

PBGC Proposes Valuation and Notice Requirements for Insolvent Multiemployer Plans

Proposed PBGC regulations aim to streamline reporting and disclosure of information to PBGC and interested parties about certain multiemployer plans. Insolvent plans receiving financial assistance (whether terminated or not) and plans terminated by plan amendment that are expected to become insolvent could generally perform actuarial valuations less frequently than currently required. Additionally, the proposal would eliminate some notice requirements for insolvent plans.

Background

PBGC steps in with financial assistance for multiemployer plans when a terminated plan or plan in critical status is insolvent. These plans must provide notices to PBGC and to certain interested parties (such as a notice of insolvency and a notice of insolvency benefit level). Annual actuarial valuations are generally required so that these plans can assess the potential need to reduce benefits and create reports for PBGC.

Until repealed by the Multiemployer Pension Reform Act of 2014 (MPRA), financially troubled multiemployer plans entered a “reorganization” status if their funding was below a certain level. The MPRA modified notice requirements to reflect critical status rather than reorganization, but the old terminology remains in PBGC regulations.

In response to the administration’s directive for “Improving Regulation and Regulatory Review” in [Executive Order 13563](#), PBGC looked at valuation, notice, and reporting requirements for these plans to identify opportunities to reduce burdens while achieving policy goals, and to align terminology to reflect ERISA changes.

Actuarial Valuation Changes

PBGC’s [proposed regulations](#) would add actuarial valuation requirements for some plans and reduce them for others — with the goal of making sure PBGC “continue[s] to have reasonably reliable data to measure its liabilities, while reducing burden on plans that present smaller exposure.” Currently, terminated plans receiving financial assistance from PBGC are not required to obtain an annual valuation of plan liabilities, and plans terminated by mass withdrawal



with nonforfeitable benefits of \$25 million or less must perform valuations only every third year. Under the proposal, for insolvent plans receiving financial assistance (whether terminated or not) and plans terminated by plan amendment that are expected to become insolvent, a plan with nonforfeitable benefits of \$50 million or less would need to perform an actuarial valuation every five years. Alternatively, these plans could, within 180 days after the end of the plan year, submit their current SPD, most recent actuarial report, and other information specified on PBGC's website to allow PBGC to prepare the valuation.

Comment. As plan expenses connected with actuarial valuations reduce the benefits that can be paid to participants and ultimately hasten the point when PBGC funds need to be tapped to pay benefits, lowering these costs serves the interests of participants and PBGC finances alike.

Withdrawal Liability Filings

Under the proposal, plan sponsors of certain terminated or insolvent plans would be required to file with PBGC information about withdrawal liability payments and whether any employers have withdrawn but have not yet been assessed withdrawal liability. This filing would be due within 180 days after the earlier of the end of the plan year in which the plan terminates or becomes insolvent, as well as each plan year thereafter.

Terminated and Insolvent Plan Notices

PBGC is proposing to eliminate most of the annual updates to its notices of insolvency benefit level. It would require the sponsor of a critical status plan, or of a plan terminated by mass withdrawal, to provide notices of insolvency if the plan is insolvent in the current plan year or is expected to be insolvent in the next plan year — but there would be no notice requirement in subsequent years unless there is a change in the benefit level paid. If the change only affects one participant or beneficiary, or a participant class, the notice would only need to be provided to the affected individuals.

The proposal would coordinate the timing for the delivery of the notice of insolvency and the notice of insolvency benefit to be the later of 90 days before the beginning of the insolvency year or 30 days after the date the insolvency determination is made. The plan sponsor could provide one combined notice for the same insolvency year.

Content changes for the notices would eliminate outdated references to reorganization and make other clarifications and editorial changes.

Application for Financial Assistance

To allow the agency sufficient time for review, PBGC would require an initial application for financial assistance to be filed no later than 90 days before the first day of the month the plan will be unable to pay full guaranteed benefits. The proposal would require recurring applications to be filed as soon as practicable after determining an inability to pay guaranteed benefits when due for a given month.

In Closing

PBGC estimates that its proposed changes would deliver approximately \$438,000 of savings to multiemployer plans. Comments on the proposed rule should be submitted by September 14, 2018 to be assured of consideration.

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