



SLEVIN & HART, P.C.

Benefits Update

PBGC Issues Final Regulations on Terminated and Insolvent Plans

May 15, 2019

On May 2, 2019, the Pension Benefit Guaranty Corporation (“PBGC”) issued final regulations related to Terminated and Insolvent Multiemployer Plans and Duties of Plan Sponsors. The final regulations change the requirements applicable to terminated and insolvent multiemployer pension plans regarding notices of insolvency to certain interested parties, applications to the PBGC for financial assistance, required actuarial valuations, and withdrawal liability reporting.

Some of the significant changes set forth in the final regulations include the following:

- **Notice of Insolvency.** A multiemployer plan is considered to be insolvent for a plan year if it is, or will be, unable to pay benefits when due at any point in the plan year. Current regulations require multiemployer plans to send “notices of insolvency” stating the plan year that the plan is, or is expected to be, insolvent to participants, beneficiaries, the PBGC and certain other interested parties, generally within 30 days after determining that the plan will become insolvent in the current, next following or, in some cases, next 5 plan years. The final regulations modify this rule by providing that multiemployer plans must send the notices of insolvency by the later of (1) 90 days before the beginning of the plan year of insolvency, or (2) 30 days after the date the insolvency determination is made.
- **Notice of Insolvency Benefit Level.** An insolvent multiemployer plan must suspend all plan benefits that are not basic benefits guaranteed by the PBGC, except to the extent the plan sponsor determines that the plan has sufficient available resources to pay more than just the PBGC-guaranteed basic benefits for the entire plan year. In general, PBGC-guaranteed basic benefits are monthly benefit payments equal to 100% of the first \$11 of the Plan’s monthly benefit accrual rate, plus 75% of the next \$33 of the accrual rate, times each year of credited service. In addition to the notice of insolvency, multiemployer plans must send annual “notices of insolvency benefit level” with information stating the level of benefits that will be paid during a plan year in which the plan is insolvent. The plan must send the notice to the PBGC and participants and beneficiaries who are in pay status or expected to enter pay status that year, and the notice to affected participants and beneficiaries must include individual information

about the monthly benefit amount expected to be paid to them during the insolvency year. Under the final regulations, multiemployer plans must send the notices of insolvency benefit level by the later of (1) 90 days before the beginning of the insolvency year, or (2) 30 days after the date the insolvency determination is made. The plan may combine this notice of insolvency benefit level with the notice of insolvency discussed above.

- Annual Update to Notice of Insolvency Benefit Level. In addition to sending an initial notice of insolvency benefit level, current regulations require multiemployer plans to provide an updated notice annually to the PBGC and participants and beneficiaries who are in pay status or expected to enter pay status in the next plan year. The final regulations generally eliminate this annual updated notice requirement, providing that a plan must provide an updated notice to all parties only if there is a change in benefit level affecting participants and beneficiaries generally. If a change affects one or a class of participants and beneficiaries, but not all participants and beneficiaries generally, an updated notice is required to be provided only to the PBGC and the affected payee(s).
- Initial Application for PBGC Financial Assistance. If, after suspending all benefits that are not basic benefits guaranteed by the PBGC, a multiemployer plan sponsor determines that the plan will not have sufficient available resources to pay the PBGC-guaranteed basic benefits for the entire plan year, the plan sponsor must apply for initial financial assistance from the PBGC. Current regulations require plan sponsors to file the application for initial financial assistance at the same time that they file the notice of insolvency benefit level for that plan year with the PBGC. The final regulations modify the above rule by requiring that the application for initial financial assistance be filed with the PBGC by the later of 90 days before the first day of the month for which the plan sponsor determines that the plan will have insufficient resources to pay the basic benefits guaranteed by the PBGC, or as soon as practicable after making that determination.
- Actuarial Valuation Requirements. Current regulations generally require multiemployer plans terminated by mass withdrawal to perform an annual actuarial valuation, but permit plans with nonforfeitable benefits of \$25 million or less to perform a valuation once every 3 years. The final regulations expand this annual actuarial valuation requirement to apply to insolvent multiemployer plans and multiemployer plans terminated by plan amendment that are expected to become insolvent. In addition, the final regulations expand this exception to the annual valuation requirement by permitting plans with nonforfeitable benefits of \$50 million or less to perform a valuation only once every 5 years. Plans must file the actuarial valuation with the PBGC within 180 days after the end of the applicable plan year. Alternatively, insolvent plans with nonforfeitable benefits of \$50 million or less that are receiving financial assistance from the PBGC may comply with the actuarial valuation requirement by filing their current summary plan description, most recent actuarial valuation, and other information specified in instructions on the PBGC's website to allow the PBGC to prepare the actuarial valuation.

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- Withdrawal Liability Information. The final regulations require multiemployer plans subject to the above-described actuarial valuation requirements to file information about withdrawal liability, both in the aggregate and by employer, with the PBGC within 180 days after the end of the earlier of the year the plan becomes insolvent or the year the plan terminates, and each subsequent plan year.

The final regulations are effective July 1, 2019. Please contact Slevin & Hart for more information on multiemployer plan terminations and insolvency, and how the final regulations may affect your multiemployer plan.

Attorneys



Andy Dietrich



David Weingarten