PBGC Multiemployer Update

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NCCMP Lawyers and Administrators Meeting
April 11, 2019

The opinions of Mr. Perlin do not necessarily reflect the views of the PBGC.

Presentation Overview

- PBGC Proposed Rule for Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors
- PBGC Final Rule on Multiemployer Plan Mergers and Transfers
- List of Insolvent Multiemployer Plans for FY 2018
- Partitions – Local 805 Pension and Plasterers & Cement Masons Local 94 Pension
- PBGC Policy Statement on Requests to Review Alternative Terms and Conditions to Satisfy Withdrawal Liability

PBGC Proposed Rule for Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors

Proposed Rule – Plan Sponsor Duties

- Proposed Rule published at 83 FR 32815 (July 16, 2018)

- Insolvency Notices and Updates – The current rule requires a plan that is insolvent or is expected to be insolvent for a plan year to provide a notice of insolvency to PBGC and to participants and beneficiaries. For each insolvency year, the plan must also provide a notice of insolvency benefit level to PBGC and participants and beneficiaries in pay status or reasonably expected to be in pay status.

- Proposed Rule – The plan would be able to provide one combined notice for the same insolvency year. And most of the annual updates to the notice of insolvency benefit level would no longer be required.

Proposed Rule – Plan Sponsor Duties

- Annual Actuarial Valuation – The current rule requires a plan terminated by mass withdrawal to perform an annual actuarial valuation of plan assets and liabilities. A plan can perform an actuarial valuation every 3 years if the present value of the plan's nonforfeitable benefits is $25 million or less

- Proposed Rule – Terminated plans and insolvent plans would file annual actuarial valuations with PBGC. A plan could perform an actuarial valuation every 5 years if the present value of the plan's nonforfeitable benefits is $50 million or less.

- Plans with nonforfeitable benefits of $50 million or less receiving financial assistance from PBGC could comply with the actuarial valuation requirement by filing alternative information specified in valuation instructions on our website

Proposed Rule – Plan Sponsor Duties

- Withdrawal Liability Payments – Terminated plans and insolvent plans would file information with PBGC about withdrawal liability, in the aggregate and by employer, that the plan has or has not yet assessed withdrawn employers
  - For each employer not yet assessed, information would include the name of the employer and the reasons the employer has not been assessed
  - For each employer assessed, information would include the name of the employer and whether there are scheduled periodic payments or a lump sum settlement
  - Information would need to be filed within 180 days after the earlier of the end of the plan year in which the plan terminates or becomes insolvent and each plan year thereafter, unless there is no updated information to file

PBGC Final Rule for Multiemployer Plan Mergers and Transfers

Final Rule - Mergers and Transfers

- Final Rule published at 83 FR 46642 (Sept.14, 2018); effective Oct. 15, 2018
- Provides procedural and informational requirements for facilitated merger requests
- Proposed changes to certain plan solvency requirements for mergers and transfers not adopted – to allow more time for consideration of public comments

Changes

- Informal consultation added
- Notice must include supporting data and assumptions for safe-harbor solvency test for non-significantly affected plans
- Waiver added for requirement that no participant's or beneficiary's accrued benefit will be lower immediately after if there is a contemporaneous MPRA benefit suspension
- Actuarial valuation requirement changed for non-significantly affected plans from within 3 years to most recent year

Additional Requirements for Facilitated Mergers

- 270 days advance notice
- Information requirements about the plans and merger, including actuarial and financial information
- Limits on financial assistance
- PBGC's decision is a final agency action

Current Solvency Tests

- Non-significantly affected plan test –
  - Fair market value of assets immediately after merger or transfer is equal to or greater than 5 times the benefit payments for the preceding year; or
  - Assets, contributions, and investment earnings is equal to or greater than expenses and benefit payments for each of the 5 years after the merger or transfer

Current Solvency Tests

- Significantly affected plan test –
  - Contributions equal or exceed amount necessary to satisfy minimum funding for 5 years after merger or transfer;
  - FMV of assets immediately after merger or transfer equals or exceeds total benefit payments for 5 years after merger or transfer;
  - Contributions equal or exceed benefit payments for first year after merger or transfer; and
  - Contributions for amortization period equal or exceed unfunded accrued benefits and normal cost. The amortization period is 25 years.

List of Insolvent Multiemployer Plans for FY 2018

PBGC

Insolvent Plans - 2018

- Carpenters Industrial Council of Eastern Pennsylvania Pension Fund
- Cement Masons Local 521 Pension Plan
- IATSE and MPMO Local Union No. 252 Pension Plan
- Insulators Local Union No. 112 Pension Trust Fund
- International Union of Tool, Die & Mold Makers Pension Plan
- Roofers Union No. 211 (Grand Rapids Roofers) Pension Plan
- Teamsters Local 575 Pension Fund

Partitions – Local 805 Pension and Plasterers & Cement Masons Local 94 Pension

Local 805 Pension (Teamsters)

- Partition order signed Nov. 16, 2018 and effective Jan. 1, 2019
- Plan covered about 2,000 participants in the New York, NY area
- Plan was about 25% funded and expected to become insolvent in the PY ending Mar. 31, 2022
- Benefits for about 500 participants were not reduced because of the statutory protections for older and disabled participants or were less than 110% of the PBGC guarantee amount
- The remaining participants will see future benefit reductions to 110% of the PBGC guarantee amount, an average reduction of 41% in benefits

Plasterers & Cement Masons Local 94 Pension

- Partition order signed Dec. 20, 2018 and effective May 1, 2019
- Plan covered about 100 participants in the Harrisburg, PA area
- Plan was about 45% funded and expected to become insolvent in the PY ending April 30, 2027
- Benefits for about 30 participants were not reduced because of the statutory protections for older and disabled participants or were less than 110% of the PBGC guarantee amount
- About 70 participants will see an average reduction of 38% in benefits

PBGC Policy Statement on Requests to Review Alternative Terms and Conditions to Satisfy Withdrawal Liability

Alternative Terms and Conditions to Satisfy Withdrawal Liability

- PBGC issued a policy statement on the information and factors PBGC considers when reviewing plan proposals for alternative terms and conditions to satisfy withdrawal liability, 83 FR 14524 (April 4, 2018)

- PBGC finds it helpful to see support for assertions that –
  - The proposal would retain employers in the plan long-term and secure income that may otherwise be unavailable, and
  - Absent the proposal, employers would withdraw or significantly reduce contributions in ways that would undermine plan solvency

Pension Benefit Guaranty Corporation

Alternative Terms and Conditions to Satisfy Withdrawal Liability

Information PBGC finds helpful to evaluate the proposal

- How is the payment amount or alternative schedule determined
- What requirements must the employer satisfy to be eligible
- What are the expected cash flows, recoveries of withdrawal liability, and other assumptions under statutory rules versus the proposal
- Information on the composition of contributing employers

Alternative Terms and Conditions to Satisfy Withdrawal Liability

Factors PBGC considers in its review of the proposal

- The proposal is in the interests of participants and beneficiaries
- The proposal does not create an unreasonable risk of loss to PBGC
- The proposal is otherwise consistent with ERISA and PBGC's regulations
- The proposal maximizes projected contributions and the net recovery of withdrawal liability compared to the statutory rules
- The assumptions used in the proposal are supported by credible data
- The proposal is reasonable in scope and applies uniformly to all employers

Alternative Terms and Conditions to Satisfy Withdrawal Liability

PBGC has an active informal consultation program –

- Trustees and advisors are encouraged to reach out to PBGC staff to discuss how to proceed with alternative withdrawal liability rule request

- Can help expedite the decision process

Thank You