



## **PBGC provides guidance on multiemployer plan partitions**

On June 19, 2015, the Pension Benefit Guaranty Corporation (PBGC) issued interim final rules regarding the PBGC's authority under the Multiemployer Pension Reform Act of 2014 (MPRA) to partition eligible multiemployer plans. These rules provide guidance regarding conditions and notice requirements that must be satisfied before the PBGC may partition a plan.

### **Background**

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 \("MPRA"\)](#). 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.

The recently issued PBGC partition rules provide guidance on:

- Partition applications;
- Eligibility for partitions;
- Initial review process; and
- Notice of partition order.

### **Plan partitions**

#### **Before MPRA**

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.

Before MPRA, a plan partition was only available in limited circumstances involving employer bankruptcies. The liabilities transferred were restricted to nonforfeitable benefits directly attributable to service with bankrupt employers, along with an equitable share of assets. If the new plan did not have sufficient assets to pay the transferred benefits, the PBGC provided financial assistance to the new plan so that it could make benefit payments to participants whose benefits were transferred to the new plan. However, the benefits in the new plan were reduced to the PBGC guarantee level. Participants in the ongoing plan continued to receive unreduced benefits.

#### **MPRA provisions**

With the enactment of MPRA, the PBGC may approve a partition without requiring an employer bankruptcy and the benefits subject to transfer in a partition are no longer limited to those attributable to service with a bankrupt employer. However, MPRA does impose new eligibility requirements for a partition as discussed below.

## Eligibility requirements

Before the PBGC may order a partition, the following five conditions must be satisfied:

- **The plan must be in critical and declining status.** The plan's actuary must annually certify whether the plan is or will be in critical and declining status. 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.
- **PBGC determination on reasonable measures.** The PBGC must determine, after consultation with the [Participant and Plan Sponsor Advocate](#), that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including [benefit suspensions](#). The Participant and Plan Sponsor Advocate acts as a liaison between the PBGC and participants and plan sponsors of defined benefit plans. The Advocate assists participants and sponsors in resolving problems with the PBGC.
- **Long-term loss and plan insolvency.** The PBGC must reasonably expect that the partition:
  - Will reduce the PBGC's expected long-term loss with respect to the plan; and
  - Is necessary for the plan to remain solvent.
- **Certification to Congress.** The PBGC must certify to Congress that its ability to meet existing financial assistance obligations to other plans will not be impaired by the partition.
- **Source of funding.** The cost to the PBGC arising from the partition must be paid exclusively from the PBGC fund for basic benefits guaranteed for multiemployer plans.

## Application requirements

A plan sponsor must submit an application for a partition. The application must:

- Be signed and dated by an authorized trustee who is a current member of the board of trustees. A stamped signature or faxed signature is not permitted; and
- Include 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.

The application must be filed at:

Multiemployer Program Division  
Pension Benefit Guaranty Corporation  
1200 K Street, NW, Suite 9537  
Washington, DC 20005

## Information to be filed

An application for partition must include the following information:

- **Plan information** such as formal plan documents, trust agreements, summary plan descriptions, summaries of material modifications, rehabilitation plans, Forms 5500, 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.
- **Partition information** such as:

©2015 Prudential Financial Inc. and its related entities.

Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc., and its related entities, registered in many jurisdictions worldwide.

RSMH076

- A detailed description of the proposed partition, including the proposed structure, effective date and any larger transaction of which the proposed partition is a part (including but not limited to benefit suspensions or a merger);
- A description of the events that led to the plan sponsor's decision to submit an application for partition (and if applicable, application to suspend benefits);
- A detailed description of all measures the plan sponsor has taken (or is taking) to avoid insolvency and any measures the plan sponsor considered taking but did not take; and
- A detailed description of the estimated benefit amounts the plan sponsor has determined are necessary to be partitioned for the plan to remain solvent, including the estimated number of participants and beneficiaries whose benefits would be transferred, the number of retirees receiving payments, and the number of vested terminated participants and active participants.
- **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; and
  - Information about the plan's assets and liabilities including data, projections and actuarial assumptions.
- **Participant census** data such as vested accrued monthly benefits before and after suspension, form of payment and benefit commencement date.
- **Financial assistance** information including the amount of estimated annual financial assistance requested from the PBGC.

### Initial review

The PBGC will perform an initial review to determine if the application is complete. If the application 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](#). If applicable, the PBGC's initial determination that the application is complete will be conditioned on the plan sponsor filing an application for benefit suspension with the Department of Treasury within 30 days after receiving the written notice from the PBGC.

### Notice of application for partition

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. Interested parties are:

- Participants;
- Beneficiaries of deceased participants;
- Alternate payees;
- Employers obligated to contribute to the plan;
- Employee organizations that currently have a collective bargaining agreement pursuant to which the plan is maintained; and
- The PBGC.

### Content of notice

The notice must contain the following information:

©2015 Prudential Financial Inc. and its related entities.

Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc., and its related entities, registered in many jurisdictions worldwide.

RSMH076

- Identifying plan information such as the name of the plan, plan sponsor name, address and phone number, Employer Identification Number (EIN) and Plan Number;
- Information regarding the partition application to the PBGC;
- If applicable, a statement of whether the plan has submitted an application for suspension of benefits;
- A description of the partition provisions and other information such as eligibility for partition and PBGC guarantees;
- Impact of partition on interested parties;
- A summary of the partition application; and
- Contact information for the plan sponsor, the PBGC and the PBGC Participant and Plan Sponsor Advocate.

## Model notices

The PBGC has drafted two model notices to assist plan sponsors in discharging their responsibilities. One notice is used when applying for a partition and the other notice is used when applying for a partition and suspension of benefits. Use of the model notices is not required but will be considered to satisfy the PBGC notice requirements.

The model notices are available at <http://www.pbgc.gov/MPRA>

## PBGC review of application

The PBGC will approve or deny an application within 270 days after issuing a notice to the plan sponsor. The decision to approve or deny an application for partition is within the PBGC's discretion, is final and not subject to PBGC rules for reconsideration or administrative appeal. If the PBGC denies the application, it will state the reasons for the denial. If the PBGC approves the application, it will issue a partition order.

The partition order will describe the liabilities to be transferred to the successor plan and the manner in which financial assistance will be provided to the successor plan by the PBGC. The partition order will also include information such as the:

- PBGC's findings and conclusions on a partition application;
- Effective date of the partition; and
- Obligations and duties of the plan sponsor to the original plan and successor plan.

The plan sponsor of the original plan and successor plan must amend both plans to reflect the benefits payable to participants and beneficiaries resulting from the partition order.

## 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 are applicable to applications for partition submitted to the PBGC on or after June 19, 2015.

### Compliance Advisory by Prudential Retirement

The Compliance Advisory is published by Prudential Retirement, a Prudential Financial business, to provide clients with information on current developments affecting qualified retirement plans. This publication is distributed with the understanding that Prudential Retirement is not rendering legal advice. Plan sponsors should consult their attorneys about the application of any law to their retirement plans.

Editor: Julie Koos (563) 585-6811

©2015 Prudential Financial Inc. and its related entities.

Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc., and its related entities, registered in many jurisdictions worldwide.

RSMH076