

## PBGC Proposes Multiemployer Plan Facilitated Merger Rules

PBGC proposed regulations on multiemployer plan mergers would set the stage for approvals of facilitated mergers under the Multiemployer Pension Reform Act of 2014. Under facilitated mergers, PBGC would be able to offer training, technical assistance, mediation, communication with stakeholders, support with requests to other government agencies and financial assistance.

### Background

Mergers and transfers between multiemployer plans are subject to conditions in ERISA 4231 (as contrasted with the Internal Revenue Code requirements applicable to single employer plans). These conditions include a requirement to notify PBGC, preclude reduction of participant accrued benefits, and not subject participants to an expectation of benefit suspensions.

The Multiemployer Pension Reform Act of 2014 (MPRA) added specific authorization for PBGC to facilitate multiemployer plan mergers. Upon request by the plan sponsors, the PBGC will take such actions it deems appropriate to promote and facilitate a merger — provided that it determines that the merger is in the interests of participants of at least one of the plans and is not reasonably expected to be adverse to the overall interest of participants in all of the plans. PBGC assistance may include training, technical assistance, mediation, communication with stakeholders, support with requests to other government agencies and financial assistance.

The PBGC is permitted to provide financial assistance for a merger involving a plan in critical and declining status that is necessary to enable one or more plans to avoid or postpone insolvency — provided that the agency reasonably expects that the assistance will reduce the PBGC's expected long-term loss for the plans involved and such assistance is necessary for the merged plan to become or remain solvent. Under MPRA, the merger rules are effective for plan years beginning after December 31, 2014.



Multiemployer plan mergers can be beneficial to participants and decrease risk to the PBGC by reducing administrative cost and boosting net investment performance through economies of scale.

For a general overview of MPRA, please see our [January 12, 2015 For Your Information](#).

## PBGC Proposes Facilitated Merger Guidance

PBGC's [proposed regulation](#) on multiemployer plan mergers would reorganize and restate the rules for these mergers and would add a framework for determining its response to requests for general support and, for plans in critical and declining status, financial assistance.

### Plan Solvency Tests

The test for demonstrating that participants in a plan that is not "significantly affected" by the transaction are unlikely to face benefit suspensions would be significantly harder to pass. Instead of the current regulatory threshold requiring assets after the merger or transfer to equal or exceed five times the benefit payments for the last plan year ending before the proposed merger or transfer, the assets would need to equal or exceed ten times such payments. Similarly, the current test projecting that assets, expected contributions and investment earnings will exceed expected expenses and benefit payments for five years would be expanded to a ten year test.

Similarly, for plans that are "significantly affected," the requirement that expected contributions meet five years of future minimum funding would be replaced by a ten year requirement. Instead of the requirement that assets after the merger or transfer equal or exceed expected benefit payments for five plan years, the assets would need to equal or exceed the expected payments for ten plan years. The proposal retains the requirement of contributions for the first post transaction year to exceed expected benefit payments. Finally, the current requirement of a funding level covering a minimum of normal cost and 25 year amortization of liabilities would be narrowed to normal cost and 15 year amortization of liabilities.

The proposed regulation would modify the definition of "significantly affected plan" by adding plans that are either in endangered status or critical status and engage in a transfer (other than a 3% de minimis transfer). The definition of a significantly affected plan would continue to include transfers of 15% or more of assets and certain transfers or mergers after a mass withdrawal.

### Facilitated Mergers

New sections of the regulation would detail the information and documentation requirements for requesting PBGC general support or financial assistance. PBGC anticipates that the amount of financial assistance generally will not exceed the amount available to the critical and declining status plan involved in the merger for a partition.

In addition to the actuarial information required for a merger in general, the request would include a detailed narrative description with supporting documentation demonstrating that the proposed merger is in the interest of participants and beneficiaries of at least one of the plans and is reasonably expected not to be adverse to those covered by any of the plans. For a financial assistance merger, this material would consider the effect of the financial assistance in making these determinations.

When requesting financial assistance, in addition to plan and trust documents for each plan, PBGC's proposed rule would require the most recent rehabilitation plan (or funding improvement plan), the plan's IRS determination letter, Form 5500, a listing of contributing employers, participant counts, withdrawal liability schedules and, if applicable, a

copy of any application for suspension of benefits. Detailed census data would need to be submitted in support of the actuarial projections.

Sponsors would also need to provide a detailed description of the proposed merger, information on significant risks, calculations, assumptions and methods. Specific actuarial and financial information would be required, including annual cash flow projections.

For each critical and declining status plan involved in the merger, long-term projections (50 to 90 years) of benefit disbursements reflecting payments at PBGC-guaranteed levels and reflecting payments if maximum suspensions are applied would be required

### **Timing of Request**

In the case of a merger for which a compliance determination is requested, a notice of a merger or transfer must be filed no less than 120 days before the effective date of a merger or transfer. If a compliance determination is not requested, the notice is required no less than 45 days in advance. In the case of a facilitated merger, the proposed rule would require that notice of a proposed facilitated merger be filed no less than 270 days before the proposed effective date of the merger.

### **PBGC: “Talk to us”**

In light of the complexities and uncertainties inherent in this process, PBGC would allow a plan sponsor to engage in informal discussions with the agency before filing a formal request for a facilitated merger. PBGC expects that fewer than 20 plans would be approved for either a partition or financial assistance merger over the next three years (about six plans per year), and that the total financial assistance PBGC would provide under both provisions would be less than \$60 million per year.

### **Effective Date**

The proposed rule would apply to mergers and transfers for which a notice, and, if applicable, a request for a facilitated merger are filed with PBGC on or after the effective date of the final rule. If a plan sponsor submits an application for a facilitated merger before the final rule is issued, they may need to revise or supplement the request to take into account any additional requirements in the final rule. PBGC requests comments on the proposal by August 5.

### **In Closing**

PBGC expects that these mergers can help stabilize multiemployer plans as well as the agency by increasing the base of contributing employers, reducing administrative costs and improving investment results.

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