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Multiemployer Pension Plan Ref

How Will the New Rules
Impact Employers and
Employees?

by | **William P. Sweeney** and **Robert E. Entin**





This article takes an early look at important aspects of the Multiemployer Pension Reform Act passed in late 2014. Actuaries and attorneys will write in detail about individual aspects of MPRA in future issues.

Recent changes in federal laws that apply to multiemployer pension funds may have significant implications for employees, retirees and contributing employers.

Historically, these pension funds have depended on steady contributions from employers in the manufacturing, construction, transportation and other heavily unionized industries. Even though thousands of companies continue to participate in these funds, the future for many plans is far from certain. According to its most recent annual report, the Pension Benefit Guaranty Corporation (PBGC) estimates that over 10% of multiemployer plans are “substantially underfunded” and therefore may fail in the future. Despite the positive market returns on their investments in recent years, some funds have suffered due to reductions by employers in the numbers of their union employees covered by these plans. As a result, there are fewer and fewer active employees but ever-increasing numbers of retirees in these funds. In addition to these demographic trends, the low-interest-rate environment has

increased the actuarial values of the funds' benefit liabilities, further aggravating the underfunded status of some plans.

Some funds are now faced with the very real prospect that their assets eventually will become insufficient to meet the federal benefit guarantees that are insured by PBGC. This may result in even greater stress on PBGC reserves. In fact, the PBGC recently announced that its entire multiemployer plan insurance program, which oversees more than 1,400 funds with ten million union workers, could become insolvent within the next decade. The total tab to avoid complete insolvency is currently estimated to be a whopping \$42.2 billion.

MPRA and the Possibility of Significant Benefit Reductions

With no appetite for a full bailout of the multiemployer pension plan system, Congress passed the Multiemployer Pension Reform Act of 2014

(MPRA). The White House expressed no objection to the sweeping legislation, and President Obama signed MPRA into law last December. MPRA is intended to help PBGC's financial position and provide new tools for troubled multiemployer pension funds as they fight for long-term survival.

Without question, the most controversial change made by MPRA allows a fund to suspend benefit payments—including benefits for some current retirees—to improve its finances. MPRA makes no bones about what it means for a fund to “suspend” payments: It can be either a temporary or permanent reduction in the benefit levels for plan participants that the fund's actuary determines is necessary to avoid insolvency.

This is an extraordinary change to the federal laws that apply to pension plans. For over 40 years, virtually all accrued benefits under private pension plans, including those under multiemployer funds, were protected by the

“anticutback” restrictions under the Employee Retirement Income Security Act of 1974 (ERISA).

Now, a distressed multiemployer pension fund will be permitted to seek reductions in benefits and, assuming it follows the detailed procedures under MPRA, will generally be immune to challenges from the government and lawsuits brought by unhappy participants and beneficiaries.

The benefit reductions may be large for some participants. In fact, some employee rights groups have estimated that a retiree's benefits under some distressed multiemployer funds could be reduced by as much as 60%. However, MPRA limits the reductions to no less than 110% of PBGC's annual guarantee, which currently is set at a maximum of \$12,870 per year for a multiemployer fund participant. In addition, retirees over the age of 80 and disabled participants would be fully protected under MPRA from any benefit cuts, while retirees between the ages of 75 and 80 would be partially protected. The benefits of all other retirees and plan participants could be reduced, however.

How a Fund Can Seek to Reduce Benefits

MPRA has detailed procedures a fund must follow before it can reduce benefits, including an extensive approval process that will be overseen by the Treasury Department, in consultation with the Department of Labor (DOL) and PBGC, under strict statutory deadlines. The pension fund must justify its request to reduce benefits by providing detailed information to the Treasury Department. The fund must include supporting actuarial projections

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that the reductions are necessary to avoid fund insolvency. The Treasury Department may reject benefit cuts either in whole or in part and may also require the fund to provide additional information. For multiemployer funds with at least 10,000 participants, a class representative must be appointed to represent the interests of retirees during the Treasury Department review process. Due to these extensive procedures, some troubled plans—such as the Central States pension fund—have announced that it may take up to one year before any reductions could take effect.

Even if the Treasury Department approves the fund's application, plan participants will have a chance to reject the benefit reductions. This will take the form of a mandatory vote that must be extended to all participants—actives, retirees and all other participants. The vote must be conducted under very detailed ballot procedures and time lines. While the rejection vote serves as a check on the fund's authority to reduce benefits, MPRA also requires that a majority of all participants actually vote to reject the benefit reductions. That is, the rejection vote will have no impact on the cuts unless a majority of all plan participants actually vote to reject the cuts.

Even if a majority reject the cuts, the Treasury Department can override the vote if it determines that the fund is a *systemically important* plan. This exception will capture only the largest of all distressed multiemployer plans, as the Treasury Department's override authority applies solely to plans for which PBGC estimates that its future financial assistance that could be needed to sustain the plan exceeds \$1 billion if the reductions are not implemented.

Other Key Changes Under MPRA

In addition to possible benefit reductions, MPRA makes many other changes that may impact employers and their employees. Many of the changes are intended to enhance PBGC's authority and improve its financial position over time. For example, MPRA allows greater authority for PBGC to partition multiemployer plans to carve off "orphan" liabilities attributable to employees whose employers previously withdrew from the plans.

PBGC would also have additional tools to facilitate mergers of troubled multiemployer plans. Historically, PBGC has been very reluctant to exercise its authority for plan partitions and mergers, but that may change significantly under MPRA. However, going forward, plan partitions and mergers may be useful for those funds that are saddled with large *orphaned*

takeaways >>

- PBGC has estimated its unfunded liability for distressed multiemployer pension funds is \$42.2 billion.
- A pension fund otherwise facing insolvency now has the ability to seek a temporary or permanent reduction in benefits. Benefits for disabled participants and retirees older than 80 cannot be reduced, and those aged 75-80 would face less severe reductions.
- Pension benefits cannot be reduced to below 110% of the amount PBGC would pay retirees if PBGC were to take over benefit payments.
- The process for reducing benefits is detailed and time-consuming. If a majority of plan participants vote against a benefit reduction, it can be rejected, although the Treasury Department can override a negative vote if the pension plan liability is large enough.
- MPRA doubles the multiemployer fund premium to PBGC, gives PBGC additional tools to try to help troubled funds improve their funding status and makes substantial changes in other areas.
- Additional guidance is expected this year on many provisions of MPRA.

liabilities (i.e., underfunded benefit liabilities attributable to employers that previously withdrew without paying their full delinquent contributions and withdrawal liabilities).

PBGC is expected to issue future guidance as to how it might use its new suite of tools in these areas.

In addition, beginning in 2015, MPRA requires the PBGC insurance premiums that all multiemployer funds must pay to double from \$13 per participant to \$26 per participant. The annual premium amounts in future years will be increased for inflation.

MPRA also clarifies the rules for determining an employer's *withdrawal liability*, which is the additional amount that a company must pay into a fund when it exits an underfunded multiemployer plan. In recent years, as the number of employer withdrawals has increased due to corporate bankruptcies and market downturns, many companies have received hefty bills for withdrawal liabilities. MPRA provides some limited relief to withdrawing employers. Beginning in 2015, funds will not be permitted to include certain contribution surcharges in the calculation of an employer's withdrawal liability. This should generally reduce an employer's withdrawal liability if it decides to leave the fund in the future, although the amount of any reduction may vary greatly and will depend on the employer's contribution history and the specific multiemployer fund to which pension contributions are made.

MPRA also expands the required disclosures that a fund must provide to plan participants, participating employers, labor organizations and other interested parties. The enhanced disclosures will allow these parties to request additional governing documents and detailed financial information about their pension funds. These new rules were intended, in part, to allow greater transparency to both employers and employees as the fund makes its decisions on implementing MPRA changes.

MPRA also creates new funding-based classifications for multiemployer plans and provides additional flexibility for their actuaries to make annual funded status determinations. In particular, for underfunded plans that may seek benefit reductions, the fund's actuary must certify that the plan is in "critical and declining status." This requires the actuary to determine that the plan is projected to become insolvent in the current plan year or any of the 14 following plan years (or, if the plan is less than 80% funded or has a ratio of inactive to active participants that exceeds two to one, that it is projected to become insolvent in the current plan year or any of the 19 following plan years). MPRA also removes the "sunset date" for the special funding rules for multiemployer plans under the Pension Protection Act of 2006, which effectively makes those provisions permanent going forward.

What's Next for Employers and Employees?

MPRA changes generally take effect with the 2015 plan year. As a result, for calendar year plans, the new rules already are effective. Employers and employees in a multiemployer pension plan may want to begin making inquiries to the fund's board of trustees as to whether it will implement any changes under MPRA, including the new rules that allow for potential benefit reductions.

In addition, PBGC, the Internal Revenue Service and DOL are expected in the next few months to issue detailed guidance on the MPRA changes. Depending on a fund's decisions to implement MPRA changes and the future regulatory guidance, there could be significant issues for the bargaining parties to address in future collective bargaining negotiations.

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William P. Sweeney is a shareholder in the Chicago, Illinois office of Polsinelli PC, where he advises public, private and tax-exempt employers on the design, implementation and administration of all types of welfare plans and tax-qualified retirement plans. He also has significant experience with multiemployer benefit funds and advises clients on withdrawal liability matters and ERISA fiduciary compliance. Sweeney earned a J.D. degree from John Marshall Law School and a B.S. degree from Millikin University.



Robert E. Entin is a shareholder at Polsinelli and previously worked as an in-house counsel for a large Chicago-area labor union. A labor and employment generalist, he counsels clients with employee discipline, hiring and firing, restrictive covenant, wage and hour and reasonable accommodation issues; drafts and updates employee handbooks, personnel policies and separation agreements; and represents clients in federal and state courts. Entin earned a J.D. degree from Chicago-Kent College of Law, Illinois Institute of Technology, and a B.A. degree from the University of Michigan.

Conclusion

MPRA is, without question, a "game changer" for many distressed multiemployer pension funds. Employers and employees should monitor whether their funds will seek to reduce benefits or implement any other changes under MPRA. Because many distressed pension funds are likely to pursue benefit reductions, the Treasury Department and other federal agencies will likely conduct public hearings and issue extensive written guidance in the near future. 

