

MPRA Aims to Strengthen PBGC



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If the Pension Benefit Guaranty Corporation (PBGC) runs out of money, it would no longer be able to insure multiemployer pensions. Provisions of the Multiemployer Pension Reform Act (MPRA) are intended to prevent that from happening.

The Multiemployer Pension Reform Act (MPRA), signed into law in late 2014, was intended to do much more than the much-heralded possibility of reducing benefits of participants of defined benefit pension plans facing insolvency. The principal objective of the law is to shore up the Pension Benefit Guaranty Corporation (PBGC) so that it can afford to continue insuring multiemployer pension benefits and help troubled plans avoid insolvency.

MPRA significantly increases premiums multiemployer DB pension plans must pay to PBGC. It also encourages mergers and partitions of funds that are seriously challenged. These two provisions are intended to make it less likely PBGC will run out of money. If that were to happen, PBGC would be unable to pay even the reduced benefits it now provides to multiemployer plan participants of pension funds that have already failed and would provide to participants whose plans are projected to fail in the near future.

It is too early to tell whether these new measures will be enough to ease the stressed financial position of PBGC's multiemployer insurance program, which insures pension benefits of about ten million people covered under about 1,400 funds. In its *FY 2014 Projections Report* released in late September 2015, PBGC said its multiemployer insurance program is in slightly better shape. It now is expected to run out of money in 2025, rather than 2022 as had been projected in the previous year's report. MPRA's increase in premiums is credited with the improvement.

Help for Multiemployer Fund Mergers

Multiemployer fund mergers essentially stopped with the Pension Protection Act (PPA), and there appears to be little interest in mergers now. And it's likely that a fund will be reluctant to merge with another fund perceived as weaker without some nudging from PBGC.

Under MPRA, PBGC can help along a merger between two or more multiemployer funds if the funds' boards of trustees

request help. Before it can offer help, PBGC must determine that a merger is in the best interests of participants and beneficiaries of at least one of the funds and that it won't reasonably be expected to be adverse to the interests of participants and beneficiaries of any fund. PBGC would make that determination in consultation with a participant and plan sponsor advocate.

The assistance PBGC can provide includes training, technical assistance, mediation, communication with stakeholders and support with related requests to other government agencies.

PBGC also can provide financial assistance to help funds seeking a merger avoid or postpone insolvency if:

- One or more of the funds participating in the merger is in *critical and declining status* (in the red zone with insolvency projected, depending on fund demographics, within 15 or 20 years)
- PBGC reasonably expects the financial assistance will reduce its expected long-term loss if one or more of the funds involved becomes insolvent
- Financial assistance is necessary for the merged fund to become or remain solvent
- PBGC can certify that its ability to meet existing financial assistance obligations to other funds will not be impaired
- The financial assistance is paid exclusively from PBGC's fund for multiemployer fund basic benefits guarantees.

Within 14 days of providing financial assistance, PBGC must notify:

- The U.S. House of Representatives Committee on Education and the Workforce and Committee on Ways and Means
- The U.S. Senate Committee on Finance and Committee on Health, Education, Labor and Pensions.

Multiemployer Plan Partitions

Although PBGC for more than 30 years has had the abil-

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ity to allow partitions of multiemployer funds, it very rarely has done so. The Multiemployer Pension Plan Amendments Act of 1980 enabled a partition to occur when *orphaned* participants (those whose employers were no longer in business and who had become the responsibility of the remaining contributing employers) were severed from their current fund and transferred to a new fund. The partition was intended to give the original fund a better chance to survive.

MPRA seems to encourage partitions under quite different conditions. A multiemployer fund would be eligible if:

- It is in critical and declining status
- PBGC determines, after consultation with the participant and plan sponsor advocate, that the plan sponsor has taken or is taking (aside from its partition application) all reasonable measures to avoid insolvency. Those measures include making the maximum allowed reductions of PPA's adjustable benefits and maximum suspensions of benefits allowed

under MPRA (i.e., that it can protect fund solvency by reducing participants' and beneficiaries' benefits to no lower than 110% of PBGC's benefit guarantees).

- PBGC expects that a partition will reduce PBGC's expected long-term loss with respect to the fund and is necessary for the fund to remain solvent
- PBGC certifies to Congress that the partition will not impair PBGC's future ability to serve multiemployer funds
- PBGC's related costs are paid exclusively from its existing assets for multiemployer fund insurance
- The "new" fund to be created by the partition order will pay no more than PBGC-guaranteed benefits
- The partition order will provide for a transfer to the new fund the minimum amount of the original fund's liabilities necessary for it to remain solvent.

Trustees of the original fund manage both the original fund and the new fund created by a partition. While the newly created fund pays benefits

up to PBGC's benefit guarantees, the original fund pays any excess between what it had promised (reflecting any suspensions of benefits allowed under MPRA) and what the newly created fund pays. For ten years after the partition, the original fund will pay PBGC premiums on behalf of participants of both funds.

If, within ten years of the partition, trustees decide to improve benefits, the original fund must pay restoration to PBGC at the same time it pays premiums.

In the event an employer withdraws from the fund that was partitioned within ten years following the date of the partition order, withdrawal liability will be computed with respect to both of the pension funds involved (and generally not reflect any reductions in liability resulting from suspensions in benefits). However, if an employer withdraws more than ten years after the partition, withdrawal liability shall be computed only with respect to the original fund that was partitioned, ignoring the new fund.

When a plan sponsor applies for a partition of the plan, PBGC has 270 days to make a determination. Trustees have no more than 30 days after submitting the application to notify participants and beneficiaries. Once a partition has been ordered, PBGC has 14 days to notify the two interested committees in each house of Congress and any affected participants or beneficiaries.

These changes apply to plan years beginning after 2014.

In June 2015, PBGC issued an interim final rule on partitions that elaborates on collection of a fund's actuarial and financial data when a fund is applying for a partition. The interim rule also

describes PBGC's review process and continuing jurisdiction after the partition is approved.

The stringent requirements for a partition—analyzing and potentially suspending participant benefits, as well as the application processes for both benefit suspensions and the partition itself—likely will mean few plans requesting a partition.

Premium Increases and Additional Restrictions

PBGC premiums for plan years beginning in 2014 were \$12 per participant per plan year and had been scheduled to increase to \$13 for plan years beginning in 2015. MPRA boosted premiums to \$26 for plan years beginning after 2014. In subsequent plan years, the \$26 amount will be adjusted using Social Security's national average wage index.

In the past, if PBGC determined that its assets from multiemployer fund premium collection exceeded current needs, it could have asked Treasury to invest the excess in obligations issued or guaranteed by the United States. MPRA now requires that minimum pools of assets be gathered in non-interest-bearing accounts before further investments can be made. These minimum pools are:

- \$108 million for fiscal year 2016
- \$111 million for fiscal year 2017
- \$113 million for fiscal year 2018
- \$149 million for fiscal year 2019
- \$296 million for fiscal year 2020.

PBGC's financial assistance to help plans with mergers and partitions is to be proportionately withdrawn from the non-interest-bearing accounts and from PBGC's other invested accounts. The large increase for fiscal year 2020 likely corresponds to results from PBGC's own modeling system for its exposure.

PBGC must report to Congress by June 1, 2016 on whether the new MPRA premium levels are enough to allow PBGC to meet projected benefit guarantee obligations for the ten- and 20-year periods beginning with 2015. The report must explain the assumptions underlying PBGC's analysis. If PBGC thinks the premium levels are insufficient—or its analysis shows levels are excessive—it must propose a schedule of revised premiums sufficient to meet (but not exceed) PBGC's obligations. This mechanism in MPRA indicates that Congress plans to retain its ability to set premiums, with input from PBGC, rather than giving that power to PBGC itself. 6

bio



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takeaways

- PBGC reported in September that its multiemployer insurance program is in better shape because of the premium increase; it expects to run out of money in 2025 instead of 2022.
- Now, PBGC is able to help two or more multiemployer funds merge if their trustees request training, technical assistance, mediation, help with communications and other support.
- MPRA seems to encourage partitions—something PBGC has allowed only very rarely.
- Requirements for partitions are difficult to meet; it's unlikely many plans will request a partition.
- PBGC multiemployer premiums increased steeply.