April 2015

PENSION ANALYST

Important information—Plan administration and operation

Prudential
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New law impacts multiemployer defined benefit plans

Who's affected

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

Background and summary

The Pension Protection Act of 2006 (PPA) established new funding requirements for multiemployer defined benefit plans covered by ERISA. To ensure that underfunded plans addressed funding issues, PPA created additional funding rules for underfunded plans that are in endangered or critical status. However, under PPA, the funding rules for plans in endangered or critical status were set to expire after December 31, 2014.

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 made permanent the PPA multiemployer provisions that were set to expire after 2014.

In addition, the Act provides:

- An increase in Pension Benefit Guaranty Corporation (PBGC) premiums;
- Benefit suspensions for plans in critical and declining status;
- Expanded plan information disclosure requirements;
- Clarification of PPA provisions; and
- Guidance regarding plan mergers.

Action and next steps

The information contained in this *Pension Analyst* impacts plan funding, design and administration. It affects the duties of plan trustees, plan administrators and contributing employers. Sponsors should carefully read the information contained in this newsletter and discuss the new law's impact on their plans with their enrolled actuary and their fund counsel. The provisions discussed below are generally effective for plan years beginning on or after December 31, 2014, except where otherwise noted.

In this issue

Increase in PBGC premiums

For plan years beginning in 2014, the Pension Benefit Guaranty Corporation (PBGC) flat-rate premium per participant was $12. For plan years beginning after December 31, 2014, the Act increased the flat-rate per participant premium to $26. For plan years beginning in a calendar year after 2015, the premium increases will be determined based on changes in the national average wage index of the Social Security Act.

Benefit suspensions for plans in critical and declining status

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
- Is 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 plan's actuary must annually certify whether the plan is or will be in critical and declining status.

The Act defines benefit suspensions as 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 benefits are suspended.

In order to suspend benefits:

- The plan 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.
- The plan sponsor must determine in writing that the plan is still projected to become insolvent unless benefits are suspended. The plan sponsor can consider various factors such as current and past contribution levels, compensation levels of active participants and competitive and other economic factors that impact contributing employers.

Limitations on benefit suspensions

Suspensions are subject to the following limitations:

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

Benefit improvements

A plan sponsor has the discretion to provide benefit improvements while benefits remain suspended under the plan. The Act defines a benefit improvement as:

- A resumption of suspended benefits;
- An increase in benefits;
- An increase in the benefit accrual rate; or
- An increase in the vesting schedule.

However, benefit improvements cannot increase plan liabilities and are subject to special rules.

Notice requirements

A plan sponsor must submit an application to the IRS for approval to suspend benefits. Concurrently, the plan sponsor must notify the following individuals of the benefit suspension:

- Plan participants and beneficiaries;
- Each employer who has an obligation to contribute to the plan; and
- Each employee organization representing plan participants for purposes of collective bargaining.

The notice must contain the following information:

- Sufficient information to enable participants and beneficiaries to understand the effect of any benefit suspension;
- A description of the factors considered by the plan sponsor in designing the benefit suspension;
- A statement that the application for approval will be available on the IRS website and that comments regarding the application will be accepted;
- Information as to the rights and remedies of plan participants;
- Information on how to contact the IRS for additional information and assistance; and
- If applicable, information regarding the appointment of a retiree representative.

The Act authorizes the IRS to develop a model notice that plan sponsors may use to satisfy the notice requirement.

IRS approval

The IRS, in consultation with the PBGC and DOL must approve the application to suspend benefits. 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.

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.

Participant ratification

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 vote to reject the suspension. A plan sponsor may submit a new application to suspend benefits.

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. This number will be indexed in future years. If a plan is a systemically important plan, the IRS must decide whether to:

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

Access to additional plan information

PPA required multiemployer plan administrators to provide a copy of certain plan documents, upon written request, from a participant, a beneficiary, an organization representing participants or a contributing employer.

The Act expands the list of plan documents to include the following:

- The current plan document and amendments;
- The latest summary plan description;
- The current trust agreement and amendments;
- In the case of a request by an employer, any participation agreement that relates to the employer's plan participation during the current or any of the 5 immediately preceding plan years;
- The annual report (Form 5500) for any plan year;
- The annual funding notice for any plan year;
- Any periodic actuarial report received by the plan for any plan year which has been in the plan's possession for at least 30 days;
- Any quarterly, semi-annual or annual financial report which has been in the plan's possession for at least 30 days;
- Any audited plan financial statements for any plan year;
- Any applications filed with the IRS for amortization extensions; and
- The latest funding improvement or rehabilitation plan and contribution schedules.

However, plan administrators do not have to provide more than one copy of any document during any 12-month period.

PPA provisions clarified

The new law clarifies many of the multiemployer provisions contained in the Pension Protection Act. Some of these provisions include the following:

- Qualified Pre-retirement Survivor Annuity. The new law clarifies that a qualified pre-retirement survivor annuity (QPSA) payable to a surviving spouse under a multiemployer plan that becomes insolvent or is terminated is guaranteed and not forfeited in the event that the participant has not died on the plan termination date or the date the plan becomes insolvent. This provision applies to benefit payments payable on or after January 1, 1985. However, it does not apply to surviving spouses that died before December 16, 2014.
- Election to be in critical status. The plan sponsor of a multiemployer plan that is not in critical status but that is projected by the plan actuary to be in critical status in any of the succeeding five plan years may elect to be in critical status for the current plan year.
- Revised rules for plans that emerge from critical status. A plan remains in critical status until the actuary certifies that the plan:
  - Does not satisfy the requirements to be in critical status as of the beginning of the plan year;
  - Is not projected to have an accumulated funding deficiency for the plan year, or any of the nine succeeding plan years; and
  - Is not projected to become insolvent for any of the 30 succeeding plan years.

Mergers

The new law includes provisions to facilitate mergers between multiemployer plans. Upon plan sponsor request, the PBGC may take actions to promote and facilitate the merger of two or more multiemployer plans if it determines that the merger is in the interest of plan participants and beneficiaries of at least one of the plans and is not expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans.

To facilitate a merger which the PBGC determines is necessary to avoid or postpone insolvency, the PBGC may provide financial assistance to the merged plan if:

- One or more of the plans participating in the merger is in critical and declining status;
- PBGC reasonably expects that the financial assistance will reduce PBGC's long-term loss and the financial assistance is necessary for the merged plan to become or remain solvent;
- PBGC certifies that its ability to meet existing financial assistance to other plans will not be impaired; and
- The financial assistance is paid exclusively from the fund for basic benefits guaranteed for multiemployer plans.

PBGC website update

Due to the enactment of the new law, PBGC has updated their website to include a list of frequently asked questions regarding the new law. These frequently asked questions are available at http://pbgc.gov/about/factsheets/page/multiemployer-pension-reform-act-of-2014-faqs.html

Normal retirement age

The Consolidated and Further Continuing Appropriations Act, 2015 also includes a provision regarding normal retirement age.

Background

For vesting and benefit accrual purposes, the Internal Revenue Code (IRC) defines normal retirement age as the earlier of the:

- Time a participant reaches normal retirement age under the plan, or
- Later of:
  - The time a plan participant reaches age 65, or
  - The fifth anniversary of the time a participant began participation in the plan.

In 2007, the IRS issued final rules on how low a plan's normal retirement age may be and established age 62 as a safe harbor normal retirement age. Under these final rules, a plan's normal retirement age may not be earlier than the earliest age that is reasonably representative of the typical retirement age for the industry in which the covered workforce is employed. However, a normal retirement age of age 62 or later is acceptable.

If a plan sets the normal retirement age between age 55 and age 62, the employer must apply a good faith analysis to determine if that age is reasonable under the specific facts and circumstances. In general, a normal retirement age that is lower than age 55 is presumed to be unreasonable, unless the employer can demonstrate otherwise.

The IRS clarified that plans may not provide a normal retirement age that is conditioned (directly or indirectly) on the completion of a stated number of years. The IRS believes that a normal retirement age that changes to an earlier date upon completion of a stated number of years of service will not satisfy the vesting or accrual rules.

Clarification of normal retirement age

The new law clarifies the definition of normal retirement age. Under the new law, a defined benefit plan which on or before December 8, 2014, provides for a normal retirement age which is the earlier of an attained age permitted in the IRC or completion of a number of years of benefit accrual service as defined in the plan (not less than 30) may continue to apply this definition only to an individual who:

- Is a participant in the plan on or before January 1, 2017; or

- Is an employee at any time on or before January 1, 2017, of an employer maintaining the plan and who later becomes a participant in the plan.

Next steps

Plan sponsors should carefully read the guidance discussed in this newsletter. The provisions of the new law are very complex. If you have questions about the information discussed in this newsletter, you should contact your plan's enrolled actuary or fund counsel.

In the interim, Prudential Retirement will continue to monitor IRS, PBGC and DOL published guidance regarding these new rules. We will keep you informed, as additional guidance is made available that clarifies the provisions discussed in this *Pension Analyst.*

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