



BENEFIT NEWS BRIEFS

PBGC Publishes Proposed Rule On Mergers and Transfers Between Multiemployer Pension Plans

The Pension Benefit Guarantee Corporation (PBGC) recently issued a [proposed rule](#) that would amend the PBGC's regulation on *Mergers and Transfers Between Multiemployer Plans* to implement Section 121 of the *Multiemployer Pension Reform Act of 2014* ("MPRA"). The proposed rule would also reorganize and update the existing regulation by dividing it into subparts. Subpart A would contain the general merger and transfer rules. Subpart B would provide guidance on procedures and information requirements for facilitated mergers, including those involving financial assistance.

A specially prepared copy of the proposed rules with a table of contents added for ease of navigation is available by "[clicking here.](#)"

Limited Impact

The PBGC expects that *fewer than 20 plans* would be approved for either partition or financial assistance merger *over the next three years* (about *six plans per year*), and that the total financial assistance PBGC would provide under both provisions would be *less than \$60 million per year*. Plan professionals of plans that may be affected by these rules will want to review the *Preamble* and proposed regulations.

Overview

Section 121 of MPRA amends the existing rules under Section 4231 of *ERISA* by adding a new Section 4231(e), which clarified the PBGC's authority to facilitate the merger of two or more multiemployer plans if certain statutory requirements are met. For these purposes "facilitation" may include training, technical assistance, mediation, communication with stakeholders and support with related requests to other government agencies.

In addition, subject to certain requirements, the PBGC may provide financial assistance to facilitate a merger it determines is necessary to enable one or more of the plans involved to avoid or postpone insolvency. The proposed rule would provide guidance on the process for requesting a facilitated merger, including a request for financial assistance.

The proposed rule would also provide guidance on:

- The process for submitting a notice of merger or transfer, and a request for a compliance determination or facilitated merger;
- The information required in such notices and requests;
- The notification process for PBGC decisions on requests for facilitated mergers; and
- The scope of PBGC's jurisdiction over a merged plan that received financial assistance.

PBGC Discretion and Assistance Criteria

The decision to facilitate a merger is within PBGC's discretion. Before the PBGC may exercise this discretion, it must first determine, in consultation with the Participant Advocate and Plan Sponsor, that the merger is in the interest of the participants and beneficiaries of at least one of the plans, and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans.

The PBGC may provide financial assistance to facilitate a merger that it determines is necessary to enable one or more of the plans involved to avoid or postpone insolvency, if the following statutory conditions are satisfied:

- One or more of the plans involved in the merger must be in critical and declining status.
- The PBGC must reasonably expect that financial assistance will reduce the PBGC's expected long-term loss with respect to the plans involved; and financial assistance is necessary for the merged plan to become or remain solvent.
- The PBGC must certify that its ability to meet existing financial assistance obligations to other plans will not be impaired by the financial assistance.
- The financial assistance must be paid exclusively from the PBGC fund for basic benefits guaranteed for multiemployer plans.
- The PBGC must provide notice of the financial assistance to the Committee on Education and the Workforce of the House of Representatives; the Committee on Ways and Means of the House of Representatives; the Committee on Finance of the Senate; and the Committee on Health, Education, Labor, and Pensions of the Senate.

Additional Matters

The proposed rule also would amend the definition of “*significantly affected*” to include a plan in endangered or critical status that engages in a transfer (other than a de minimis transfer). Originally, only plans transferring 15% or more of their assets, or receiving a transfer of unfunded accrued benefits equaling 15% or more of their assets were treated as significantly affected plans.

The proposed rules also make changes in the use of actuarial valuations, solvency requirements, notice rules, and the information requirements for a financially assisted merger.

Informal Discussion with PBGC Encouraged

The *Preamble* notes the proposed rule clearly provides that plan sponsors may engage in informal consultations with PBGC to discuss proposed mergers and transfers. Informal consultation is particularly important in the context of a proposed financial assistance merger because the PBGC’s ability to provide financial assistance will depend on, among other things, its ability to meet existing financial assistance obligations to other plans.

Effective Date

The proposed rule would be applicable to mergers and transfers on or after the effective date of the final rule.

Comments

Comments are due by August 5, 2016. Information about how to provide comments is listed in the *Preamble*.

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