

Treasury Finalizes Multiemployer Benefit Suspension Regulations

The Treasury Department issued final regulations and an updated revenue procedure to address the benefit suspensions available to multiemployer plans in critical and declining status. Treasury is now positioned to approve previously submitted, as well as future, requests.

Background

The Multiemployer Pension Reform Act of 2014 (MPRA), signed into law on December 16, 2014, was designed to address an expected insolvency of the PBGC's insurance program for multiemployer pension plans. As explained in our [January 12, 2015 For Your Information](#), a main — and controversial — component of MPRA is the allowance of benefit suspensions in certain multiemployer plans.

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. In temporary regulations, IRS explained the administrative requirements for the participant vote — including distribution of the ballot package, voting and tabulation procedures, and the determination of the voting result. (See our [September 2, 2015 For Your Information](#).) The proposed regulations would not be effective until released in final form, and Treasury would not approve any application proposing a benefit suspension until that time.

Our [February 17, 2016 For Your Information](#) covered additional proposed regulations on MPRA benefit suspensions addressing the ordering rule for a plan that covers participants who worked for employers that withdrew from the plan prior to December 16, 2014.

Final Suspension Guidance Issued

The [final rules](#) and [Revenue Procedure 2016-27](#) generally complete the initial implementation steps for benefit suspensions, including the process for voting on proposed suspensions. The final rule



encompasses the previously proposed and temporary regulations, other than the proposal from February 2016.

Changes from the Proposals

The final regulation generally follows the rules as proposed. In response to comments, the final rule:

- Retains a bar on broad-based contingent suspensions, but clarifies that individual-level contingencies (such as retirement) can be considered for those who had not started benefits before the effective date of the suspension
- Clarifies that expenses to be paid by the plan include reasonable ones incurred by the retiree representative in communicating with the retired and deferred vested participants and beneficiaries about the proposed suspension
- Affirms that protected disability benefits only include those that participants elected in lieu of other larger benefits available under the plan, such as early retirement benefits
- Modifies the 5 percent tolerance standard for showing a proposed suspension does not materially exceed the amount necessary to avoid insolvency by adding a floor of 2 percent of the periodic payment determined before the proposed reduction; this change will increase the margin in the case of a somewhat smaller benefit suspension
- Adds new rules allowing different groups of participants and beneficiaries to be treated as separate categories or groups for purposes of the equitable distribution requirement for a proposed suspension involving benefits calculated after suspension using a new benefit formula (rather than by reference to an individual's benefits before suspension)
- Details the steps that must be taken to locate participants whose notices are returned as undeliverable, for example, contacting administrators of other benefit plans such as the employer's health plan (to the extent contact is permitted under applicable law)
- Adds 14 days to the 30-day post vote deadline for recommendations from the participant and plan sponsor advocate to respond to Treasury about whether a plan is "systemically important" so that the time period is fixed
- Clarifies that the \$1.0 billion in financial assistance projected to be needed from PBGC is indexed for inflation

The final regulation also adds a new rule that, in appropriate circumstances determined by Treasury in consultation with PBGC and DOL, allows a plan sponsor that has withdrawn an application to submit a revised application for suspension that will be subject to a different review process (the "resubmission review process"). Under the resubmission:

- The application can propose an effective date of the suspension fewer than nine months after the revised application is submitted
- The individual and aggregate limitations may be applied using the same actuarial data (including the same fair market value of the plan assets) as the initial application
- The plan sponsor may provide a simplified version of the revised application notice to any individual for whom the amount and timing of the proposed suspension under the revised application are the same as under the withdrawn application

Additionally, the final rule includes changes on participant voting procedures to:

- Clarify that terminated vested participants and retirees (but not alternate payees) are eligible voters, and establish rules for maintaining a voting roster
- Require the plan sponsor to provide Treasury with information (such as participant identification codes) to allow for identity verification of each eligible voter
- Allow, in certain circumstances, votes by mail in lieu of via Internet and phone automated voting systems

New Revenue Procedure

IRS' replacement revenue procedure supersedes the 2015 revenue procedure and includes modifications to address changes in the final regulation such as procedures for resubmission review. It includes a revised model notice for informing participants of the suspension submission, a model declaration of power of attorney and a checklist for assuring all required elements are included in the submission.

Effective Dates

The final regulations are effective April 28, 2016 and apply to suspensions approved or denied on or after that date. The new revenue procedure must be followed for applications submitted on or after April 26, 2016.

In Closing

Plan sponsors can now proceed with some certainty that applications are complete and accurate if the steps contained in the final regulations are followed. And IRS can move ahead with responding to those submissions.

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