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PBGC Finalizes Multiemployer Plan Facilitated Merger Rules

Final regulations on multiemployer plan mergers allow PBGC to approve facilitated mergers under the Multiemployer Pension Reform Act of 2014. Through this process, PBGC can offer training, technical assistance, mediation, communication with stakeholders, support with requests to other government agencies, and financial assistance.

Background

When multiemployer plans merge, they are required to notify PBGC and provide certain safeties for plan participants. In 2016, PBGC proposed changes to their merger regulations to implement "facilitated" mergers authorized by the Multiemployer Pension Reform Act of 2014 (MPRA). For the 20 or so plans that are anticipated to implement either a partition or financial assistance facilitated merger in the short term, the proposal spelled out the solvency and documentation requirements for gaining PBGC technical and financial assistance. See our June 7, 2016 *For Your Information* for details on the proposed requirements.

Some Changes in Final Rule – No Solvency Changes

In response to comments, PBGC's final regulation omits proposed changes to plan solvency provisions in the existing regulation — at least for now. Commenters were concerned that the revised tests would "make mergers and transfers more difficult or prohibit them, would substantially expand burden for plan sponsors, and would restrict options for plans." They also asked for guidance on how an enrolled actuary may "otherwise demonstrate" solvency under the test in the existing regulation. PBGC said it may eventually re-propose changes for the solvency requirement, considering the input received.

The final rule adopts the procedures and information requirements for a voluntary request for a facilitated merger to implement MPRA and reorganizes and updates existing provisions of PBGC's merger regulation.

Procedures and Information Requirements

In addition to updates and reorganization of the existing regulations, the final regulation outlines the process to be followed for multiemployer plan mergers:

- How to submit a notice of merger or transfer, and a request for a compliance determination or facilitated merger
- What information to include in notices and requests, such as:
  - A description of the merger and how the merger is in the interests of plan participants of at least one of the plans, and not reasonably expected to be averse to the overall interests of participants and beneficiaries in any of the plans
  - Actuarial information about the plan's funded status, significant risks, assumptions and methods along with long-term projections of benefit disbursements
  - Financial information including annual cash flow projections
  - Plan and trust documents (and IRS determination letter)
  - Rehabilitation or funding improvement plans, as well as any application for suspension of benefits
  - The plan's most recent Form 5500
  - Listing of contributing employers
  - Participant counts and census data
  - Withdrawal liability schedules
- How PBGC will provide notice of facilitated merger decisions
- An explanation of PBGC's jurisdiction over a merged plan that has received financial assistance

Timing of Request

Retaining the rules as proposed, 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 the event. 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 notice of that proposed merger must be filed no less than 270 days before the proposed effective date of the merger.

PBGC: "Talk to us"

Also as proposed, considering the complexities and uncertainties inherent in this process, PBGC encourages plan sponsors to engage in informal discussions with the agency before filing a formal request for a facilitated merger.

Effective Date

The final rule applies to mergers and transfers for which a notice and, if applicable, a request for a facilitated merger are filed with PBGC on or after October 15, 2018.

In Closing

As PBGC noted in a press release issued to announce the final rule, merger assistance may help struggling multiemployer plans — but it does not offer a global solution to the funding crisis in the multiemployer pension system. Nonetheless, facilitated mergers may be an attractive tool for remaining solvent in the near term.

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