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Refinements Proposed to Multiemployer Suspension Rules

Additional proposed regulations on MPRA benefit suspensions would address the ordering rule to be used when a plan covers participants who had worked for employers that had withdrawn from the plan prior to December 16, 2014 when the law was enacted. The amount of suspension for such participants will be affected by whether their employer had paid withdrawal liability and agreed to set up a "make whole" plan.

Background

One of the main components of the Multiemployer Pension Reform Act of 2014 (MPRA) is it allows benefit suspensions in certain multiemployer plans as explained in our January 12, 2015 *For Your Information*. Under MPRA, "critical and declining status" plans are permitted to suspend accrued benefits — including benefits of participants and beneficiaries currently in pay status. A "critical and declining status plan" is defined as a critical status plan that is projected to become insolvent within 15 years, or is projected to become insolvent within 20 years if either the plan's ratio of inactive to active participants is greater than 2 to 1 or the plan is less than 80% funded.

The plan trustees have some discretion in designing a benefits suspension and can impose either a temporary or permanent reduction of any current or future payment obligation to any participant or beneficiary, whether or not in pay status. However, there are some constraints. In regulations proposed last June, Treasury provided initial guidance in a revenue procedure, along with temporary and proposed regulations — as described in our June 29, 2015 *For Your Information* — on the suspension rules in general, including definitions, conditions and implementation after a participant vote, standards for submitting an application to Treasury, limitations on suspensions, and model notices.

A provision of MPRA that was not addressed in the initial guidance was how to apply variations in suspensions where any of the former participating employers had withdrawn from the plan prior to December 16, 2014, paid withdrawal liability, and agreed to set up a "make-whole" plan to provide benefits under a separate plan of the

employer equal to any benefits reduced because of the financial status of the multiemployer plan. Benefits under the multiemployer plan that are directly attributable to service with other employers that did *not* cover their withdrawal liability and agree to a "make-whole" plan are suspended first, before adjustments are made in the benefits of participants who do have "make-whole" plans.

Proposed Rules for Employer Classes

In crafting its proposed regulation for these variations, using the relevant Code sections that control the rule, the IRS uses the term "subclause III employer" to refer to the employers who have agreed to assume liability for benefits under the make-whole agreements, and "subclause I employer" for those that did not.

Under the proposal, a suspension could not reduce benefits directly attributable to service with a subclause III employer unless benefits for other participants are reduced first. This protects a subclause III employer from a suspension that would take advantage of the employer's agreement to make participants and beneficiaries whole for the reductions.

More specifically, reductions are required to be made using the following progression:

- To benefits attributable to service for a subclause I employer, to the maximum extent permitted
- To benefits attributable to service for employers other than subclause I or III employers (but not to the maximum extent permitted)
- To benefits attributable to service for a subclause III employers

Although the reduction in the second step is not required to be "to the maximum extent permitted," the proposed regulation would not allow the reduction to the second level of benefits to be less than the reductions applied to the third level.

The proposal calls for covering an individual participant in group three even if services were performed before the subclause III employer entered into the make-whole agreement and are not covered by that agreement.

Alternative Considered

A refinement to the ordering rule described above would call for reductions attributable to service with a subclause III employer to be less than the reduction for benefits attributable to service with any other employer.

Effective Date and Comments

The regulations are proposed to be effective for suspensions approved or denied after final regulations are adopted by the Treasury and published in the *Federal Register*. Comments will be considered for the final rule if timely received by March 15, 2016. A hearing is scheduled for March 22, 2016.

In Closing

Given the short time allowed for comments, it is clear that the agencies intend to finalize these rules quickly. Doing so should help to alleviate any uncertainty for trustees struggling to implement MPRA suspensions.

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