilitation plans adopted under section 432(e) or under section 305(e) of such Act, that the plan actuary reasonably anticipates will occur without regard to any change in status of the plan resulting from the election.

(C) ADDITIONAL RESTRICTION ON BENEFIT INCREASES.—

If an election is made under subparagraph (A), then, in addition to any other applicable restrictions on benefit increases, a plan amendment which is adopted on or after March 10, 2010, and which increases benefits may not go into effect during the period beginning on such date and ending with the second plan year beginning after such date unless—

(i) the plan actuary certifies that—

(I) any such increase is paid for out of additional contributions not allocated to the plan immediately before the election to have this paragraph apply to the plan, and

(II) the plan's funded percentage and projected credit balances for the first 3 plan years ending on or

Attachment Client Bulletin 2010-39

after such date are reasonably expected to be at least as high as such percentage and balances would have been if the benefit increase had not been adopted, or

- (ii) the amendment is required as a condition of qualification under part I or to comply with other applicable law.

(D) TIME, FORM, AND MANNER OF ELECTION.—

An election under this paragraph shall be made not later than June 30, 2011, and shall be made in such form and manner as the Secretary may prescribe.

(E) REPORTING.—

A plan sponsor of a plan to which this paragraph applies shall—

- (i) give notice of such election to participants and beneficiaries of the plan, and
- (ii) inform the Pension Benefit Guaranty Corporation of such election in such form and manner as the Pension Benefit Guaranty Corporation may prescribe.

Section 311 (b) ASSET SMOOTHING FOR MULTIEMPLOYER PLANS.—

(2) IRC AMENDMENT.—

Section 431(c)(2) of the Internal Revenue Code of 1986 is amended—

- (A) by redesignating subparagraph (B) as subparagraph (C); and
- (B) by inserting after subparagraph (A) the following new subparagraph:

(B) EXTENDED ASSET SMOOTHING PERIOD FOR CERTAIN INVESTMENT LOSSES.—

The Secretary shall not treat the asset valuation method of a multiemployer plan as unreasonable solely because such method spreads the difference between expected and actual returns for either or both of the first 2 plan years ending on or after June 30, 2008, over a period of not more than 10 years. Any change in valuation method to so spread such difference shall be treated as approved, but only if, in the case that the plan sponsor has made an election under subsection (b)(8), any resulting change in asset value is treated for purposes of amortization as a net experience loss or gain.

Section 311 (c) EFFECTIVE DATE AND SPECIAL RULES.—

(1) EFFECTIVE DATE.—

The amendments made by this section shall take effect as of the first day of the first plan year beginning after June 30, 2008, except that any election a plan sponsor makes pursuant to this section or the amendments made thereby that affects the plan's funding standard

Attachment Client Bulletin 2010-39

account for any plan year beginning before October 1, 2009, shall be disregarded for purposes of applying the provisions of section 305 of the Employee Retirement Income Security Act of 1974 and section 432 of the Internal Revenue Code of 1986 to that plan year.

(2) DEEMED APPROVAL FOR CERTAIN FUNDING METHOD CHANGES.

In the case of a multiemployer plan with respect to which an election has been made under section 304(b)(8) of the Employee Retirement Income Security Act of 1974 (as amended by this section) or section 431(b)(8) of the Internal Revenue Code of 1986 (as so amended)—

- (A) any change in the plan's funding method for a plan year beginning on or after July 1, 2008, and on or before December 31, 2010, from a method that does not establish a base for experience gains and losses to one that does establish such a base shall be treated as approved by the Secretary of the Treasury, and
- (B) any resulting funding method change base shall be treated for purposes of amortization as a net experience loss or gain.