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in the news

Employee Benefits & Executive Compensation

March 2015

Update: Multiemployer Pension Plans

*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 apprised of the potential impact on your company's withdrawal liability exposure and other business risks. Read the February 2015 installment of this Update Series here.*

In this Issue:

Recent Developments for Multiemployer Pension Plans

1. PBGC Issues Detailed Study on Troubled Multiemployer Pension Funds.

On March 11, 2015, the Pension Benefit Guaranty Corporation (PBGC) issued a detailed study that explains how its insurance guarantees reduced the benefits of participants under plans that have already become "insolvent" (i.e., those plans that are receiving the PBGC's financial assistance to make minimum benefit payments up to the annual benefit guarantee of $12,870 per year). More importantly, however, the PBGC study also estimated the percentage of plan participants that would likely see benefit reductions if their funds become insolvent in the future. According to the PBGC, over 50% of participants in these funds will experience reductions because their benefits likely exceed the relatively-low annual guarantees under the PBGC's insurance program.

Our View: The PBGC study paints a bleaker picture of troubled multiemployer pension funds than what has been reported previously. The study may prompt many of these funds to pursue benefit reductions under the MPRA rules to improve their financial positions. Employers should review the funded status of the multiemployer funds to which they make pension contributions, as well as make inquiries to the fund trustees to determine whether they will implement the MPRA rules that allow benefit reductions.

2. **PBGC and IRS Both Seek Public Comments on MPRA Benefit Reduction Procedures.**

In February, both the PBGC and the IRS issued special requests for information to help the agencies prepare future regulations under the MPRA. The PBGC request is primarily focused on soliciting input about its expanded authority under the MPRA to facilitate partitions and mergers of multiemployer pension plans. Because the IRS has the lead authority to approve benefit reductions that troubled funds may seek under the MPRA rules, its request asks for information for determining whether a plan is in "critical and declining" status and how any benefit reductions will apply to both active and retired participants.

Our View: The requests for information signal that there are many important issues under the MPRA changes that are yet to be resolved by the IRS and PBGC. We expect that after the public comment periods end, the agencies will move quickly to issue regulations for the benefit reduction procedures under the MPRA.

3. **PBGC Issues FAQs on MPRA Changes**.

On February 19, 2015, the PBGC issued a set of frequently asked questions regarding the MPRA, which are addressed to union employees and other individuals that participate in multiemployer pension funds. The FAQs explain how the new MPRA rules will allow financially-troubled pension funds to reduce benefit levels.

Our View: While the FAQs are aimed at educating plan participants on the possibility of future benefit reductions, employers should also keep them in mind for discussions with union representatives that may relate to the MPRA's impact on subsequent collective bargaining agreements.

Q & A

Question: How can my company obtain information to evaluate the current funded status of a multiemployer pension fund?

Answer: Evaluating a plan's funded status can be daunting. The good news is that there are publicly-available resources and helpful disclosures that the fund is required to provide to participating employers. For example, each year, the fund is required to file its Form 5500 report (which then can be accessed on the Department of Labor's public website) and also provide an "annual funding notice" to all participating employers. For those multi-employer plans that are "red zone" or "yellow zone" funds, the DOL also maintains a separate online list that tracks their annual funding notices.

More Polsinelli MPRA Intelligence:

PODCAST: Major Changes to Multi-Employer Pension Plans

WEBINAR: A Road Map to Major Changes Coming to Multi-Employer Pension Plans: What Participating Employers Should Do Now Want the slides? Download here.

eAlert - Employers Should Start Preparing Now for Big Changes Coming to Multiemployer Pension Plans

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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 Polisnelli attorney or any of the individuals shown below.

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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

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* Law360, March 2014
** *The American Lawyer* 2013 and 2014 reports

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