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CLIENT BULLETIN

Two More MPRA Suspension Applications Bite the Dust

The Treasury Department recently denied two more benefit suspension Applications filed under the *Multiemployer Pension Reform Act (MPRA).* Under *MPRA*, the Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Secretary of Labor, must approve an Application upon finding that the plan is eligible for the benefit suspensions and has satisfied the applicable statutory requirements. *MPRA* requires, among other things, that the Application demonstrate that the proposed benefit suspensions are reasonably estimated to allow the plan to avoid insolvency. The Treasury cannot approve an Application unless the proposed benefit suspensions would reasonably ensure the plan's long-term solvency.

The two Applications that were recently denied were the *Ironworkers Local 16 Pension Fund* and the *Teamsters Local 469 Pension Fund*. For a list of all Applications and their statuses go to: https://www.treasury.gov/services/Pages/Plan-Applications.aspx. We will briefly discuss some of the reasons the Applications were rejected. There are many in the multiemployer community that have expressed dismay at what they see as a failure to adhere to the statutory rules by the Special Master and Treasury. Under *MPRA,* Treasury may appoint an individual ("Special Master") to coordinate the implementation of the *MPRA* regulations and to help in the review of applications for the suspension of benefits and other appropriate documents, and to provide recommendations to the Secretary of the Treasury with respect to decisions required under these regulations.

Ironworkers Local 16 Pension Fund

The Treasury rejected this Application stating that the suspensions described in the Application failed to satisfy the requirement set forth in *MPRA* "that the proposed benefit suspensions, in the aggregate, be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency". The Treasury said the application failed this test because the <u>mortality</u> and the <u>hours of service assumptions</u> used for this purpose are *not reasonable.*

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Problems with the mortality assumptions

In particular, the denial letter stated that the mortality and mortality improvement assumptions used in the Application are not reasonable because they:

- do not take into account relevant historical and current demographic data;
- have a significant bias in that they overestimate the rate at which Plan participants and beneficiaries will die; and
- are not appropriate for the purpose of the intended measurement (that is, cash flow projections to demonstrate solvency under MPRA).

The denial letter explained that the Application used the 1983 Group Annuity Mortality Table (1983 GAM Table) which is significantly out of date. The 1983 GAM Table was based on mortality experience from the 1960s that was projected to 1983 based on U.S. population data since 1966. The Treasury noted that mortality rates have declined significantly since the early 1980s. Thus, by relying on an outdated mortality table, the Application underestimates the future benefit payments that must be taken into account in projecting cash flows.

The denial letter continued stating that of even greater significance to the Treasury was that the Application made no provision for mortality improvement for the period from 1983 to the proposed effective date of the suspension, or for the 30-year solvency projection period following the effective date of the suspension.

Problems with the hours of service assumption

The denial addressed the flaws in the hours of service assumption as well. The Application assumed that that the contribution base units (CBUs) will be 275,000 for 2016 and will remain unchanged at that level through 2046. However, the Treasury observed these assumptions fly in the face of the fact that for many years CBUs have been *decreasing*, including significant decreases in the last three years. Neither the Application nor supplementary information the Plan provided established a sufficient basis for this assumption.

The denial letter concluded that the CBU assumption is *not* reasonable because it:

- does not take into account relevant historical and current demographic data; and
- has a significant bias in that it is significantly optimistic with respect to the employer contributions during the solvency projection period.

Based on the foregoing, the Treasury denied the Application because the proposed suspension fails to satisfy the statutory criteria for approval.

Teamsters Local 469 Pension Fund

The Treasury rejected this Application stating that the suspensions described in the Application failed to satisfy the requirement set forth in *MPRA* "that the proposed benefit suspensions, in the aggregate, be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency."

In particular, the Treasury concluded that the following two assumptions used for the actuarial projections in the Application are not reasonable: (1) the assumption regarding the election of spousal survivor benefits and (2) the investment return assumption.

Problems with the assumption on election rate of joint-and-survivor annuity
The denial letter explained that the Plan's *own experience* is that over 70% of participants receive a joint-and-survivor annuity. In its Application, the Plan assumes that 80% of all participants who have not commenced their benefits are married, and its cash flow *projections* reflect the further *assumption* that *100%* of the married participants will *choose to waive* their subsidized joint-and-survivor annuities and *receive less valuable single-life annuities*.

The Treasury concluded this assumption is not reasonable because it:

- does not adequately take into account relevant historic and current demographic data;
- has a significant bias; and
- is not appropriate for the purpose of the measurement (the cash flow projections relating to proposed benefit suspensions under MPRA).

The investment return assumptions are not reasonable
The Treasury discussed the flaws it saw in the investment return assumptions. For example, the Application used a 7.25% annual investment rate of return assumption for the *entire 45-year solvency projection period*. This assumption is not reasonable because it:

- does not adequately take into account relevant current economic data (that is, appropriate investment forecast data);
- has a significant bias in that it is significantly optimistic;
- is not appropriate for the purpose of the measurement (cash flow projections relating to proposed benefit suspensions under MPRA), taking into account the Plan's negative cash flows and other factors.

Additional concerns with the application
In addition to the above problems the Treasury had with the application, there were also assumptions and methods that may not be reasonable for the purpose of the measurement but that are unlikely to have a material impact on the outcome of the cash flow projections:

- The assumption that active participants who become disabled will wait until age 65 to commence benefits. The most reasonable assumption is that disabled participants who are no longer earning wages and are likely to have a shorter life expectancy would commence benefits when they are eligible to do so.
- The assumption that all participants who are past normal retirement age but have not yet retired will retire immediately.
- For participants who are likely to retire when they first become eligible for an unreduced early retirement benefit upon completing 30 years of service, the assumption that benefit commencement will begin on the 30th anniversary of

plan participation which does not take into account that some participants may have partial years of service and thus their eligibility for this benefit would be delayed.

- The assumption that the mortality rates of plan participants are those of a person two years older than the participant's actual age (i.e., ages are set forward two years).
- The projections did not take into account the proposed suspension of accruals earned during 2015.

Conclusion

More applications are expected to be ruled on in the next few months. We will report on those decisions as they occur. In the interim, these denials serve as a guide to what the Treasury is examining during the application process.

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