



October 2015

PENSION ANALYST

Important information—Plan administration and operation



Prudential
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IRS issues guidance on suspension of benefits for multiemployer plans

Who's affected

These developments affect sponsors of and participants in qualified multiemployer defined benefit plans.

Background and summary

On December 16, 2014, President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2015. Although the new law provides funding for most of the federal government through September 2015, it also contains the [Multiemployer Pension Reform Act of 2014 \(the "Act"\)](#). The Act provides that certain multiemployer plans that are in critical and declining status may suspend benefits.

Recently, the IRS published temporary regulations and Revenue Procedure 2015-34, which provide guidance for plan sponsors regarding suspension of benefits. The temporary regulations provide guidance regarding the:

- Definition of a suspension of benefit;
- Conditions for a suspension;
- Limitations on suspensions;
- Notice of a proposed suspension; and
- Suspension application.

[Revenue Procedure 2015-34](#) describes the procedural requirements for a multiemployer defined benefit plan in critical and declining status to apply for approval of a proposed suspension of benefits.

The IRS also published proposed regulations on suspension of benefits. However, plan sponsors cannot rely on these proposed regulations until they are finalized and published in the Federal Register as final regulations.

Action and next steps

The information contained in this *Pension Analyst* impacts plan administration and design. Plan sponsors should read the information contained in this newsletter and discuss any impact on their plans with their enrolled actuary and fund counsel.

The temporary regulations are effective as of June 19, 2015. Although they are effective immediately, the IRS has indicated that it will not approve any application proposing a benefit suspension until final rules are published. The provisions of the proposed and temporary regulations are expected to be integrated and issued as a single set of final rules.

If a plan sponsor submits an application for approval of a proposed benefit suspension before the IRS issues final rules, the plan sponsor may need to revise the proposed suspension and related notices to plan participants to reflect any additional provisions in the final regulations.

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In general, a plan sponsor may not amend a qualified plan to decrease any participant's accrued benefit. This is known as the "[anti-cutback rule.](#)" However, the Act provides that certain multiemployer plans that are in "critical and declining status" may suspend benefits. A plan is in critical and declining status if the plan is:

- In [critical status](#); and
- Projected to become insolvent within:
 - The current plan year or any of the 14 succeeding plan years; or
 - Any of the 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the plan's funded percentage is less than 80 percent.

The IRS recently issued guidance regarding the suspension of benefit rules, which provides sufficient guidance to enable a plan sponsor to submit a suspension of benefits application to the IRS.

Temporary rules

The temporary rules provide general guidance including the meaning of "suspension of benefits," the conditions for a suspension, and notice requirements.

Definition of suspension of benefits

A "suspension of benefits" is a temporary or permanent reduction of any current or future payment obligation of the plan to any participant, beneficiary or alternate payee under the plan, whether or not in pay status at the time of the suspension. A suspension remains in effect until the earlier of when the:

- Plan sponsor provides benefit improvements; or
- Suspension expires by its own terms. If a suspension does not expire by its own terms, it continues indefinitely.

Benefit improvements

A "benefit improvement" is:

- A resumption of suspended benefits;
- An increase in benefits;
- An increase in the rate at which benefits accrue; or
- An increase in the rate at which benefits become nonforfeitable under the plan.

A plan sponsor generally has discretion to provide benefit improvements while a suspension of benefits is in effect. However, a plan sponsor may not increase plan liabilities as the result of benefit improvements for any participant or beneficiary who is not in pay status unless the:

- Benefit improvement is accompanied by an equitable distribution of benefit improvements for those who have begun to receive benefits; and
- Plan actuary certifies that, after taking into account the benefit improvements, the plan is projected to avoid insolvency indefinitely.

Conditions for suspension

In order to suspend benefits:

- The plan's actuary must certify that the plan is projected to avoid insolvency, assuming the suspension of benefits continues until the suspension expires by its own terms, or if no expiration date is set, indefinitely; and
- The plan sponsor must determine in writing that although all reasonable measures to avoid insolvency have been taken (and continue to be taken during the period of suspension) the plan is still projected to become insolvent unless benefits are suspended. In making this determination, the plan sponsor may consider factors such as current and past contribution levels, levels of benefit accruals, compensation levels of active participants, competitive and other economic facts facing contributing employers, and measures undertaken to retain or attract contributing employers.

Limits on benefit suspensions

Suspensions are subject to the following limitations:

- An individual's monthly benefit may not be reduced below 110 percent of the monthly benefit guaranteed by the PBGC;
- Disability benefits may not be suspended; and
- Participants or beneficiaries who have attained age 80 may not have their benefits suspended. Participants and beneficiaries between ages 75 and 79 will have their benefits partially suspended based on a formula.

Retiree representative

A plan sponsor must select a plan participant in pay status to act as a retiree representative if the plan has 10,000 or more participants reported on the most recently filed Form 5500, "Annual Return/Report of Employee Benefit Plan." The plan must select the retiree representative at least 60 days before the plan sponsor submits an application to the IRS to suspend benefits.

The retiree representative serves as an advocate for the interests of retired and deferred vested participants and beneficiaries throughout the suspension approval process. In the discretion of the plan sponsor, the retiree representative may also continue in this role throughout the period of benefit suspension.

The plan must pay reasonable expenses incurred by the retiree representative, including reasonable legal and actuarial support, commensurate with the plan's size and funded status. Upon request, the plan sponsor must promptly provide the retiree representative with relevant information, such as plan documents and data that are necessary for the retiree representative to perform his duties.

Notice of proposed suspension

Plan sponsors must provide a notice of proposed suspension to:

- All plan participants;
- Beneficiaries of deceased participants;
- Alternate payees (regardless of whether their benefits are proposed to be suspended) except those who cannot be contacted by reasonable efforts;
- Each contributing employer; and
- Each employee organization, which for purposes of collective bargaining represents plan participants employed by such an employer.

The notice must be given no:

- Earlier than four business days before the date on which an application is submitted; and
- Later than two business days after the Secretary of Treasury notifies the plan sponsor that it has submitted a completed application.

The notice must be in writing and may be furnished in any paper or electronic form to the extent such form is reasonably accessible to participants and beneficiaries. Permissible electronic methods include those permitted by the:

- [Department of Labor \(DOL\)](#); and
- [Final 204\(h\) regulations](#).

The notice must contain information including, but not limited to:

- Sufficient information so that a participant or beneficiary can understand the effect of any suspension of benefits, including an individualized estimate (on an annual or monthly basis) of the effect on that participant or beneficiary. If an estimate is not possible, a narrative description of the effect of the suspension may be provided;
- A description of the factors considered by the plan sponsor in designing the benefit suspension;
- A statement that the application for approval of any suspension of benefits is available on the Department of Treasury's website;
- Information as to the rights and remedies of plan participants and beneficiaries;
- If applicable, a statement describing the appointment of a retiree representative, the date of the appointment, identifying information (including whether the representative is a plan trustee and how to contact the representative);
- Information on how to contact the Department of Treasury for information and assistance;
- A statement that the plan sponsor has determined that the plan will become insolvent unless the proposed suspension takes effect and the year in which insolvency is projected to occur without suspension of benefits; and
- A statement that insolvency could result in benefits lower than benefits paid under the proposed suspension and a description of the projected benefit payments upon insolvency.

A plan administrator may include any additional information that the administrator determines would be necessary or helpful to understand the information contained in the notice, as long as it does not mislead or misinform the participants.

IRS review of application

The IRS, in consultation with the PBGC and DOL, must approve the application to suspend benefits. The IRS will notify the plan sponsor within two business days whether the submission is complete. No later than 30 days after receipt of the application, the IRS must publish a notice in the Federal Register requesting comments from contributing employers, employee organizations and participants and beneficiaries regarding the benefit suspension.

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.

If the IRS denies a plan sponsor's application, the notification of the denial will detail the specific reasons for the denial, including reference to the specific requirements not satisfied.

Participant vote on proposed suspension

No later than 30 days after the IRS has approved the suspension, participants and beneficiaries must vote to approve or reject the suspension. The suspension will go into effect unless a majority of all participants and beneficiaries reject the suspension. A plan sponsor may submit a new application to suspend benefits. The ballot provided by the plan sponsor in connection with the vote for suspension must:

- Be written in a manner that can be readily understood by the average participant;
- Not include any false or misleading information; and
- Be approved by the IRS, in consultation with the DOL and PBGC.

If participants and beneficiaries reject a benefit suspension, the IRS, in consultation with the DOL and PBGC, must determine within 14 days after the vote whether a plan is a "systemically important plan." A "systemically important plan" is a plan that the PBGC projects will have a present value of financial assistance payments that exceeds \$1 billion if benefits are not suspended. If the plan is a systemically important plan, the IRS must decide whether to implement:

- The proposed suspension; or
- A modified benefit suspension provided the plan is projected to avoid insolvency with the modification.

Revenue Procedure 2015-34

Revenue Procedure 2015-34 provides guidance regarding the procedural requirements to apply for a suspension of benefits.

The application for benefit suspension must be submitted by the:

- Plan sponsor (generally, the joint board of trustees); or
- Authorized representative of the plan sponsor.

The application must be signed and dated by an authorized:

- Trustee who is a current member of the board of trustees; or
- Representative of the plan sponsor.

The application must include the following information:

- The effective date of the proposed suspension;
- If the proposed suspension will expire by its own terms, the expiration date;
- The categories or groups of individuals who would be affected by the proposed suspension and how those categories are defined;
- A statement under penalties of perjury that the application and enclosed documents contain all relevant facts relating to the application, and they are true, correct and complete; and
- A statement signed by an authorized trustee acknowledging that the application and supporting materials will be publicly disclosed on the IRS website.

The plan sponsor has a duty to correct any errors that are discovered after the application has been submitted to the IRS.

In addition, to the above, the application must provide information including:

- The plan sponsor's determination of projected insolvency;
- The plan actuary's certification of critical and declining status;
- The plan actuary's certification that the plan is projected to avoid insolvency;
- A demonstration that the limits on individual suspensions are satisfied;
- A demonstration that the proposed suspension is reasonably estimated to enable the plan to avoid insolvency;
- A description of the measures taken to avoid insolvency;
- A copy of the proposed ballot for ratification of the suspension;
- Plan sponsor information such as name, contact information and employer identification number (EIN) of the plan sponsor;
- If applicable, the name of the retiree representative;
- Plan documents such as the most recent plan document, including all amendments since the last restatement, the most recent summary plan description and any subsequent summaries of material modification, and the most recent determination letter;
- Collective bargaining agreements;
- Information from the most recently filed Form 5500, Annual Return/Report of Employee Benefit Plan; and
- The most recent rehabilitation plan.

To assist plan sponsors, the revenue procedure includes:

- A [model notice](#) of application for approval of a proposed suspension of benefits that plan sponsors may use to satisfy the notice requirement;
- A power of attorney and declaration of representative before the Department of Treasury; and
- A checklist to ensure that the application is complete. The completed checklist must be placed on top of the application.

The application must be submitted electronically to www.treasury.gov/mpira.

Next steps

The suspension of benefits provisions and application process are complex. Plan sponsors should consult with their plan's enrolled actuary or fund counsel if they have any questions regarding the guidance discussed in this newsletter.

In the interim, Prudential Retirement will continue to monitor IRS published guidance regarding these rules. We will keep you informed as additional guidance is made available.

Pension Analyst by Prudential Retirement

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Editor: Julie Koos (563) 585-6811

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