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COMPLIANCE ADVISORY



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PBGC issues final rules on multiemployer plan partitions

On December 23, 2015, the Pension Benefit Guaranty Corporation (PBGC) issued final rules to implement the application process and notice requirements for partitions of eligible multiemployer plans. These final rules incorporate minor changes to the interim final rules in response to public comments.

Background

On December 16, 2014, President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2015. The law contained the [Multiemployer Pension Reform Act of 2014 \("MPRA"\)](#). MPRA contains a number of statutory reforms intended to help financially troubled multiemployer plans and improve the financial condition of the PBGC's multiemployer insurance program.

MPRA provides the PBGC with new authority to assist financially troubled multiemployer plans under certain conditions, if doing so would reduce potential future costs to the PBGC and if the PBGC can certify that its ability to meet existing financial assistance to other plans will not be impaired.

On June 19, 2015, the PBGC published interim final rules on multiemployer plan partitions. A plan partition is a process whereby a multiemployer plan that is in danger of becoming insolvent transfers the minimum amount of liabilities necessary for it to remain solvent to a newly created successor plan. The [interim final rules](#) provided guidance on partition applications, eligibility for partitions, the PBGC review process and notice requirements.

In response to public comments, the PBGC has made minor edits to the interim final rules. These minor revisions are discussed below.

Application requirements

An application for partition must include certain information pertaining to the plan such as formal plan documents, trust agreements, summary plan descriptions, summaries of material modifications, rehabilitation plans, Forms 5500, the most recent IRS determination letter, a current listing of employers who have an obligation to contribute and the approximate number of participants for whom each employer is currently making contributions.

The interim final rules noted that if any of the required information is not included, the application is not considered complete. However, in response to comments that stated that there may be instances where these documents are not required or do not exist, the final rules allow the PBGC to use discretion to determine whether an application is complete.

Actuarial and financial information

An application for partition must include actuarial and financial information such as:

- A copy of the plan's most recent actuarial report and copies of the actuarial reports for the two preceding plan years;
- A copy of the plan actuary's most recent certification of critical and declining status;
- Information about the plan's assets and liabilities including data, projections and actuarial assumptions; and
- Information pertaining to benefit payments.

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Under the final rules, benefit payment information must be organized by participant status (e.g., active, retiree, terminated vested, beneficiary). The PBGC has determined that organizing benefit payment information in this manner is necessary to determine the aggregate amount of benefits subject to transfer to the successor plan.

In addition, the PBGC revised the actuarial and information requirements to require long-term projections of pre-partition benefit payments at the PBGC-guarantee benefit level, and if applicable, [maximum benefit suspensions](#).

Participant census data

The application for partition must include participant census data such as vested accrued monthly benefits before and after suspension, form of payment and benefit commencement date. Under the final rules, the participant census data requirement also includes gender information. Gender information is necessary to determine the present value of plan liabilities.

Initial review process

Under the final rules, if the application for partition is incomplete, the PBGC will let the plan sponsor know what information is missing. Upon determining that the application is complete, the PBGC will issue a written notice to the plan sponsor. The date of the written notice commences the 270-day review period. In addition, plan sponsors must provide a notice to interested parties no later than 30 days after receipt of the PBGC letter that the application for partition is complete. However, the interim final rules did not provide a time limit on the PBGC for making an initial determination on whether an application is complete.

Having considered concerns raised by commenters relating to the lack of a specified time limit on the PBGC's initial review process, the final rules include a 14-calendar day review period for the PBGC to complete the initial review of the application.

Conditional determination process

The interim final rules described a conditional approval process for plan sponsors who file applications for partition and suspension of benefits. The PBGC may, in its discretion, approve an application for partition conditioned on IRS final authorization to suspend benefits. However, a partition will only become effective upon completion of the required conditions and the issuance of a partition order.

In response to comments, the final rules clarify that in any case in which an application for partition is made in combination with a suspension of benefits, the effective date of the suspension of benefits may not take effect prior to the effective date of the partition.

Under the multiemployer benefit suspension rules, the IRS must approve or deny the application to suspend benefits within 225 days after submission of the application. An application is deemed approved, unless within 225 days, the plan sponsor is notified that the application is incomplete. The final plan partition rules clarify that the PBGC's issuance of a conditional approval within the 225-day period will satisfy the requirement that the effective date of the suspension of benefits may not take effect prior to the effective date of the partition.

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Next steps

The information contained in this *Compliance Advisory* affects the duties of plan trustees, plan administrators and contributing employers. Sponsors should carefully read the information contained in this newsletter and if applicable, discuss the impact of this guidance on their plans with their enrolled actuary and their fund counsel. The provisions discussed in this newsletter apply to applications for partition submitted to the PBGC on or after January 22, 2016.

Compliance Advisory by Prudential Retirement

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