

update

Compliance News for Multiemployer Plans

July 9, 2015

Expanded Multiemployer Defined Benefit Plan Disclosure Requirements

The Multiemployer Pension Reform Act of 2014 (MPRA) expanded the disclosure requirements under Section 101(k) of the Employee Retirement Income Security Act (ERISA). Generally, the basic workings of §101(k) remain the same, but MPRA increased the categories of documents that plan administrators must disclose. In addition, MPRA limited the application of §101(k) to defined benefit (DB) plans only.¹ The changes are effective for plan years beginning after December 31, 2014.

This *Update* describes the disclosure provisions as expanded by MPRA and outlines some action steps for plan administrators.

MPRA Changes

Except as noted below, the original provisions of ERISA §101(k) enacted in the Pension Protection Act of 2006 (PPA'06) remain in place. As a result, basic operational rules such as a 30-day response period remain the same, and it appears that final rules issued under §101(k) in 2010 generally would remain applicable except to the extent superseded by a statutory change.² For example, regulatory guidance with respect to the identification of a “contributing employer” that is permitted to request documents and what constitutes a “reasonable charge” for providing requested documents should remain applicable.

Applicability

Effective for plan years beginning after December 31, 2014, ERISA §101(k) applies only to multiemployer DB plans. Multiemployer DC plans (e.g., money purchase annuity plans) are no longer covered.

Disclosure Categories

In addition to the three original disclosure categories that were introduced by PPA'06, MPRA added eight more categories. All 11 categories are noted in the text box at the top of the next page.



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¹ ERISA §101(k) was revised by MPRA §111(a). The [text of MPRA](#) is designated as Division O of the Consolidated and Further Continuing Appropriations Act, 2015, the omnibus government funding bill.

² The final rules were published in the [March 2, 2010 Federal Register](#).

ERISA §101(k) Disclosure Categories After MPRA

The original PPA'06 disclosure categories, which continue to be required, are:

- Any periodic actuarial report (including any sensitivity testing) for any plan year that had been in the plan's possession for at least 30 days;
- Any quarterly, semi-annual or annual financial report prepared for the plan by an investment manager or advisor or other fiduciary that had been in the plan's possession for at least 30 days; and
- Any application for a funding amortization extension filed with the Secretary of the Treasury and the determination with respect to that application.

The categories added by MPRA are:

- The current plan document (including all amendments);
- The latest summary plan description (SPD) of the plan;
- The current trust agreement (including all amendments) or other instruments or agreements under which the plan is established or operated;
- For a request by a contributing employer, any participation agreement with respect to the plan for the employer that relates to the employer's plan participation during the current or any of the five immediately preceding plan years;
- The Form 5500 annual report for any plan year;
- The annual funding notice for any plan year;
- Audited financial statements of the plan for any plan year; and
- In the case of a plan that was in critical or endangered status for a plan year, the latest funding improvement or rehabilitation plan, and the contribution schedules applicable with respect to such funding improvement or rehabilitation plan (other than a contribution schedule applicable to a specific employer).

Limitations

Under MPRA, disclosures are still limited to one copy of any particular document in a 12-month period, but the limitation is clarified to apply to all types of documents required to be disclosed (not just reports or applications) and to apply to all parties that can request disclosure (not just participants, beneficiaries and employers).

Disclosures of the periodic actuarial reports, financial reports, annual reports (Forms 5500), annual funding notices, and audited financial statements are further limited to those that have been in the administrator's possession for less than six years. Those that are six years old or older are not required to be disclosed under this provision. MPRA also revised ERISA's general six-year document retention requirement specifically to include this same list of documents.

Finally, a new disclosure limitation states that if a plan administrator provides a copy of a particular document to a particular person in accordance with a request under ERISA §101(k), the administrator has satisfied the disclosure requirement for that document with respect to that requestor under any other applicable section of ERISA.

Remedies

Under MPRA, the Secretary of Labor may still assess a civil penalty of up to \$1,000/day for nondisclosure; in addition, however, sponsoring unions and contributing employers may file lawsuits to enjoin any practice that violates the disclosure requirements or to obtain appropriate equitable relief to correct the violation or to enforce disclosure.

Suggested Action Steps

Administrators of DB plans might wish to prepare for ERISA §101(k) disclosure requests by, for example:

- Reviewing the expanded list of documents that can be requested, and ensuring that those documents are up-to-date and readily available for copying. For example, if the plan's SPD has not been recently updated in accordance with ERISA rules, this might be a good time to consider an update.
- Identifying the periodic actuarial reports, financial reports, annual reports (Forms 5500), annual funding notices, and audited financial statements that are eligible for disclosure under the six-year limitation.
- Checking documents that must be disclosed for information to be deleted or redacted (individually identifying information and proprietary information); and
- Revisiting the plan's document-retention policy to ensure that periodic actuarial reports, financial reports, annual reports (Forms 5500), annual funding notices and audited financial statements are retained for the period required by ERISA.

Administrators of multiemployer DC plans should keep in mind that while ERISA §101(k) no longer applies to them, other applicable disclosure requirements still do. For example, money purchase annuity plans are still subject to ERISA §104(b)(4), which requires disclosure of documents "under which the plan is established or operated" to requesting participants and beneficiaries.

As with all issues involving the interpretation or application of laws and regulations, trustees should rely on fund counsel for authoritative advice related to required disclosures under ERISA and other compliance issues. Segal Consulting can be retained to work with trustees, plan administrators and fund counsel on these issues.

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