

Washington Update

Multiemployer Pension Reform Act of 2014

The Multiemployer Pension Reform Act of 2014 (MPRA)—included in the omnibus government budget and spending bill President Barack Obama signed into law December 16, 2014—makes sweeping changes to current law governing multiemployer pension plans. MPRA includes numerous technical corrections and clarifications to the Employee Retirement Income Security Act (ERISA), as amended by the Pension Protection Act (PPA), and the Internal Revenue Code as well as some significant provisions to assist deeply troubled pension plans.

Most of the MPRA provisions become effective for plan years that commence after December 31, 2014. Throughout the act, the secretary of the Department of the Treasury is charged with primary oversight of many of the MPRA provisions and regulation promulgation, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor (DOL).

Overview of the PPA Technical Amendments

As an overview, MPRA:

- Removes the PPA “sunset” provision indefinitely
- Allows plans projected to be in critical status in the five succeeding plan years to elect to be in critical status in the current plan year
- Tightens the rule applicable to determining whether a plan may emerge from critical status
- Provides that a plan will not be in endangered status if the plan actuary certifies that the plan is projected to no longer be in endangered status as of the end of the tenth plan year ending after the plan year of the actuary’s certification

- Amends a plan’s process for determining the target funded percentage applicable to funding improvement plans
- Amends certain rules applicable to endangered status plans during the adoption and funding improvement periods
- Clarifies certain rules affecting collective bargaining
- Repeals the often-burdensome reorganization rules
- States that certain contributions will be disregarded for withdrawal liability purposes
- Requires PBGC to guarantee a plan’s payment of certain qualified preretirement survivor annuities
- Clarifies and expands the scope of a plan’s information disclosure requirements
- Increases the per capita PBGC premiums.

Amendments to Assist Deeply Troubled Pension Plans

Critical and Declining Status

MPRA creates a new plan status known as *critical and declining status*. A plan shall be in this status if it is projected to become insolvent in the current year or any of the 14 succeeding plan years or is projected to become insolvent in the current year or any of the 19 succeeding plan years and meets one of the following additional tests: The ratio of inactive to active participants exceeds 2 to 1 or the plan is less than 80% funded.

Plan Partitions

MPRA drastically amends current ERISA partitioning rules applicable to multiemployer pension plans. It removes the previous ERISA limit stating that a partition was allowed only for those



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“orphan” beneficiaries attributable to a bankrupt employer. Additionally, upon application by a plan and meeting specific conditions, PBGC may order the partition of an “eligible multiemployer plan.”

Plan Mergers

Under MPRA, Congress has given PBGC the authority to promote and facilitate the merger of two or more pension plans. Upon request of a plan, PBGC may step in and facilitate a merger with another plan if it determines that the merger is in the best interests of the participants and beneficiaries of at least one of the plans and it is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans. PBGC may also provide financial assistance to facilitate a merger if certain other conditions set forth in the statute are satisfied.

Benefit Suspensions

Plans that are deeply troubled and projected to be in the newly created critical and declining status may apply to Treasury to voluntarily suspend pension benefits for participants in pay status and accrued benefits for participants not in pay status. The term *suspension of benefits* is defined to mean “the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits.”

Highlights of the benefit suspension provisions set forth in MPRA are:

- During the suspension approval process, the act provides for a retiree representative for plans with 10,000 or more participants to advocate for the interests of retirees and inactive participants in the application for benefit suspension process.
- A plan in critical and declining status may suspend benefits only if the plan’s actuary certifies that, consid-

ering the proposed suspension, the plan is projected to avoid insolvency. The plan sponsor must determine that even though it has taken all reasonable measures to forestall insolvency, the plan is still projected to become insolvent unless the proposed benefits are suspended. Benefit suspensions are subject to certain limitations set forth in the statute.

- A special benefit suspension allocation rule
- Treasury must publish a notice in the *Federal Register* soliciting comments within 30 days of receiving the plan’s application.
- Treasury must approve or deny the application within 225 days or the application is automatically deemed approved.
- Plans may challenge a denial through judicial review procedures.
- Benefit suspensions approved by Treasury are subject to a vote of all participants and beneficiaries within 30 days of the approval. A proposal for benefit suspension is rejected only if a majority of all participants and beneficiaries (not simply a majority of those who vote) reject it. The plan sponsor may submit a new application if the suspension is rejected. Suspensions of benefits will not take effect until after the vote.
- If participants and beneficiaries reject proposed benefit suspensions, Treasury, within 14 days after the vote and in consultation with DOL and PBGC, must determine whether the plan is *systemically important*, which is defined as resulting in \$1 billion or more in projected PBGC liabilities, if the suspensions are not implemented. If the determination is made, Treasury, in consultation with DOL and PBGC, has the discretion to either accept the proposal terms or modify the benefit suspensions in some other manner projected to avoid plan insolvency.
- Other technical amendments regarding implementation and oversight of the benefit suspension process, including judicial review
- Treasury is directed to publish guidance to implement the benefit suspension amendments within 180 days after MPRA enactment.