

in the news

Employee Benefits & Executive Compensation



July 2015

Update: Multiemployer Pension Plans

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In this **Update Series**, we will provide continuing updates on the key developments relating to multiemployer pension plans, as well as practical considerations for the companies that participate in them.

These union benefit funds pose unique and significant business risks, which are more important than ever to understand due to recent changes made by the Multiemployer Pension Reform Act of 2014 (MPRA). As the post-MPRA landscape evolves, including how your collective bargaining strategies may need to be adjusted, we will keep you informed of the potential impact on your company's withdrawal liability exposure and other business risks.

For our previous installments of the Update Series, please see:

[February 2015](#) | [March 2015](#) | [May 2015](#).

Recent Developments for Multiemployer Pension Plans

1. Pension Benefit Guaranty Corporation Issues New MPRA Regulations on "Partitions" of Multiemployer Pension Plans

The MPRA was passed as a part of a Congressional effort to aid multiemployer pension plans with a high risk of insolvency. Partition is one tool the MPRA provides to the Pension Benefit Guaranty Corporation (the "PBGC") to assist troubled multiemployer pension plans. Partition separates plan participants and beneficiaries whose employers are no longer contributing to the plan due to bankruptcy or other reasons, from the participants and beneficiaries who are still covered by a contributing employer. In June, PBGC released final proposed rules that provide guidance on how a struggling multiemployer pension plan can apply for plan partitions and suspension of plan benefits.

A partition is the transfer of a portion of an original multiemployer pension plan's liabilities to a successor plan, which is financially backed by the



PBGC, in order to prevent the original plan from reaching insolvency. Only the minimum amount of liabilities necessary to keep the original plan solvent may be transferred. To be eligible for partition, the multiemployer pension plan must meet multiple requirements, fully set forth in the application for partition filed by the plan sponsor. The plan must be in “critical and declining status.” “Critical” is generally defined by ERISA § 305(b), as a plan that has less than 65% of the funding necessary to pay its pension benefit obligations. The plan is “declining” if it is projected to become insolvent during the current plan year, during any of the 14 succeeding plan years, or during any of the 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one. The plan sponsor also must establish that all reasonable measures to avoid insolvency have been exhausted, including a “suspension” of benefits (discussed in greater detail below). The partition must be necessary in order for the plan to remain solvent, and must reduce PBGC’s expected long-term loss concerning the plan. The PBGC must be able to continue satisfying its existing financial obligations to other plans, as the costs for partition are funded by PBGC.

If PBGC grants partition, the participants and beneficiaries whose employers are no longer plan contributors are separated into the successor plan. PBGC then provides 100% of the minimum statutorily guaranteed benefits to the participants and beneficiaries allocated to the successor plan. If no suspension of benefits is authorized, the original plan remains responsible for paying the plan’s participant’s and beneficiaries’ residual benefits, as a grant of partition alone does not reduce benefits. However, since a partition application must show the plan has taken all reasonable measures to avoid insolvency, including benefit suspension, the PBGC expects any plan applying for partition will also apply for a proposed suspension of benefits. Under a suspension of benefits, the participants and beneficiaries covered by the successor plan receive 110% minimum statutory guarantee. The PBGC covers 100% of the statutorily guaranteed rate, and the original

plan remains responsible for the additional 10% owed to the partitioned participants and beneficiaries. With respect to suspension of benefits, there are various requirements and limitations; for example, the suspension of disability benefits and benefits for those over 80 years old are prohibited. If the plan’s application for partition and benefit suspension is accepted, it must be approved by a vote of eligible plan participants and beneficiaries before implementation.

Our View: The purpose of partition under the MPRA is to allow multiemployer pension plans to provide fuller benefits to contributing employers’ participants and beneficiaries, while allowing those without a contributing employer to receive more benefits than those statutorily guaranteed. While applying for partition includes many challenging steps for the fund, it may be a useful tool to avoid insolvency of a multiemployer pension plan.

2. IRS Issues New Regulations Relating to Benefit Suspension Rules under the MPRA

As noted above, the MPRA allows a multiemployer pension plan to “suspend” benefit payments if it is in “critical and declining” status. A benefit suspension can be either a temporary or permanent reduction in benefit levels. There are detailed procedures and restrictions under the MPRA that a fund must keep in mind before any benefit suspension can be implemented. The IRS recently released Revenue Procedure 2015-34, which outlines the application procedures that a fund must follow when requesting a benefit suspension from the Secretary of the Treasury.





Under the IRS guidance, a fund's application must contain detailed financial and actuarial information that demonstrates its eligibility for a benefit suspension, as well as the fund's determination that reasonable measures have been (or will be) taken to avoid insolvency. Applications for benefit suspensions by critical and declining funds began being accepted on June 19, 2015. However, final IRS regulations will not be issued until after public hearings are held and the agencies (IRS, DOL, and PBGC) consider any public comments on the new rules.

Our View: Some multiemployer plans may decide to wait until final regulations are issued before they seek benefit suspensions. Employers who participate in distressed funds should nevertheless monitor developments as the process evolves for the issuance of final regulations.

Q & A

Question: Has the DOL updated its website to reflect the "critical" and "endangered" status notices that funds may have issued during 2015?

Answer: Yes. Please see [here](#) for the updated DOL website, which shows the notices that it has received so far from funds during 2015.

MPRA Resources

PODCAST: Major Changes to Multi-Employer Pension Plans
Click [here](#) to listen.

WEBINAR: A Road Map to Major Changes Coming to Multi-Employer Pension Plans: What Participating Employers Should Do Now

Click [here](#) to listen to the webinar.
Click [here](#) to download the slides.

MPRA Counseling Services

Polsinelli offers a suite of fixed-fee services to help your company better understand the potential impact of the MPRA on each multiemployer fund to which it makes pension contributions. [Learn more about our fixed-fee counseling services.](#)

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To automatically receive information on the impacts of the MPRA on Twitter, please [follow our Employee Benefits and Executive Compensation practice group.](#)



For More Information

Our attorneys have extensive experience helping companies address complex issues under multiemployer pension plans. If you should have any questions regarding this Update Series, please contact your Polsinelli attorney or any of the individuals shown below.

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To learn more about our Employee Benefits and Executive Compensation practice, click [here](#) or visit our website at www.polsinelli.com > Services > Employee Benefits and Executive Compensation.





About Polsinelli's Employee Benefits and Executive Compensation Practice

Polsinelli has a diverse group of Employee Benefits attorneys who cover all aspects of plan creation and design, plan compliance and executive compensation agreements. Our attorneys have more than 100 years of combined employee benefits experience which we focus on providing practical, proactive advice, while also striving to develop innovative solutions to our clients' employee benefit needs.

Our firm has experience working with public and private businesses, as well as governmental and nonprofit entities to design, implement and effectively administer plans that meet their business needs.

In this increasingly complex area of compliance responsibility, our team works with clients to not only minimize the risk of problems, but to develop proactive strategies in ways that benefit a business' culture, as well as its bottom line. A key to such success lies in the development of initial advisory alerts, training programs, educational campaigns, and regular internal memoranda that properly outline compliance obligations, as well as the elements of the organization's successful usage of such arrangements.

About Polsinelli

real challenges. real answers.SM

Polsinelli is an Am Law 100 firm with more than 750 attorneys in 18 offices, serving corporations, institutions, entrepreneurs and individuals nationally. Ranked in the top five percent of law firms for client service and top five percent of firms for innovating new and valuable services*, the firm has risen more than 100 spots in Am Law's annual firm ranking over the past six years. Polsinelli attorneys provide practical legal counsel infused with business insight, and focus on health care, financial services, real estate, life sciences and technology, and business litigation. Polsinelli attorneys have depth of experience in 100 service areas and 70 industries. The firm can be found online at www.polsinelli.com. Polsinelli PC. In California, Polsinelli LLP.

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