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TOPIC: Treasury Department Rejects Central States' Application to Suspend Benefits Under MPRA

EXECUTIVE SUMMARY: On Friday, May 6, 2016, the Department of the Treasury denied the rescue plan application submitted by Central States Pension Fund Trustees' under which "Critical and Declining" status multiemployer plans that are certified to become insolvent and meet certain criteria may suspend benefits as permitted under the Multiemployer Pension Reform Act of 2014 (MPRA). Such suspensions are only permitted to the extent necessary to avoid insolvency; ultimate benefits may not be reduced below 110% of the PBGC guaranty levels and only if, after the suspensions are implemented, the plan will remain solvent.

The Treasury Department's denial letter cites three failings of the application: 1) the reasonableness of the rate of return assumptions 2) an inequitable distribution of benefit suspensions and 3) the technical nature of the participant notices.

Not only does this decision subject Central States participants to deeper cuts (even under the best case scenario and assuming the plan can craft a new rescue plan that meets the requirements Treasury has set forth), but if no such plan can be developed and the plan falls to an insolvent PBGC multiemployer guaranty fund, the General Accountability Office has estimated that the benefits payable will approach zero. Those opponents of Central States' rescue plan who celebrate this decision have initiated a game of high stakes poker. Unfortunately, the likely losers are not those opponents, but the current and future Central States pensioners.

While the ruling by Treasury is in response to the specific application filed by Central States, this decision has ramifications that extend to the rest of the multiemployer community.

Additional details on this decision are discussed in the analysis and commentary that follows.

PURPOSE:	Informational
CATEGORY:	Treasury Ruling
ISSUER:	Department of the Treasury
TARGET AUDIENCE:	Trustees of and Plan Advisors to Multiemployer Pension Plans
SEND COMMENTS TO :	*Multi-elert@nccmp.org*
REFERENCE:	Vol. XVI, Issue 3
FOR ADDITIONAL BACKGROUND SEE:	Treasury Denial of Central States' Application Secretary Lew's Letters to Congress NCCMP Press Release on Denial of Central States' Application Tom Nyhan's Media Remarks

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Treasury Rejects Central States' Rescue Plan

Last Minute Decision Ensures Deeper Cuts - Has Broad Implications for Entire System

On May 6, 2016, the Department of the Treasury announced that Central States' rescue application to enable the plan to take remedial action to remain solvent was denied.

The application was filed on September 25, 2015 based on the Proposed and Temporary regulations issued by Treasury and PBGC last summer. At the time these regulations were issued, plans were put on notice that, while they may rely on these regulations to make application for relief under the Act, if the final regulations made substantive changes, the plans may have to make changes to their applications to comply. For many plans this admonition was sufficient to defer the application process until the final regulations were issued rather than incur the additional cost and effort to make substantial changes once their rescue plan was developed. For other plans, including Central States, whose timeline to the "point of no return," beyond which the plans' assets may be insufficient to remain solvent and, therefore, no longer eligible for the MPRA relief, delay was not an option.

MPRA requires that Treasury must act on an application to suspend benefits within 225 days (by May 7, 2016 in this case) or the application would be deemed approved. On April 26th (the 215th day), Treasury released their final regulations with significant changes affecting Central States' application. Their denial letter cites three failings of the application: 1) the reasonableness of the actuarial projection assumptions; 2) the allegedly inequitable nature of the proposed benefit suspensions for UPS retirees; and 3) the overly technical nature of the participant notices, which it determined were too complex to be understood by the average participant. Central States has responded point by point to these allegations in a press statement issued by Tom Nyhan, Executive Director, on Monday (see link above). Of the three reasons, the most significant is the one that challenges the reasonableness of the actuarial assumptions. Treasury determined that Central States' decision to use an assumed rate of return of 7.5% is overly optimistic in evaluating the expected impact of short term returns on a cash flow basis and, therefore, on the assets ultimately available to avoid insolvency. In practical terms, this statement means that if the assets will be less than projected to be necessary to avoid insolvency, cuts will have to be deeper.

From a process perspective, what is more troubling than the last minute fundamental change in methodology is the approach used by the regulators in issuing this decision. Given the amount of lead time it takes for the government to vet such decisions, it is clear that the expected results and the methodology that led to their decisions had to have been in development for some time. What is troubling is that rather than take a parallel, problem solving track with the applicant (Central States) and engage in discussions of the relative impact of such changes in methodology so as to expedite any required modifications in their application, the regulators have invited the kinds of criticism which has appeared in the media that this process was tainted by politics.

Regardless of the outcome in this particular case, we hope Treasury will use the lessons learned in this experience as trustees attempt to use these voluntary self-help tools which Congress unambiguously intended to make available. Clearly dialogue between regulators and those who can provide informed answers to thoughtful questions regarding the plans' efforts to comply with their statutory requirements will be more productive than repeatedly engaging in "listening" sessions with those who, because of their personal circumstances are understandably terrified of seeing what they have worked for and counted on their entire lives disappear, but who unfortunately have little to offer than criticism and speculation borne of suspicion; or with those who have no personal legal or fiduciary duties to act in the "sole and exclusive" interests of these very participants - as do the plan's trustees - and can, therefore, engage in baseless accusations and pontifications regarding the implications of what the prudent use of these limited tools may mean, simply to advance their own vested interests.

Central States' Board of Trustees and their advisors are now studying "what, if any, next steps are viable" in response to Treasury's decision. Whether they will be able to file an amended rescue plan that is acceptable to the Treasury or not, this decision means that the cuts which will be imposed on current and future pensioners and beneficiaries will be greater than those originally proposed for all participants and beneficiaries with the possible exception of those former UPS employees who are part of the "Transfer" group. These are a unique group of individuals covered by a bargaining agreement between UPS and the International Brotherhood of Teamsters under which certain individuals will be "made whole" by UPS for any reductions they may suffer from Central States. These are not the same protected groups (the133,000 disabled and elderly (over age 80) pensioners) whose benefits would be protected by the MPRA, but, absent an approved rescue plan, will be subject to the same reduction as any other pensioner or beneficiary if the plan ultimately becomes insolvent and has to rely on the PBGC to fund the guaranteed benefits.

We applaud the diligence of Central States' Trustees and Administration for exploring all available avenues to preserve the benefits of plan Participants and beneficiaries to the greatest extent possible given the available resources. We hope they will succeed in finding a path to achieving a plan that meets the Congressional intent and Treasury's regulations to provide meaningful relief to plans facing insolvency. Absent such a plan, however, the pension fund will become insolvent and the current and future pensioners and beneficiaries will face much greater benefit reductions, almost to zero, if and when both Central States and the PBGC become insolvent.

The NCCMP issued a press release in response to Treasury's announcement expressing its concern with the implications of this ruling in the event no suitable solution can be found for:

- current and future pensioners and beneficiaries of Central States who will now face even greater benefit reductions than were originally proposed;
- disabled pensioners and those of an advanced age whose benefits are protected from reductions under MPRA, but will now suffer the same magnitude of reduction as every other participant at such time as the plan becomes insolvent and applies to the PBGC for coverage;
- the broader implications for the entire multiemployer system, especially those plans – past, present and future – that have, or will become insolvent and must look to the PBGC safety net for even the modest benefit assistance that system provides. As forecast by the General Accountability Office, however, when the PBGC exhausts its accumulated assets and benefits must be paid from premium cash flow, even those modest benefits face further reductions of up to 90% from the statutory guarantees; and
- the magnitude of PBGC premium increases required to offset the deficit attributable to Central States that will be imposed on the entire system.

We look forward to working with the Treasury Department in support of the other pending applications, and with Congress to shore up funding of the multiemployer system.

Implications of Treasury's Central States' Decision for PBGC Premiums

In its congressionally mandated five-year premium adequacy study issued by the PBGC March 31, 2016, PBGC reported the following:

> ***Although the timing is uncertain, PBGC projects that current premiums ultimately will be inadequate to maintain benefit guarantee levels. However, given the projected extension of the PBGC's Multiemployer Program solvency due to the Multiemployer Pension Reform Act of 2014 (MPRA), the uncertainty of how plans will use the suspension, partition and merger provisions incorporated in MPRA, as well as additional changes which may be contemplated in the laws governing such plans, it is not possible to determine now what corresponding changes in PBGC's multiemployer program will be necessary or appropriate.***

We agree that the ultimate rate and timing of the PBGC's resource needs remains a matter for further discussion. The possibility that Central States may default to the guaranty system rather than having the ability to take advantage of MPRA's self-help measures is alarming. In their 2013 Annual Report PBGC had estimated their exposure to Central States at over $20 billion. To put that in perspective, the PBGC premiums for 2016 of $27 per covered participant will yield total premium income across the system of approximately $280 million. At that rate the exposure created by Central States alone is the equivalent of more than 71 years of the entire premium income.

In its recent budget proposal, the Administration proposed premium increases that would total $15 billion in premiums over the next 10 years, or slightly more than a five-fold increase over the current rate. Key elements of that proposal include:

- the ability for PBGC to set its premiums to reflect risk
- a premium structure that includes both the fixed per-participant amount plus a variable premium[1] based on the plan's level of underfunding; plus
- an exit fee to be imposed on employers that leave the system.

Shortly after the Administration's proposal was released, the NCCMP held meetings with top Administration officials in the Departments of Labor, Treasury and the PBGC to express our concern over the potential detrimental impact such premium rates and structures would have, especially on those plans in the greatest jeopardy of becoming insolvent. For example, with a reported 407,000 participants (approximately 4% of the total participants in the multiemployer system), Central States premium assessment in 2016 would be approximately $11 million at the current per participant rate of $27. While no specific amounts have been proposed for the multiemployer variable premium, it is not unreasonable to use the existing single employer premium rates as illustrative to underscore the seriousness of Treasury's recent decision; a decision which will greatly increase the pressure for enactment of significant PBGC premium increases. Hypothetically, if the single employer risk charge were applied Central States (arguably the plan which poses the greatest risk to the PBGC) their total annual PBGC premium would increase to approximately $214.5 million (a nearly 20 fold increase), which would only hasten their insolvency.

[1] While no specific numbers for the variable premium have been suggested, the Administration has proposed a risk charge model that is similar to that used in the single employer guaranty fund. In the most recently concluded budget bill the single employer premium will increase gradually from $64 per participant in 2016 to $80 per participant in 2019 indexed for inflation thereafter; plus a variable rate premium that is tied to the plan's level of underfunding which was increased to $30 per $1000 of unfunded vested benefits in 2016, and will increase gradually to $41 by 2019 with an overall cap in 2016 of $500 per participant (in addition to the per participant charge).

MPRA mandates that the PBGC conduct a separate premium adequacy study looking out both 10 and 20 years which must be issued not later than June 1, 2016. This study is expected to provide updated estimates of the projected deficit. As this report is intended to reflect actual experience with plans that have exercised their ability to adopt rescue plans or seek assistance through partition, the Treasury's recent decision and relatively late guidance is likely to have a minimal positive impact on their preliminary deficit estimates.

As always, we will continue to work with Congress and the Administration to attempt to facilitate a constructive approach to this problem which reflects a more informed understanding of the competing concerns in this issue.

We strive to ensure that the information contained in this and every issue of Multi-Elert is correct to the extent information is available. Nevertheless, the NCCMP does not offer legal advice. Plan fiduciaries should rely on their own attorneys and other professional advisors for advice on the meaning and application of any Federal laws or regulations to their plans.

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If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact the NCCMP, by phone at (202) 737-5315 or by e-mail at nccmp@nccmp.org .