



BENEFIT NEWS BRIEFS

Temporary MPRA Regulations on Administration of the Multiemployer Plan Participant Vote on a Suspension of Benefits Application Approved by The Treasury

The *Multiemployer Pension Reform Act of 2014 (MPRA)* provides relief to multiemployer pension plans that are projected to have insufficient funds to pay the full plan benefits to which individuals would otherwise be entitled. Such plans are referred to as being in "*critical and declining status*". Plan sponsors of such plans are permitted to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions are satisfied. Such suspensions are generally only allowed if they will permit the plan to continue on an ongoing basis.

This reduction of benefits under *MPRA* is referred to as a "suspension of benefits". This suspension of benefits is not permitted to take effect prior to a vote of the participants of the plan with respect to the suspension. See [Research Memo 2015-31](#) for more details on the guidance applicable to this general process.

In order to flesh out the details concerning this participant voting process, the IRS has released [temporary regulations](#) on the issue. These temporary regulations also serve as the text of the [proposed regulations](#) published elsewhere in this issue of the Federal Register. Any reference below to actions which the Treasury Department may take shall be undertaken only after consultation with the DOL and PBGC.

These temporary regulations apply June 17, 2015 through June 15, 2018.

The *Preamble* to these temporary regulations contains a discussion of the statutory background under *MPRA* of the general participant voting process, including listing the *MPRA* guidance released so far. We will not rehash those details other than to note that although earlier temporary regulations set forth many of the rules relating to the participant vote they did not provide *detailed guidance* on how the Treasury Department would administer the vote. These temporary regulations fill in those gaps. The following discussion is drawn from the *Preamble* to the temporary regulations.

Explanation of the Temporary Regulations

Our discussion will begin with an overview of the voting process and also discuss:

- *Distribution of the Ballot Package*
- *Voting by Eligible Voters and Collection and Tabulation of Votes*
- *Determination That a Majority of Eligible Voters Has Voted to Reject the Suspension*
- *Items Related to the Contents of the Ballot*

Overview Of The Voting Process

Eligible voters are defined as all plan participants and all beneficiaries of deceased participants. A participant vote requires the completion of the following three steps:

- A package of ballot materials is distributed to eligible voters.
- The eligible voters cast their votes and the votes are collected and tabulated.
- The Treasury Department determines whether a majority of the eligible voters has voted to reject the proposed suspension.

As part of the voting process, the Treasury Department is permitted to designate a service provider or service providers to facilitate the administration of the vote. The service provider may assist in the steps of distributing the ballot package to eligible voters and collecting and tabulating the votes. If a service provider is designated to collect and tabulate votes, then the service provider will provide the Treasury Department with the report of the results of the vote, including a breakdown of the number of eligible voters who voted, the number of eligible voters who voted in support of and the number who voted to reject the suspension, and certain other information. The Treasury Department will use that information to determine whether a majority of eligible voters has voted to reject the suspension.

Distribution of the Ballot Package

The ballot package sent to eligible voters includes the approved ballot and a unique identifier for each eligible voter to ensure the integrity of the voting and to also protect the eligible voters' privacy. The rules do not permit the plan sponsor itself to distribute the ballot, but the plan sponsor is responsible for furnishing a list of eligible voters to the designated service provider so that the ballot can be properly distributed.

The list of voters provided by the plan sponsor must include the last known correct mailing address for each eligible voter, as well as a list of eligible voters whom the plan sponsor has been unable to locate. In addition, the plan sponsor must furnish current electronic mailing addresses for certain eligible voters.

Furthermore, the plan sponsor must also furnish the individualized estimates of the effect of the benefit suspension that was provided to eligible voters as part of the earlier notices required when a plan sponsor applies to the Treasury to implement a suspension of benefits. This individualized estimate of the effect of the benefit suspension shall be included with the ballot packet sent to each eligible voter. These materials **must be provided** by the plan sponsor **no later than 7 days after** the date the Treasury Department has **approved an application** for a suspension of benefits.

The plan sponsor is responsible for paying all costs associated with the ballot package, including printing, assembling and postage for mailing those ballot packages. The ballot packages will be distributed to eligible voters by first-class U.S. mail. A supplemental copy of the mailed ballot package may also be sent by an electronic communication to an eligible voter who has consented to receive electronic notifications. Other details apply to the use of electronic notifications. These electronic notifications are sent by the plan sponsor, not the designated service provider.

Voting by Eligible Voters and Collection and Tabulation of Votes

The Treasury Department shall administer the participant vote no later than 30 days following the date of approval of an application for a suspension of benefits. The voting period must begin (but need not end) within said 30-day timeframe. Thus, the ballot packages must be distributed no later than 30 days after the application has been approved and specify that the voting period begins on the ballot distribution date. It is generally expected that ballot packages will be distributed well before that deadline.

The voting period generally will remain open until the 30th day following the date the Treasury Department approves the application for a suspension of benefits. However, the voting period will not close earlier than 21 days after the ballot distribution date. The Treasury Department is permitted to specify a later end to the voting period in appropriate circumstances, such as significant technical difficulties with respect to the collection of votes that cannot be resolved in time to provide eligible voters with sufficient time to cast their votes.

Votes must be collected and tabulated using an automated voting system under which each eligible voter must furnish a unique identifier in order to cast a vote. Votes will be recorded both electronically (through a Web site) and telephonically (through a toll-free number that will accommodate a touchtone or interactive voice response). Votes are permitted to be cast using only these two methods; any other responses are invalid.

Determining If a Majority of Eligible Voters Has Rejected the Suspension

Within 7 days after the end of the voting period, the Treasury Department will either certify that a majority of all eligible voters has voted to reject the suspension or not reject the suspension proposal. The Treasury Department may establish a process for an eligible voter to challenge the results of the vote. It is expected that the Treasury Department will resolve any challenges before the conclusion of the 7-day period following the end of the voting period.

Items Related to the Contents of the Ballot

The statement in opposition to the proposed suspension that is compiled from comments received on the application will be prepared by the DOL and shall be written in a manner that is readily understandable to the average plan participant. The statement in opposition will be written in a manner to ensure parity with the statement in support of the suspension. If there are no comments in opposition to the proposed suspension, then the statement in opposition will indicate that there were no such comments.

The Treasury Department may publish a model ballot for use in the voting process.

FOR FURTHER INFORMATION CONTACT:

The Department of the Treasury *MPRA* guidance information line at (202) 622-1559 (not a toll-free number).

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