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TOPIC: Treasury Department Approves First Rescue Application to Preserve Benefits and Plan Solvency Under MPRA

EXECUTIVE SUMMARY: On Friday, December 16, 2016, the Department of the Treasury approved the first rescue plan application under the Multiemployer Pension Reform Act of 2014 (MPRA). Following four denials that cited concerns about various actuarial assumptions among other issues, the Ironworkers Local 17 Pension Fund of Cleveland, OH application was approved, pending a minor modification to the draft plan amendment. Participants and beneficiaries will now vote on whether to accept the rescue plan. Treasury will conduct the vote by December 31, 2016, and unless the majority of participants vote to reject the plan, the rescue plan will go into place on February 1, 2017.

This long-awaited approval provides one, much needed guidepost for Trustees of other deeply troubled plans who have hesitated to incur the significant expense of preparing a rescue plan application given concerns that Treasury would never approve an application to suspend benefits, even if doing so would allow the plan to remain solvent for all participants and enable the Trustees to preserve greater benefits than the participants would receive otherwise.

The Trustees of Ironworkers Local 17 are to be commended for taking the immensely difficult, but necessary, steps to preserve benefits for their participants. as is the Department of the Treasury for allowing the clear intent of Congress to provide these self-help tools to be used by the Trustees of deeply troubled multiemployer plans to take action to save their plans

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*
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FOR ADDITIONAL BACKGROUND SEE:	Treasury Approval of Ironworkers 17 Application Ironworkers Local 17 Application

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Treasury Approves First Rescue Application Under MPRA

The Department of the Treasury has issued the first approval of a rescue application under the Multiemployer Pension Reform Act of 2014 (MPRA), on Friday, December 16, 2016 to the Ironworkers Local 17 Pension Fund of Cleveland, OH.

This approval marks the first step in a process that will enable the Plan to remain solvent, and to continue to provide lifetime benefits to participants that are greater than the guarantees provided by the Pension Benefit Guarantee Corporation (PBGC) to plans that are unable to avoid insolvency. This approval also provides much needed guidance to Trustees of other deeply troubled multiemployer plans facing the difficult decision of how best to fulfill their fiduciary duty to their participants, and how taking action under MPRA can restore their failing plan to solvency.

MPRA was passed in December 2014 to enable Trustees of "critical and declining" multiemployer plans facing imminent insolvency to take the courageous steps necessary to preserve the maximum level of benefits payable from their plans, while preserving plan solvency for current and future generations of participants. Such actions include reducing benefits, including those of pensioners and beneficiaries in pay status, to the extent reasonably expected to enable the plan to survive long term. However, benefits to be paid must remain at least 10% higher than participants would otherwise receive on the plan becoming insolvent and the PBGC stepping in. Further, the proposal must protect the entire benefit for broad classes of participants – disability pensioners and those over age 80 (phased in between ages 75 and 80), none of which happens for participants whose plans ultimately fall into the PBGC safety net.

Since the denial of the Central States application in May of last year, the Treasury has denied three more applications, citing disagreement with the reasonableness of various actuarial assumptions, concerns about whether proposed notices were too complex to be understood by the average participant, and whether the structure of benefit suspensions were equitable.

The Ironworkers Local 17 application differs from the prior applications in two significant ways. First, the actuarial assumptions used in the application addressed the ways in which the Treasury had considered assumptions used in prior, denied applications unreasonable. The application was originally submitted in December of 2015, but was withdrawn and resubmitted in July 2016 using revised actuarial assumptions to reflect the final Regulations issued in late April 2016.

The application addressed Treasury's concerns in previously denied applications that the expected investment return assumptions were "overly optimistic" in evaluating the impact of short term returns on cashflow, and ultimately on the assets available to avoid insolvency. The Ironworkers Local 17 application uses annual expected returns based on the Plan's target asset allocation that range from a low of 3.96% as of the start of the projection period to a high of 7.92% at the end of the 40-year projection period.

Prior denial letters also criticized the use of a simplified assumption to determine the age and sex of new participants entering the plan. The Ironworkers Local 17 application assumes that new entrants have a demographic mix consistent with new participants during the past 5 years, including a range of entry ages between 18 and 47 and mix of male and female participants.

In addition, one of the denial letters described the mortality table used in the denied application "outdated," and criticized that there was no provision for future improvement in mortality. In general, older mortality tables predict shorter life expectancies, and therefore, benefits will be paid for a shorter period of time. The Ironworkers Local 17 application used both a very current mortality table and mortality improvement scale.

Second, while the responsibility of determining how best to equitably distribute the necessary benefit suspensions among classes of participants rests with the Trustees, Treasury took issue with Central States' interpretation of a provision of the law defining a protected tier of participants. In general, this provision is unlikely to apply to most pension plans, but subject to the protected classes of participants described above and the requirement to preserve benefits at or above 110% of the PBGC guaranteed level, the Ironworkers Local 17 application provides that all benefits will be recalculated by applying the same adjusted plan of benefits to all participants, eliminating any potential concerns about equity.

Now that the Treasury has approved Ironworkers Local 17's application, participants will have the opportunity to vote on whether to accept the proposed rescue plan. Treasury must conduct the vote, and has sent ballots to participants. Unless the proposal is rejected by the majority of participants, the rescue plan will go into effect on February 1, 2017. Unlike Central States, the outcome of the participant vote is binding as the plan does not pass the threshold requirement for being considered a "Systemically Important" plan – defined as one which presents potential exposure to the PBGC of $1 billion or more.

We applaud the Trustees of the Ironworkers Local 17 Pension Fund for taking these immensely difficult, but necessary steps to preserve the benefits of Plan participants and beneficiaries to the greatest extent possible given the available assets of the Plan. While any suspension of benefits that participants depend upon is difficult, we commend the Trustees for recognizing the harsh, but inarguable fact that if the Plan were allowed to become insolvent and become subject to the guarantees provided by the PBGC, the benefits that participants would receive would, in all cases, be less than the Trustees' proposed solution.

We also commend the Department of the Treasury for allowing the clear Congressional intent to be realized by allowing Trustees of multiemployer pension plans facing insolvency to take the necessary steps to protect benefits for their participants.

As Trustees of other critical and declining plans consider how they may best fulfill their fiduciary duty to their participants, this long-awaited approval provides one guidepost toward a successful application under MPRA to ensure the solvency of their plan.

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 .