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Multiemployer Plans

IRS Hearing on Benefit Suspensions Features Impassioned Voices

When crafting final regulations on suspending benefits under multiemployer pension plans, the IRS and Treasury Department should use the “maximum limits” of their authority to write rules that follow the law but are as fair as possible to workers and retirees, speakers said during an IRS hearing.

While the proposed and temporary regulations issued by the Internal Revenue Service and Treasury in June offer some “meaningful protections,” there’s room for improvement, Karen Ferguson, director of the Pension Rights Center, told a panel of officials from the IRS, Treasury, Pension Benefit Guaranty Corporation and Department of Labor at the Sept. 10 hearing. She also warned the panel that pension cuts made possible under the Multiemployer Pension Reform Act of 2014 set a dangerous precedent for all types of pensions.

The hearing was held to discuss temporary (T.D. 9723; RIN 1545-BM73) and proposed (REG-102648-15; RIN 1545-BM66) regulations issued June 17 by the IRS and Treasury on benefit suspensions allowed by the MPRA (42 BPR 1094, 6/23/15). The proposed regulations would affect active, retired and deferred vested participants and beneficiaries of multiemployer plans that are in critical and declining status as well as employers contributing to, and sponsors and administrators of, those plans.

Speakers, including union representatives, pension advocates, and people facing benefit cuts, lobbed sharp criticism at Congress for passing the MPRA without public hearings or floor debates, in what Ferguson called “a back room deal” negotiated by a small group of people.

The voices of the workers who will be directly affected by the suspensions came through loudly, with many individuals calling the potential cuts “devastating” to their livelihoods. Some implored the panel to look into the circumstances that led to the current state of many multiemployer pension plans, particularly the Central States, Southeast and Southwest Area Pension Fund, one of the largest multiemployer plans in the nation.

Central States faces severe financial difficulties and recently said its board of trustees is considering submitting a benefit suspension application by the end of August (42 BPR 1516, 8/25/15).

Kenneth R. Feinberg, who was appointed by Treasury to oversee the implementation of the MPRA rules,

noted during the hearing that the department hasn’t received a benefit suspension application from Central States, but assured retirees that the agency wouldn’t “engage in a hasty review” of the application if and when it does.

‘Opportunities for Discretion.’ As for possible changes to the proposed rules, the PRC’s Ferguson said regulators should constrain “opportunities for discretion” by plan sponsors and trustees when it comes to benefit suspensions. This can be achieved by “requiring outside experts to evaluate the plan information, independent analyses by experts acting in a fiduciary capacity, or specifying safe-harbor actuarial assumptions the plans must follow absent compelling justification,” she said.

She also asked that final rules make sure that retirees won’t be “disproportionately affected” by benefit cuts and said there shouldn’t be any cuts for those receiving subsidized qualified joint and survivor annuities, as their benefits are already lower.

As for the appointment of the retiree representative—a topic of much discussion at the hearing—Ferguson suggested that Treasury should set the standards for selecting the person.

The temporary regulations state that plans with 10,000 or more participants must have a retiree representative that is selected by the plan sponsor. The representative must be a plan participant in pay status that is designated to “advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process,” the rules said.

John Murphy, eastern region vice president of the International Brotherhood of Teamsters, said the final rules should be clearer and emphasize that the retiree representative should be “independent of those who appoint him or her.”

The proposed rules state that the representative advocates for the retirees and deferred vested participants and beneficiaries, but it would be more beneficial if the final rules placed emphasis on the representative’s independence from the plan sponsor to allay concerns that the representative could be “unduly influenced” by the sponsor, Murphy said.

He also spoke about actuarial assumptions, saying it’s important that plans applying for benefit suspensions use reasonable assumptions about investment returns.

The federal government might not be comfortable telling plans how to invest their money, but the Teamsters “seriously question whether the government should be encouraging plan fiduciaries to try to hit five-run home runs in an effort to achieve plan solvency

through overly aggressive asset allocations,” something that’s impossible to achieve, Murphy said.

Participant Voting. Many spoke about the IRS temporary (T.D. 9735, RIN 1545-BM89) and proposed regulations (REG-123640-15) that were issued Aug. 31 dealing with multiemployer plan participant voting on an approved suspension of benefits—although they weren’t an official topic of the hearing (42 BPR 1594, 9/8/15).

Generating particular interest was how the vote will be conducted, with many, including Randy G. DeFrehn, executive director of the National Coordinating Committee for Multiemployer Plans in Washington, advocating that the IRS and Treasury reconsider the ban on paper ballots.

DeFrehn, who took a lot of flack from witnesses at the hearing for his role in the passage of the MPRA, said that many of the people who are served by multi-employer plans aren’t computer literate and many may

even still have rotary phones. He suggested that the agencies consider evaluating the need for paper ballots based on the industry, as some may be more suited for electronic voting than others.

Ferguson also advocated for paper ballots, saying that voting on the phone and online isn’t enough for many retirees.

“Including a business return envelope with the ballot would not be costly, and since many participants will use the online or phone options, the cost of counting paper ballots will be minimal. In a vote this consequential, every effort should be made to make voting as easy as possible,” she said.

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