

New Form 5500 Reporting Requirements for the 2008 Plan Year

The Pension Protection Act of 2006 added some new reporting requirements for multiemployer defined benefit pension plans. Starting with the 2009 plan year, these requirements will be part of new sections of Schedule R to the Form 5500. However, for the 2008 plan year, the additional information is to be supplied in attachments to the Schedule R that are described in the instructions to the Form 5500. The 2008 funding zone certification, plan size, and plan merger or liability transfer activity will determine how many different attachments are required. The filing deadline for the 2008 Form 5500 for calendar year plans with an extension is October 15, 2009.

PLAN CATEGORY	REQUIRED INFORMATION
All plans	<p>Total number of employers obligated to contribute to the plan in 2008.</p> <p>Detailed information related to contributing employers that individually contribute more than 5% of the plan's total 2008 contribution amount, including:</p> <ul style="list-style-type: none"> ▪ Employer name; ▪ Employer Identification Number (EIN); ▪ Dollar amount contributed by the employer; ▪ Date(s) employer's collective bargaining agreement expires; and ▪ Contribution rate per contribution base unit and the base unit measure; whether unit is measured hourly, weekly, unit-of-production, or other (specify). If rate changed during plan year, provide last rate in effect. [If there are different rates for different employee classifications or locations, provide all such rates and base unit measures.] <p>Participant count for withdrawn employers, if any, for the 2008, 2007, and 2006 plan years.</p> <p>Ratios of number of participants on whose behalf no employer had an obligation to contribute for the 2008 to 2007 plan year and the 2008 to 2006 plan year. Note that these ratios include retired and deferred vested participants of employers still participating.</p> <p>Number of employers who withdrew from the plan in 2007 and the aggregate amount of withdrawal liability assessed.</p> <p>Whether the plan received an amortization extension and, if so, the period of such extension and the effect of the extension on the minimum required contribution.*</p> <p>Whether the plan used the shortfall amortization method and, if so, the effect of the use of the method on the minimum required contribution.*</p> <p><small>* In ERISA Section 103(f)(2)(E) and (F) but not in the instructions to Schedule R.</small></p>
Endangered, Seriously Endangered, or Critical Status in 2008	<p>Summary of the plan's Funding Improvement Plan or Rehabilitation Plan, including:</p> <ul style="list-style-type: none"> ▪ Description of the various contribution and benefit schedules presented to the bargaining parties; ▪ Any other actions taken in connection with the Funding Improvement or Rehabilitation Plan, such as the use of the shortfall method or amortization period extensions; and ▪ Schedule of the expected progress for the funded percentage or other relevant factors under the Funding Improvement or Rehabilitation Plan.
Critical in 2008 and not able to emerge from Critical Status by end of Rehabilitation Period [IRC Section 432(e)(3)(A)]	<p>The above items, plus:</p> <ul style="list-style-type: none"> ▪ Alternatives considered for emergence from Critical Status; ▪ Explanation of the reason the plan can not emerge from Critical Status by the end of the Rehabilitation Period (if applicable); and ▪ Timing of when, if ever, the plan will emerge from Critical Status.
Any plan involved in a merger or transfer of assets and liabilities into the plan in 2008	<p>The plan name and EIN of each plan.</p> <p>The assets and liabilities of each plan as of the day before the first day of the 2008 plan year.</p>
Any plan where part of the liabilities consists of liabilities under two or more plans (including any single employer plans) immediately before the 2008 plan year	<p>The plan name, EIN, and plan number of each plan (with the current plan listed first).</p> <p>Funded percentage of each plan as of the end of the 2007 plan year.</p>

Multiemployer Alert: Update on Issues Affecting Taft-Hartley Plans is intended to provide information and analysis of a general nature. Application to specific circumstances should rely on separate professional guidance.

PLAN CATEGORY (cont.)	REQUIRED INFORMATION (cont.)
<p>Plans with 1,000 or more participants as of the beginning of the plan year</p> <p>(Note: This requirement applies to single-employer plans also.)</p>	<p>Beginning of year asset allocation, expressed as a percentage of the portfolio, in the following categories:</p> <ul style="list-style-type: none"> ▪ Stocks; ▪ Investment-grade debt instruments; ▪ High-yield debt instruments; ▪ Real estate; and ▪ Other. <p>Note: This allocation should reflect the assets in each category regardless of how they are shown on Schedule H. (For example, assets held in a master trust should be assigned to the appropriate class, not listed as "Other.")</p> <p>The average duration of the debt portfolio in one of the following categories:</p> <ul style="list-style-type: none"> ▪ 0 – 3 years; ▪ 3 – 6 years; ▪ 6 – 9 years; ▪ 9 – 12 years; ▪ 12 – 15 years; ▪ 15 – 18 years; ▪ 18 – 21 years; or ▪ 21 years or more. <p>The duration should be determined as (a) Effective duration, (b) Macaulay duration, (c) Modified duration, or (d) Other (specify).</p>

In some areas, the instructions to the Schedule R seem to require reporting of information above and beyond that required by the law [ERISA Section 103(f)(2), as amended by PPA]. In addition, some of the requested information may require accessing of plan records in ways not previously contemplated. An early start is recommended.

NEW REPORT TO EMPLOYERS AND UNIONS

Within 30 days after the due date of the Form 5500, a report must be provided to the contributing employers and sponsoring unions of a multiemployer plan. Much of the information in this new report is the same as the new information required on the Form 5500.

Without further guidance from the Department of Labor (DOL), there does not seem to be a need to report the extra information called for in the instructions to the Schedule R (for example, the detailed information regarding employers that contributed more than 5% of the total contributions).

However, the law does not specifically limit this new report to defined benefit plans, even though much of the information matches the new Schedule R information, which is limited to defined benefit plans. It is possible that the DOL will clarify that this new report does not apply to multiemployer defined contribution plans. At this point, there is no guidance on this either.

The report must include:

- A description of the plan's benefit formulas and contribution schedules, along with any changes made to those schedules during the year;
- The number of employers obligated to contribute to the plan;
- A list of employers that contributed more than 5% of the total contributions to the plan;
- The number of participants for whom no contributions were made for the current plan year and each of the two preceding years;
- Whether the plan was in Critical or Endangered Status for the plan year, and, if so, include:
 - A list of actions taken by the plan to improve the plan's funded status;
 - Instructions on how an employer or union can get a copy of the Rehabilitation Plan or Funding Improvement Plan and the actuarial and financial data that show the improvement expected from the corrective actions taken.
- The number of employers that withdrew in the prior plan year (2007) and the aggregate amount of withdrawal liability assessed;
- The effect of any plan mergers during the year, including the assets and liabilities of each plan as of the end of the prior plan year;
- Whether the plan applied for or received an amortization extension or used the shortfall funding method for the year; and
- Notice that any employer or union can receive a copy of the 2008 Form 5500, Summary Plan Description, or Summary of Material Modifications upon written request and payment of the charge for such documents.