

update

Compliance News for Multiemployer Plans

June 25, 2015

Guidance on MPRA's Rules for Benefit Suspension and Plan Partition

The Department of the Treasury (Treasury) and the Pension Benefit Guaranty Corporation (PBGC) recently issued related guidance addressing the rules for benefit suspension and partition, respectively, under the Multiemployer Pension Reform Act of 2014 (MPRA).¹ Comments on the guidance, which was published in the *Federal Register* on June 19, 2015, are due by August 18, 2015. Treasury has scheduled a public hearing for September 10, 2015. Topic outlines from individuals wishing to speak at the hearing also are due by the comment deadline.

Under this guidance, multiemployer plans that are in “critical and declining” status may now submit applications for suspension and/or partition.² Both agencies generally expect that no applications will be approved before final regulations are issued, and advise that any early applications (and, possibly, related participant notices) might need to be revised to reflect the final regulations. The regulations are expected to be made final as soon as possible after the comment period has closed and the agencies have had sufficient time to consider whether any additions or revisions are needed.

After providing some background, this *Update* briefly describes the new guidance and identifies certain key aspects. It concludes with some preliminary observations.

Background

MPRA was enacted into law on December 16, 2014, as part of the Consolidated and Further Continuing Appropriations Act, 2015, the omnibus government funding bill (Public Law 113-235).³ MPRA made numerous changes to the law governing multiemployer plans, but the most significant changes were new benefit suspension and partition provisions.⁴ The suspension provisions give

¹ See the [Treasury Temporary Regulations](#), the [Treasury Proposed Regulations](#), [Revenue Procedure 2015-34](#), the [PBGC Interim final rule](#) and the [PBGC partition regulation FAQs](#).

² As added by MPRA, a plan is in critical and declining status for a plan year if it satisfies the criteria for critical status under IRC §432(b)(2)/ERISA §305(b)(2) and is projected to become insolvent within the meaning of IRC §418E/ERISA §4245 in the current year plan year or any of the 14 succeeding plan years (20 succeeding plan years if the ratio of inactive to active plan participants is greater than 2 to 1 or if the funded percentage is less than 80 percent). Plans that are in critical and declining status, and that meet certain other criteria, may, but are not required to, apply to Treasury for approval of proposed benefit suspensions, and/or to apply to PBGC for approval of a partition.

³ The [text of MPRA](#) is designated as Division O of the larger omnibus funding bill.

⁴ For a more complete description of MPRA's changes, see Segal Consulting's December 2014 *Bulletin*, "[Multiemployer Pension Reform Passed by Congress Expected to Become Law](#)."



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trustees of certain critical and declining plans the ability to help their plans avoid insolvency by reducing some benefits (including benefits in pay status), subject to various safeguards and requirements. The partition provisions, as completely rewritten in MPRA, allow trustees of certain critical and declining plans to apply to the PBGC for financial assistance, in the form of partition, to fund a portion of the plan's obligations in order to remain solvent.

Treasury was under a legislative mandate to issue suspension guidance within 180 days of MPRA becoming law. PBGC had no such mandate, but adopted the same guidance schedule because of the link between suspension and partition for many plans.⁵ As an initial matter, both agencies published requests for information related to the guidance for which they were responsible.⁶ Many of those responding requested that detailed guidance on the application process be provided on an expedited basis so that plans eligible for suspension and/or partition could apply as soon as possible. The agencies obliged, as noted in the next section.

Treasury and PBGC Guidance

The guidance includes the following, which are effective June 19, 2015, except as noted:

- **Temporary Treasury Regulations** The Temporary Regulations are intended to provide enough guidance to prepare and submit an application, and to allow Treasury to begin processing those applications, for those trustees who wish to apply for approval of a benefit suspension quickly.
- **Proposed Treasury Regulations (Not Yet Effective)** The Proposed Regulations contain additional information on benefit suspension, including guidance about the standards that will be applied in the review process, required actuarial demonstrations, and the statutory limitations on suspensions (e.g., the individual limitations based on age, disability and minimum benefits, and the aggregate limitations).
- **IRS Revenue Procedure 2015-34** The Revenue Procedure gives the specifics of the benefit-suspension application process along with a model notice to participants that plans may use (suspension notice).
- **PBGC Interim Final Rules** The Interim Final Rules are intended to provide enough guidance to prepare and submit the application, along with model notices to participants that plans may use (partition notices), for trustees who wish to apply for approval of a partition quickly. The PBGC regulations do not cover facilitated mergers, but the agency has said that it intends to issue additional guidance later this year.

A key feature of the Treasury guidance is that, generally, a suspension cannot be effective any earlier than nine months after the date of the application for plans applying for suspension only. This period is intended to give Treasury adequate time for review. Another key feature is the authorization of a Special Master to oversee the suspension application and review process and to make recommendations with regard to approval or denial. Kenneth Feinberg was appointed to that position on June 19, 2015.⁷

A key feature of the PBGC guidance is that, for purposes of coordinating the suspension and partition process, PBGC will issue a preliminary approval of a partition on an expedited basis conditioned upon Treasury issuing a final authorization to suspend.

⁵ Suspension and partition are linked because certain plans are eligible for suspension only if they also can be partitioned, and plans are eligible for partition only if they have taken the maximum benefits suspension available.

⁶ Both agencies issued Requests for Information on February 18, 2015, with response deadlines of April 6, 2015. This coordinated guidance package followed.

⁷ See [Treasury's press release about the appointment of Feinberg](#). [Additional information](#) is on Treasury's website.

It also encourages plans to contact PBGC on an informal basis to discuss potential partition applications. PBGC also noted that it expects to be able to approve about six plans each year for the next three years and that the total financial assistance it expects to provide to those plans will be less than \$60 million per year.⁸

Preliminary Observations

This guidance package is lengthy and densely packed with specific details about the actuarial and other information that must be provided as part of a suspension or partition application. However, there are a number of preliminary takeaways:

- Trustees of plans that have already decided to apply for suspension, alone or in combination with a partition, should be conferring with fund counsel, their actuary and consultants to determine the timing of the application, either now (with the risk that revisions will be needed after the guidance is finalized) or after the final regulations have been issued.
- One of the criteria for suspension is a determination by the trustees that the plan is still projected to be insolvent unless benefits are suspended, even though the plan has taken all reasonable measures to avoid insolvency. In light of this requirement, early in the process, trustees of plans considering suspension also should consider whether the plan satisfies the “all reasonable measures” requirement or might need to take additional steps before or as part of a suspension application.
- The time between the submission of a “suspension-only” application and its approval generally will be at least nine months. Preparation of the application is not included in that period and should begin as soon as possible for plans that need approval as early as possible.
- Plans that might need a partition as well as suspension should consider contacting PBGC informally in the near future in order to determine on a preliminary basis whether partition will be a possibility.
- On a purely practical level, plans in the early stages of considering a future suspension and/or partition should spend time now looking at their participant data to determine if it is sufficient to support the numerous calculations and determinations that will be required. In addition, these plans should begin to locate any “missing participants” so that that as many as possible are located before any suspension or partition notices must be provided.

Segal consultants can work with fund counsel to help trustees understand MPRA and the new guidance and the issues and options that it might present. If you have any questions about the content of this *Update*, please contact your Segal consultant or the nearest Segal office. (There is a link to a list of Segal offices on the next page.)

⁸ PBGC’s ability to approve a partition is restricted by a requirement that all partition funds come from the PBGC’s multiemployer fund and that a partition will not impair PBGC’s ability to meet its existing financial assistance obligations to other plans that are insolvent or that are projected to become insolvent within 10 years.

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If you would like additional information about this news, please contact your Segal consultant or the Segal office nearest you. Segal can be retained to work with trustees and their fund counsel on compliance issues.

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