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Multiemployer Plans

Plans Applying for Partitions With PBGC Need Flexibility in Final Rules, Groups Say

Multiemployer plans asking the PBGC to allow them to partition their pension plans need the application process to be flexible, according to comment letters from various groups.

The current rule is “inappropriately strict” when it comes to what documents plans are required to submit in the application process, as it may not always be possible for plans to supply the Pension Benefit Guaranty Corporation with every document listed, the U.S. Chamber of Commerce said in a comment letter.

To remedy this, the group recommended that final rules state that applications that don’t include all information may require more time to process.

The PBGC issued on June 17 an interim final rule laying out the application process and notice requirements for plan partitioning under tight deadlines for implementing the Multiemployer Pension Reform Act of 2014 (42 BPR 1094, 6/23/15).

Prior to the MPRA, the PBGC had very limited authority to help troubled multiemployer plans improve their financial condition by partitioning off some of the unfunded liabilities. The MPRA gave the PBGC expanded discretion to approve plan partitions in situations beyond employer bankruptcies (41 BPR 2559, 12/30/14).

The PBGC has used its plan partitioning and merger authority only three times, most recently in January 2014, when it broke up the Bakery and Sales Drivers’ multiemployer pension plan to cover former Hostess Brands LLC employees while coordinating a merger with another plan for the remaining participants (41 BPR 249, 2/4/14).

Time Limits. Another concern the Chamber of Commerce raised was the amount of time the PBGC has to issue a written notice to plans that their application for partition is complete. The date the PBGC issues a written notice that a plan’s application is complete kicks off a 270-day review period under the Employee Retirement Income Security Act.

The issue also was addressed by the National Coordinating Committee for Multiemployer Plans in its letter, as the group said it “is very concerned with the provision that a partition application will not be deemed complete until PBGC makes an initial determination under the Rule.”

The interim final rule doesn’t give any time frame for the PBGC to make the determination that the applica-

tion is complete and notify the applicant, the NCCMP said. “An initial determination period of indefinite duration is contrary to the statute. It does nothing to further the process that could not be accomplished by a short, specified review period,” the letter said.

Both the NCCMP and the Chamber of Commerce recommended that the PBGC be given two business days to issue a written notice that their application is complete, the same amount of time the Internal Revenue Service has under the MPRA to determine if an application for benefit suspension is complete.

The NCCMP also encouraged the PBGC and the IRS to coordinate the partition and suspension applications in a way that isn’t “unduly burdensome” and doesn’t delay the relief requested. This is because the NCCMP “understands that the majority of critical and declining plans will require both suspension and partition to survive,” the group said.

The MPRA allowed financially troubled multiemployer plans to suspend benefits, and the Treasury Department and IRS issued temporary and proposed rules on those provisions the same day the PBGC put out its partition regulation.

Participant Concerns. The Pension Rights Center in its letter focused on issues directly impacting participants, particularly the content of participant notices and whether the MPRA makes benefits suspensions a prerequisite for partitions.

For participant notices, the Pension Rights Center said the interim final rule doesn’t require the use of the PBGC’s model notice, giving plan sponsors broad latitude to alter it as they see fit. Because of this, the group suggested that “the draft plan notice lodged with the PBGC must ‘highlight’ and explain any deviations from the Model Notice text, and the PBGC should allow use of that text only with the approval of the PBGC’s Participant and Plan Sponsor Advocate.”

On the topic of benefit suspensions, the interim final rule says that plans can’t qualify for partition assistance unless they have suspended benefits to the maximum amount allowed, something the Pension Rights Center called an “absolutist approach” that would “tie the PBGC’s hands” and prevent it from reducing its own losses in many instances.

The AARP addressed this issue similarly, saying in its letter that plans shouldn’t be required to apply for the maximum benefit suspension to qualify for partition.

“If PBGC believes it has no flexibility on the level of retiree cuts, it should ask Congress to modify this element of MPRA. We agree that partition should not en-

danger PBGC's finances and are confident PBGC can protect its financial solvency," the AARP said.

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