



TaxNewsFlash

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Rev. Rul. 2022-13: Multiemployer defined benefit plan receiving special financial assistance not deemed in “critical status” under section 432(b)(7) following merger

The IRS today released an advance version of Rev. Rul. 2022-13 that provides that after a merger of a multiemployer defined benefit pension plan that has received special financial assistance (SFA) from the Pension Benefit Guaranty Corporation (PBGC) with a second multiemployer defined benefit pension plan that has not received SFA, and with the second plan designated as the ongoing plan after the merger, the ongoing plan is not deemed to be in “critical status” under section 432(b)(7) solely as a result of the merger.

Summary

[Rev. Rul. 2022-13](#) [PDF 99 KB] addresses the following situation:

- Plan A—a multiemployer defined benefit pension plan with a calendar year plan year— is an eligible multiemployer plan under section 432(k)(3) of the Code. Plan A applies to the PBGC for SFA and receives \$50 million of SFA in October 2022. On March 30, 2023, the actuary for Plan A makes the annual certification required under section 432(b)(3) and certifies that Plan A is in critical status for the 2023 plan year in accordance with section 432(b)(7).
- Plan B—a multiemployer defined benefit pension plan that was in effect on July 16, 2006—has a calendar year plan year and is not an eligible multiemployer plan under section 432(k)(3) that may apply for SFA.

The sponsors of Plan A and Plan B agree to merge Plan A and Plan B, effective as of January 1, 2024. Under the merger agreement, Plan B will be designated as the ongoing plan after the merger and will obtain all the assets, and assume all the liabilities, of Plan A.

Plan A and Plan B implement the merger as of January 1, 2024, in accordance with the merger agreement. Following the merger, Plan B complies with the restrictions and conditions that applied to Plan A before the

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merger (as required). For example, Plan B maintains a separate account for the SFA funds received by Plan A (adjusted to reflect earnings on those funds and payments for benefits and plan-related expenses from that separate account) and invests the assets of that separate account in permissible investments.

The issue presented in the revenue ruling is: Whether a multiemployer defined benefit pension plan that has received SFA from the PBGC is merged into a multiemployer defined benefit pension plan that has not received SFA, and the plan that has not received SFA is designated as the ongoing plan after the merger, is the ongoing plan deemed to be in critical status under section 432(b)(7) solely as a result of the merger?

The IRS ruled that that after the merger, the ongoing plan is not deemed to be in “critical status” under section 432(b)(7) solely as a result of the merger.

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