Segal Consulting

update

Compliance News for Multiemployer Plans

October 8, 2015

Year-End Compliance Deadlines and Other Reminders for Multiemployer Retirement Plans

This *Update* identifies some upcoming compliance deadlines and other reminders for multiemployer defined benefit (DB) and defined contribution (DC) plans.

Retirement Compliance News Highlights:

- DB plans might need to make certain amendments as a result of MPRA.
- Other amendments also might be necessary for both DB and DC plans.
- Reminders about year-end compliance matters cover new rules for DB annual funding notices, required minimum distributions, documentation for plan loans and hardship distributions, and annual notices for §401(k) plans.

MPRA-Related Amendments

The Multiemployer Pension Reform Act of 2014 (MPRA) made several changes in the rules governing multiemployer DB plans that might require amendments to plan and/or rehabilitation plan (RP) or funding improvement plan (FIP) documents, depending on current language. Trustees should consult with fund counsel about whether amendments related to these provisions are needed and if so, whether action is needed before year end.

Withdrawal Liability Determinations

For purposes of determining withdrawal liability, MPRA clarified that the following items generally must be disregarded when allocating unfunded vested benefits to employers (subject to specified exceptions and special rules):

- Benefit reductions and suspensions for critical and critical and declining status plans that go into effect during plan years beginning after December 31, 2014;
- Surcharge obligations that accrue on or after December 31, 2014 (regardless of plan year); and
- Contribution increases required by an FIP or RP that go into effect during plan years beginning after December 31, 2014.

Applicable RP or FIP Contribution Schedule at CBA Expiration

MPRA clarified that, for plan years beginning after December 31, 2014, when a second (or later) collective bargaining agreement (CBA) expires and the parties do not agree to a new contribution schedule, the contribution schedule applicable under the most recently expired CBA, as updated and in effect on the CBA expiration date, continues until a new CBA is in place. The provision applies for plan years beginning after December 31, 2014.

Other Plan Amendments

Trustees might need or wish to adopt amendments that:

- ***Make Discretionary Plan Changes*** Under Internal Revenue Service (IRS) rules, discretionary plan amendments, such as amendments to reflect benefit improvements, plan mergers or other changes that are not required by law, generally must be adopted by the last day of the plan year in which the amendments become effective. Calendar-year plans for which discretionary amendments were made with 2015 effective dates must have those amendments committed to writing and adopted (signed and dated) by December 31, 2015.

- ***Were Required by a Second Cycle D Determination Letter*** IRS determination letters require that a restatement or any amendments submitted for review in proposed form be adopted no later than 91 days after the date on which the determination letter was issued. The same 91-day adoption deadline applies to any amendments required by the IRS reviewer as a condition for receiving the determination letter. Plans that have recently received favorable determination letters under the second Cycle D should ensure that any proposed documents are (or were) adopted by the deadline.

- ***Reflect the Decision in the* Obergefell *Same-Gender Marriage Case*** On June 26, 2015, the U.S. Supreme Court decided *Obergefell v. Hodges*, holding that it was a violation of the Constitution to treat same-gender marriages any differently than opposite-gender marriages. The IRS has not yet issued any guidance relating to the opinion. Trustees should consult with fund counsel about whether plan language (*e.g.*, the definition of "spouse") needs to be amended in light of *Obergefell* — and if so, by when the amendment should be made.

- ***Implement DB Cash Balance Plan Regulations*** While it appears very likely that the IRS will extend the deadline for amending cash balance and other hybrid plans to reflect the 2014 final and proposed "market rate of return" regulations, the IRS has not yet done so. Without an extension these regulations apply for plan years beginning on or after January 1, 2016, and amendments are required by the last day of the 2015 plan year. Trustees of hybrid plans should consult with fund counsel about what steps should be taken at this time, if any.

Reminders

Plan administrators are reminded about the following compliance issues:

- ***New Model DB Plan Annual Funding Notice*** Final regulations on Annual Funding Notices (AFNs) under Section 101(f) of the Employee Retirement Income Security Act (ERISA) were released earlier this year. The regulations, which include a new model notice, apply to AFNs for plan years beginning on or after January 1, 2015 (*i.e.,* the AFNs that will be prepared in 2016 or later), but can be applied earlier.

- ***Required Minimum Distributions (RMDs)*** For participants who attain age 70½ in 2015, payment of the required minimum distribution must begin on or before April 1, 2016 — unless the DC or DB plan provides that distributions will be delayed until April 1 of the calendar year following the year of the participant's termination of employment, if later. If they have not done so already, plan administrators should begin now to identify and verify contact information for any terminated vested participants who must receive their first RMD in 2016 in order to avoid the potential imposition of excise taxes on participants for late distributions.

- ***Documentation for Plan Loans and/or §401(k) Plan Hardship Distributions*** The IRS has recently reminded sponsors of plans that offer loans and/or hardship distributions (*i.e.*, §401(k) plans) that they are responsible for maintaining records related to all loans and hardship distributions.[*] This is the case even for plans that use third-party administrators (TPA) to administer these programs, and it is not sufficient for participants receiving such loans or distributions to keep their own records. Failure to produce the records if requested by an IRS agent during an audit is considered to be a qualification failure. In light of this position, plan administrators of plans that provide loans and/or hardship distributions should discuss whether any procedural change, plan amendment, or corrective action is necessary with the fund counsel and if applicable, the plan's TPA.

[*] See the IRS webpage, "It's Up to Plan Sponsors to Track Loans, Hardship Distributions."

- ***§401(k) Plan Annual Notices*** §401(k) plans that incorporate any type of safe harbor formula for nondiscrimination testing (ADP/ACP testing), any type of automatic enrollment feature, and/or use a qualified default investment alternative (QDIA) as the default investment option for otherwise "undirected" participant deferrals, generally must provide both initial notices to individuals as they become eligible for the plan and also annual notices to all participants reminding them of these features. There are detailed rules about the content and timing of each notice and which notices can be combined with other notices. Generally, the annual notices must be provided at least 30 days before the start of each plan year.

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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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