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ENROLLED ACTUARIES REPORT

The *Enrolled Actuaries Report* is a quarterly publication of the American Academy of Actuaries.
www.actuary.org

VOL.39 NO.1 SPRING 2015

A Deeper Look at the Multiemployer Plan Reforms

APPROXIMATELY 10 MILLION PEOPLE in the United States belong to about 1,400 multiemployer plans. The Pension Benefit Guaranty Corp., which insures those plans, reported a record $42.4 billion deficit in its multiemployer plan program in its 2014 annual report—creating a substantial risk that, without changes, the program would become insolvent.

In response, last December Congress passed a series of major changes to the law that governs multiemployer pension plans. **The Multiemployer Pension Plan Reform Act of 2014**:

- Creates a new funding status that allows plans to suspend benefits under certain circumstances;
- Grants the PBGC increased authority to facilitate plan mergers;
- Allows the PBGC to approve a partition for plans not in bankruptcy;
- Makes permanent certain sections of the Pension Protection Act that had been scheduled to expire at the end of 2014; and
- Increases PBGC premiums for multiemployer plans to $26 per capita, from $12, for plan years that commence after the end of 2014.

CRITICAL AND DECLINING' STATUS—DEFINITION, AND SUSPENSION OF BENEFITS

A new "critical and declining" status applies to plans projected by the plan actuary to become insolvent within 14 years, or "19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80 percent."

Plans in this new category may now apply to the Department of the Treasury to suspend benefits for participants. The act defines "suspension of benefits" as "the temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits."

Participants over 80 years of age cannot have their benefits suspended, and special limits apply for those over age 75. Disability pensions are also shielded from suspension, and no participant or beneficiary may have his or her monthly benefit reduced below 110 percent of the PBGC guarantee.

A plan may only apply to suspend benefits if the plan actuary certifies that doing so is projected to prevent insolvency. The Pension Reform Act includes a list of factors that plan sponsors must consider when suspending benefits—including participant age, time to retirement, and benefit histories—in order to ensure the suspensions are fair and equitable.

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Academy Kicks Off 50th Anniversary Celebrations

2015 MARKS the Academy's 50th anniversary. In conjunction with the Annual Meeting and Public Policy Forum, to be held Nov. 12-13 in Washington, we will hold a gala dinner the night of the 12th. Please mark your calendars and plan on attending.

Other activities to mark the golden anniversary will include a commemorative booklet, an interactive timeline on our website, and video interviews with past presidents and others who were instrumental in the founding and development of the Academy as the professionalism and public policy voice of the U.S. actuarial profession. Watch here and *This Week* for updates.

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Advantages of Qualified Longevity Annuity Contracts

THE PENSION PRACTICE COUNCIL sent a **letter** to the Treasury Department in January regarding the benefits of allowing qualified defined benefit pension plans to provide longevity annuities directly, rather than requiring buyers to purchase an insurance contract.

The letter was addressed to Senior Advisor to the Secretary and Deputy Assistant Secretary for Retirement and Health Policy Mark Iwry. It commended recent final regulations regarding qualified longevity annuity contracts (QLACs), and argued that "significantly more Americans could benefit from such longevity annuities" if pension plans could provide them.

Among the advantages, the letter noted, providing a QLAC through a defined benefit pension plan would overcome some of the education challenges that have limited public acceptance of annuities, as the employer "is often a known and trusted source for the employee." Additionally, education materials about annuities could be included with plan documents, and "providing a QLAC as an optional form of settlement greatly simplifies the process of obtaining a QLAC and could expand usage."

The council's letter follows up on a presentation at the Academy's Summer Summit proposing a similar annuity program for 401(k) participants, detailed in the July ***Update***.

Advising the IRS on Use of Mortality Tables

THE PENSION COMMITTEE in February sent a **comment letter** to the IRS regarding the use of mortality tables to calculate pension funding requirements for the years after 2015. "In light of the Society of Actuaries' (SOA) publication of the RP-2014 mortality tables and the MP-2014 mortality improvement scale," the committee wrote, "IRS and Treasury may consider whether to use these tables based on the full dataset (or with adjustments for collar, amount or headcount weighting variants) as published, or with modification, or use alternative tables that reflect other sources of data or underlying assumptions."

While the committee agreed that plans should be using up-to-date mortality assumptions wherever possible, the letter said, "We believe that any changes to required tables for pension funding requirements should include alternatives for smaller plans (such as static tables) in order to simplify administration and valuations where the cost of the application of more sophisticated methods may not be justified."

Furthermore, the committee argued, it is becoming common to apply generational mortality projection when determining plan benefit obligations. "Introducing generational mortality in the calculation of lump sum benefits may increase the administrative complexity and cost of the plan; IRS and Treasury will have to weigh the increased cost to plan sponsors with the value provided to plan participants. In general, we recommend adopting methods that favor simplicity where the value of additional refinements in the resulting liability or lump sum benefit is small."

Acknowledging that "many of the questions the IRS and Treasury will consider do not have clear answers," the committee expressed its desire to meet with IRS officials to discuss "our understanding of the arguments in favor of, and against, the variety of techniques, methodologies and specific assumptions that you may consider."

The committee also submitted **comments** to the IRS and Treasury on potential improvements in the operation of Internal Revenue Code Section 436 while still protecting the funded status of pension plans. The recommendations address timing, application and avoidance rules of benefit restrictions, and conflicts with collective bargaining agreements.

Late Retirement Actuarial Equivalence

THE PENSION COMMITTEE sent a **comment letter** in January to the Pension Benefit Guaranty Corp. (PBGC) regarding how pension plans should determine, in the case of a participant who retires after his or her normal retirement age, the benefit that is actuarially equivalent to the benefit that would have been payable at normal retirement age.

The committee wrote, "We understand that the PBGC has taken a preliminary position that we believe runs counter to sound actuarial practice, and that will lead in some cases to inappropriately large retirement benefits. … In brief, the PBGC is interpreting plan provisions governing actuarial equivalence in a manner that results in benefits that are not actuarially equivalent."

The letter cautioned that the PBGC's position on survivorship benefits might not be appropriate, and "could lead to plans needing to make many corrections to items such as past benefit payments, contributions, PBGC premium payments and financial accounting disclosure."

The PBGC responded to the letter, stating that a misunderstanding exists on "PBGC's position regarding late retirement actuarial adjustments in a situation where a plan provides a 100% pre-retirement death benefit." Furthermore, PBGC states, "The mere presence of the term 'actuarial equivalence' does not preclude a plan from using a methodology that results in benefits larger than the minimum benefit required by ERISA" or in this case, larger than what the Pension Committee considered the actuarial equivalence.

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Plan sponsors must notify participants of their application for suspension of benefits, and Treasury will publish a notice in the *Federal Register* seeking comments on each application. Treasury has 225 days from the date of application to approve or deny the request. Applications not otherwise addressed within that time frame will be considered approved.

If Treasury approves an application to suspend benefits, plan sponsors have 30 days to conduct a vote of all participants and beneficiaries. The suspension will be rejected only if a majority of participants and beneficiaries—not merely a majority of those who choose to vote—vote against it.

In the event participants and beneficiaries vote to reject a benefit suspension, Treasury, along with representatives from PBGC and the Department of Labor, can determine that the plan is a "systemically important plan"—defined as a plan that projects PBGC liabilities of more than $1 billion. Such designation allows Treasury to make changes to benefit structures, irrespective of participants' vote to reject.

PLAN MERGERS

In order to help plans avoid or postpone insolvency, the Pension Reform Act gives the PBGC the authority to broker the merger of two or more pension plans, upon request by plan sponsors. The PBGC is authorized to facilitate a merger if "the transaction is in the interests 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 under limited circumstances, if one or more of the participating plans are in critical and declining status.

PLAN PARTITIONS

The act amends the Employee Retirement Income Security Act's rules for partitioning multiemployer plans, removing the restriction that a partition is only possible for beneficiaries whose employer had declared bankruptcy.

The PBGC may now approve partitions for plans in critical and declining status, if "the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency," and the PBGC certifies that the partition will not impair the plan's ability to meet existing obligations to other plans.

If a partition is approved, the PBGC will ensure that the partitioned plan transfers "the minimum amount of the plan's liabilities necessary for the plan to remain solvent." The act creates additional rules during the 10-year period following partition, including special withdrawal liability calculations for employers that withdraw from a partitioned plan within that period.

OTHER CHANGES

The act includes several amendments to the Pension Protection Act of 2006, including a provision that allows plans projected to be in critical status within five years to elect that status immediately, and tighter rules on emerging from critical status. Pension Protection Act funding rules that had been set to expire at the end of 2014 are now extended indefinitely.

Plans projected to emerge from the yellow zone within 10 years even if they take no action are now elevated to the green zone. The Pension Reform Act also increases premiums for multiemployer plans, from $12 to $26, beginning in 2015.

Critical details of how the government will implement some provisions of the act remain unclear. The act gives the secretary of the Treasury 180 days to publish guidance on how some sections will be implemented, meaning that pension actuaries may have more clarity in June.