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For Your Information®

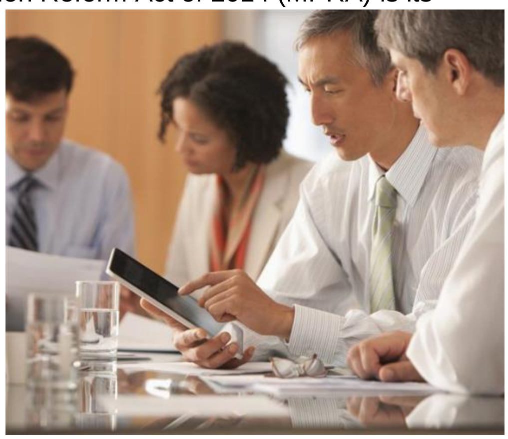
Volume 39 | Issue 56 | May 4, 2016

Treasury Finalizes Multiemployer Benefit Suspension Ordering Rule

Following final guidance on processes for implementing a benefit suspension for a multiemployer plan in critical and declining status, Treasury finalized the ordering rule for a plan that covers participants who worked for employers that made “make-whole” commitments and withdrew from the plan in question prior to December 16, 2014. The final rule is essentially unchanged from the rule as proposed in February.

Background

An important and controversial component of the Multiemployer Pension Reform Act of 2014 (MPRA) is its allowance of benefit suspensions in certain multiemployer plans. (See our January 12, 2015 *For Your Information.*)



Under the MPRA**,** 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.

Variations in suspensions are required, however, where any of the former participating employers had withdrawn from the plan prior to December 16, 2014, paid withdrawal liability, and agreed to set up a “make-whole” plan to provide benefits under a separate plan of the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. The point is to avoid saddling plan contributors that agreed to make up shortfalls (“subclause III” employers, referencing the relevant Code sub-section) with greater liabilities than other employers that did not do so (“subclause I” employers).

Our February 17, 2016 *For Your Information* provided details on the proposed regulation on the MPRA ordering rule for such plans. Our May 3, 2016 *For Your Information* discussed the general final guidance on implementing a benefit suspension for a multiemployer plan in critical and declining status.

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Adopted as Proposed

Over concerns expressed by affected plan constituents — notably United Parcel Service, Inc. — and after consideration of competing arguments, Treasury finalized the proposed rule without change other than to clarify that no *individual's* (as opposed to participant's, as proposed) subclause III benefits can be reduced more than that *individual's* benefits would have been reduced if, holding constant the benefit formula, work history, and all other relevant factors used to determine the individual's benefits, those benefits were attributable to service with any other employer.

Effective Dates

The final regulations will be effective on May 5, 2016, and will apply to suspensions for which Treasury's approval or denial is issued on or after April 26, 2016. In the case of a systemically important plan, the final regulations apply to any modified suspension implemented on or after April 26, 2016.

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