



BENEFIT NEWS BRIEFS

PBGC "Partition" Regulations Under MPRA

The PBGC released an [interim final rule](#) prescribing the application and notice process for a plan seeking a partition under the PBGC's new partition authority under the *Multiemployer Pension Reform Act of 2014 (MPRA)*. The *Preamble* to the regulations indicates that the PBGC expects *fewer than 20 plans* would be approved for partition *over the next three years* and that the PBGC will provide less than \$60 million per year to those plans.

In addition to the interim final rule, the PBGC also released some sets of Frequently Asked Questions (FAQs) about partitions, as well as model forms. Due to the very small number of plans expected to be affected by a partition, we will only hit the highlights from the FAQs. Interested readers should consult the regulations and their Plan professionals for more detail and advice.

Before looking at the FAQs, it may be helpful to look at the old partition rules and the new ones. The PBGC summed up the comparison as:

Before the new law, PBGC could partition a multiemployer plan likely to become insolvent upon application by a plan sponsor or on its own accord. In either case, partition was only available in certain limited circumstances involving employer bankruptcies, and the liabilities transferred were restricted to the nonforfeitable benefits directly attributable to service with bankrupt employers, along with an equitable share of assets.

Participants whose benefits had been transferred to the new plan would receive their benefits, but reduced to the PBGC guarantee level. Meanwhile, participants in the ongoing plan would continue to receive unreduced plan benefits.

The new law expands the circumstances under which PBGC may assist financially troubled multiemployer plans to prevent insolvency and, thereby, preserves participant and beneficiary benefits above the PBGC benefit guarantee level.

Under the new law, a "partition" is a process whereby a multiemployer plan that is in danger of becoming insolvent (the original plan) transfers the minimum amount of liabilities necessary for it to remain solvent to a newly created successor plan. No plan assets are transferred. While the same Board of

Trustees will administer the original plan and the successor plan, PBGC will provide financial assistance to the successor plan to pay the transferred benefits.

From: FAQs 13 and 16 at: <http://www.pbgc.gov/prac/pg/mpira/partition-regulation-faqs.html>. For a sample calculation see FAQs 14 and 15. Now we shall look at the other FAQs.

I. Criteria for Partitions

What are the eligibility requirements for partition?

Five statutory conditions must be satisfied for the PBGC to approve a partition:

- The plan is in critical and declining status,
- PBGC determines that the plan sponsor has taken (or is taking) all reasonable measures to avoid insolvency,
- PBGC determines that a partition of the plan will reduce PBGC's expected long-term loss and is necessary for the plan to remain solvent,
- PBGC certifies to Congress that PBGC's ability to meet existing financial assistance obligations to other plans will not be impaired by the partition, and
- The cost of the partition is paid exclusively from PBGC's multiemployer fund.

What is "critical and declining status"?

A plan is in critical and declining status if:

- The plan satisfies the criteria for critical status or elects to be in critical status, and
- Is projected to become insolvent during the current plan year or any of the 14 succeeding plan years (or 19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one or if the funded percentage of the plan is less than 80%).

The plan actuary must certify annually whether or not a plan is or will be in critical and declining status for such plan year.

Can there be a partition without benefit suspensions?

Yes, but that would be unlikely. That could happen only if no participant or beneficiary is entitled to a benefit above 110% of the applicable PBGC guarantee. The PBGC indicates it expects that most applicants for partition will also apply to Treasury for a suspension of benefits.

II. Application and Filing Requirements

Who may file an application for approval of a proposed partition?

Only the plan sponsor may file a partition application. The application must be personally signed and dated by an authorized trustee who is a current member of the board of trustees.

Where should a plan sponsor file an application?

Applications may be emailed to: Multiemployerprogram@pbgc.gov or mailed to:

Multiemployer Program Division
Pension Benefit Guaranty Corporation
1200 K Street, NW, Suite 9537
Washington, DC 20005

Do plan sponsors have to notify participants of a partition application?

Yes. If the plan sponsor has submitted a partition application, it must notify the following people and entities:

- Participants,
- Beneficiaries of deceased participants,
- Alternate payees,
- Employers obligated to contribute under the plan,
- Employee organizations that currently have a collective bargaining agreement pursuant to which the plan is maintained, and
- The PBGC.

When is the notice required to be provided to participants?

This notice must be provided no more than 30 days after PBGC informs the plan sponsor that its application for partition is complete. Model notices are available at: <http://www.pbgc.gov/MPRA>.

What information is required in the application for partition?

An application for partition includes basic plan information, the partition proposal, actuarial and financial information, participant census data, and financial assistance information. Details on the information required can be found in [Part 4233, Partitions of Eligible Multiemployer Plans](#). The PBGC may require a plan sponsor to submit additional information necessary to make a determination on an application.

What is the timeframe for PBGC to approve an application?

PBGC will perform an initial review to determine if the application is complete. If the application is incomplete, PBGC will let the plan sponsor know what information is missing. Upon determining that the application is complete, PBGC will notify the plan sponsor, in writing. After notifying the plan sponsor the application is complete, the PBGC has 270 days to review the application.

III. Key Terms and Definitions

The regulations define some 15 terms. Four key terms are listed below:

"original plan" - The term "original plan" refers to the multiemployer plan that applied for the partition.

“successor plan” - The term “successor plan” refers to the new plan created by a partition order.

“successor plan benefit” - A “successor plan benefit” is the PBGC-guaranteed portion of a participant’s or beneficiary’s monthly benefit that is transferred to a successor plan. Successor plan benefits are funded solely by PBGC financial assistance payments to the successor plan.

“residual benefit” - A “residual benefit” is the portion of the benefit payable under the original plan after the partition. It is equal to the difference between the monthly benefit that would be paid if the partition had not occurred (taking into account MPRA “benefit suspensions” and any plan amendments following the effective date of such partition) and the successor plan benefit. Together, a participant’s residual benefit and successor plan benefit constitutes the participant’s monthly benefit.

IV. Partition Orders and Post-Partition Responsibilities

What is included in a partition order?

The partition order will summarize PBGC’s findings and conclusions on the application for partition, the effective date of an approved partition, the obligations and responsibilities of the plan sponsor to the original plan and successor plan, terms and conditions of the partition, and other appropriate information.

Do withdrawal liability calculations change with a partition?

If an employer withdraws from the original plan within 10 years after the date of the partition, withdrawal liability is computed with respect to the original plan and the successor plan.

If the withdrawal occurs more than 10 years after the date of the partition, withdrawal liability is computed only with respect to the original plan (not the successor plan). In both cases, withdrawal liability is paid to the original plan.

When a plan is partitioned, does the original plan have any further obligations to the participants whose benefits are transferred to a successor plan?

Yes. The original plan is responsible for providing the *residual benefit* (the difference between what it would have paid if no partition had taken place and what PBGC is providing under the successor plan) to those participants whose benefits are transferred to a successor plan.

Are there any other costs to the original plan?

Yes, MPRA imposes a special premium rule and a benefit improvement premium on the original plan. Under the *special premium rule*, the original plan must pay PBGC premiums for the successor plan for the first 10 years after the partition takes effect.

Under the *benefit improvement premium* rule, the original plan must pay a premium to PBGC if it restores a suspended benefit, increases a benefit, or provides

a benefit improvement post-partition. The original plan must pay this premium to the PBGC for each of the 10 years following the partition effective date.

The annual amount of the benefit improvement premium is the lesser of:

- The total value of the increase in benefit payments for the year that is attributable to the benefit improvement, or
- The total benefit payments from the successor plan for the year.

Will PBGC have jurisdiction over the original and successor plans?

Yes. PBGC will continue to have jurisdiction over the original plan and the successor plan to carry out the purposes, terms and conditions of the partition order.

How can I get more information about how to file for a partition?

For consultation prior to filing, parties may call (202) 326-4100 x6804 or email partitioninquiries@pbgc.gov.

The following documents are available to download:

- [Part 4233](#) (the partition regulations)
- [Model Notice for Plans Filing an Application for Partition Only](#)
- [Model Notice for Plans Filing Coordinated Applications for Partition and Suspension of Benefits](#)

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For previous *MPRA* newsletters:

[Client Bulletin 2014-60](#) – *MPRA* Overview

[Client Bulletin 2015-27](#) – [temporary](#) and [proposed](#) IRS *MPRA* regulations.

[Research Memo 2015-31](#) – More on *MPRA* temporary regulations

[Benefit News Briefs 2015-33](#) – *MPRA* Revenue Procedure 2015-34

[Benefit News Briefs 2015-45](#) – Temporary *MPRA* Voting regulations

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