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PENSION ANALYST COMPLIANCE BULLETIN



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IRS revises multiemployer suspension of benefit procedures

The IRS recently published [Revenue Procedure 2017-43](#), which contains revised procedures for suspension of benefits applications under multiemployer defined benefit plans in critical and declining status. These procedures replace the procedures set forth in [Revenue Procedure 2016-27](#). The revised procedures are effective for applications submitted on or after September 1, 2017.

Background

On December 16, 2014, President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2015. Although this law provided funding for most of the federal government through September 2015, it also contained the [Multiemployer Pension Reform Act of 2014 \("the Act"\)](#). The Act provides that certain multiemployer plans that are in critical and declining status may suspend or reduce benefits payable to plan participants and beneficiaries, provided certain conditions are satisfied. However, no suspension may take effect prior to a participant vote with respect to the suspension.

In 2015, the IRS published temporary regulations and Revenue Procedure 2015-34, which provided guidance for plan sponsors regarding suspension of benefits. The IRS also issued temporary regulations relating to the ballot package and the administration of the participant vote.

In 2016, the IRS published final rules pertaining to the suspension of benefits provision and Revenue Procedure 2016-27, which replaced the prior application procedures. As the result of experience gained in processing suspension of benefit applications, the IRS issued Revenue Procedure 2017-43 in July, which supersedes the prior guidance regarding procedures for suspension of benefits applications.

Revised application procedures

Revenue Procedure 2017-43 modifies the submission and notice requirements for suspension of benefits applications. Under the revised procedures, if the IRS identifies an error in the application after it is submitted, it will ask for additional materials to correct the error, instead of rejecting the application.

The latest guidance also includes the following changes:

- Projected withdrawal liability payments included as part of the plan's projection of available resources and the support for certification that the plan is projected to avoid insolvency (if the benefit suspensions go into effect) must be separately identified as projected payments attributable to prior withdrawals and projected payments attributable to expected future withdrawals;
- Sample calculations will only be needed for an individual currently receiving benefits, a contingent beneficiary of an individual currently receiving benefits, and a future retiree;
- Clarification to specify the age categories for which sample calculations with respect to the age-based limitations must be provided;
- In the case of an application in connection with a proposed plan partition, less information is needed to demonstrate that the proposed suspension is equitably distributed;
- Clarification regarding the different categories of individuals with respect to which sample notices must be provided as part of the application;

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- Consolidation of descriptions and detail of the actuarial assumptions used with respect to certain illustrations and projections included in the application, along with a requirement to provide additional details on those assumptions;
- A narrative statement of the reasons a plan is in critical and declining status must be included;
- The accountant's report from the most recently filed Form 5500 must be submitted; and
- The date on which the Treasury Department indicated that the application is a candidate for resubmission review must be included in the submission.

Additionally, the new procedure also includes minor clarifications to the Model Notice of Application for Approval of a Proposed Reduction of Benefits, the power of attorney and declaration of representative form, and application checklist.

Next steps

Sponsors of multiemployer defined benefit plans in critical and declining status looking to apply for a suspension of benefits should consult their plan's enrolled actuary or fund counsel if they have any questions regarding the application procedures.

Compliance Bulletin by Prudential Retirement

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