Multiemployer Review

Update on issues affecting multiemployer plans JULY 2020

Benefit suspensions under MPRA: An overview and lessons learned

Casey Baldwin, FSA, EA, MAAA
John Rowland, ASA, EA, MAAA

Trustees of some multiemployer plans that are projected to go insolvent are currently contemplating filing a benefit suspension application to reduce benefits. While the final chapter of COVID-19 has not been written, the current market volatility and uncertain path for economic recovery is causing more strain and may increase the number of plans eligible for benefit suspensions. The crisis may also make it impossible for some plans to avoid insolvency through the use of benefit suspensions alone.

Benefit suspensions require trustees and plan professionals to face difficult decisions. Proposed legislation aiming to eliminate benefit suspensions and solvency issues surrounding the Pension Benefit Guaranty Corporation (PBGC) further complicate the decision-making process. This article provides an overview of the benefit suspension process, identifies considerations for trustees and plan professionals, and shares the lessons learned from previous applications.

Background

The Multiemployer Pension Reform Act of 2014 (MPRA) allows Critical and Declining (C&D) multiemployer defined benefit plans to apply for benefit suspensions in order to avoid insolvency. For purposes of this article, we focus on benefit suspensions that do not include a partition. Benefit suspensions are reductions to the accrued benefits earned by plan participants. Prior to MPRA, the Pension Protection Act (PPA) allowed plans in critical status to eliminate subsidies and certain other features for benefits not yet in pay status. For C&D plans, MPRA allowed further reductions to earned benefits including reductions for participants already in pay status.

As of May 2020, 28 multiemployer plans have submitted benefit suspension applications to the Treasury (roughly 20% of all plans in C&D status). Of these, 17 applications have been approved, four have been denied, five have been withdrawn, and two are currently in review. Whether approved or not, each application has helped clarify the Treasury's view on the application process and provides a template for future applications.

What are the prospects for legislative relief?

On May 15, the House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act. Among other provisions, the HEROES Act would repeal the portion of MPRA related to benefit suspensions. Plans would no longer be able to apply for benefit suspensions. This possibility of new legislation may leave some C&D plans waiting for the dust to settle before making any final decisions. However, there is no guarantee that this bill will pass because similar proposals have stalled in the past.

Trustees should certainly keep on top of legislative developments, but also understand that waiting could increase the benefit reductions necessary to avoid insolvency. In some cases, the plan's funding could deteriorate to the point where benefit suspensions alone can no longer eliminate projected insolvency, meaning the plan could no longer apply for benefit suspensions without a partition. Below are links to several Milliman publications describing proposed legislation that could affect a multiemployer plan's ability or desire to apply for benefit suspensions:

- Multiemployer pension legislation
- Proposed multiemployer legislative changes released: The Multiemployer Pension Recapitalization and Reform Plan
- U.S. House of Representatives Passes Multiemployer Pension Legislation

If you do decide to proceed with a benefit suspension application, below are items to consider.

How long do benefit reductions last?

Benefit suspensions are technically temporary reductions. Under MPRA rules, benefits must be restored when the actuary certifies that the plan can avoid insolvency without the suspended benefits. However, as a practical matter, the most likely answer is forever.

How much are benefits reduced?

Benefit reductions must be sufficient for the plan to avoid insolvency for at least 30 years. However, MPRA rules are designed to ensure that the benefit reductions are not excessive. This is often referred to as the "Goldilocks" rule because the reductions cannot be too large or too small—they must be "just right." As a result, trustees should understand that their plans will not be free from funding challenges after suspensions are implemented. Even modest unfavorable experience can still result in a plan's ultimate insolvency.

How do trustees decide whose benefits are reduced?

MPRA requires that reductions be "equitably distributed." These rules are in place to prevent large reductions targeting certain groups or individuals.

The term "equitably distributed" can be interpreted in different ways; MPRA provides a long list of considerations. Most C&D plans have watched pension contributions increase and benefit accruals decrease over the last two decades. Successful suspension applications have generally reduced benefits based on one of two different methodologies:

1. A level percentage reduction for all participants
2. Targeting the benefit disparity between cohorts by reducing the accruals earned during a given period or by applying different reductions based on the status of each member (i.e., retired, terminated vested, or active) or eliminating prior plan subsidies

Exhibit A describes the benefit reductions for the approved applications that did not involve a partition.

Which participants are protected from benefit reductions?

Some benefit suspension limitations apply to participants and beneficiaries on an individual basis:

- Reductions cannot reduce a participant's benefit below 110% of the PBGC guarantee
- No reductions are permitted for participants over age 80
- Reductions are prorated for participants between age 75 and 80
- Disability benefits may not be suspended

What should trustees consider when contemplating an application for benefit suspensions?

Trustees considering a benefit suspension application should first determine whether their plan is eligible. The law only allows plans that can reduce benefits enough to become solvent to apply for suspensions. Some plans with small benefits or plans that are too poorly funded are, in effect, ineligible because they cannot sufficiently reduce benefits to avoid insolvency without a partition.

Another consideration on whether to apply for benefit suspensions is the cost of the application itself. The application process is very lengthy and time-consuming (as discussed below), and significant professional fees can be expected. This may be an especially pertinent consideration for smaller plans.

How does a suspension affect participants?

The financial impact of a benefit suspension on an individual participant will differ depending on proximity to retirement. Consider a hypothetical C&D plan that is projected to go insolvent in 20 years, and assume that a level 30% reduction to accrued benefits would allow the plan to avoid insolvency indefinitely. Three participants each have an accrued benefit of $20,000 earned over a 25-year period. Assume that each retires at age 65 and lives 25 years post-retirement. If a benefit suspension is approved, the benefit will be immediately reduced to $14,000. Otherwise, the plan will pay benefits in full for the next 20 years, after which benefits will be reduced to the PBGC guarantee of $10,725. Based on these facts and ignoring future accruals, the following chart compares the total benefits paid in retirement for each participant with and without a benefit suspension:

		Total benefit received in retirement	
Current age	Retirement age	With suspension	Without suspension
65	65	$ 350,000	$ 453,625
55	65	$ 350,000	$ 360,875
45	65	$ 350,000	$ 268,125

In this example, all participants would be expected to receive the same amount from the plan if the suspension were implemented. However, the impact on each individual differs significantly:

- The participant currently age 65 would receive more benefits from the plan without the benefit suspension because they would receive their full $20,000 benefit for the majority of retirement before the plan runs out of money.
- The 55-year-old participant would receive roughly similar total benefits with or without the suspension.
- The 45-year-old participant would receive substantially more from the plan with the suspension because the annual benefit of $14,000 is larger than the PBGC benefit of $10,725, which is what they would receive without the suspension.

Also consider that the PBGC is projected to become insolvent by 2025 and, if it does, the PBGC guaranteed benefit would be reduced to the level supported by premium income, which could result in a reduction of up to 80% to 90% or more (possibly resulting in a benefit of $1,000 to $1,200 per year for our hypothetical participants). The uncertain future of the PBGC may motivate plans to suspend benefits sooner because waiting could result in more significant reductions in the future.

Which option is better for each participant? Which option is better for the plan? These are the questions the trustees of C&D plans face. There are no easy answers.

What is the application process?

Expect the time between the decision to submit an application and the certification of the participant vote following the Treasury's approval to last about a year, with highly concentrated periods of work by boards of trustees and plan professionals scattered throughout that period. This excludes the time prior to the application that all parties will spend weighing options, educating participants, and designing/structuring the suspension plan, which is typically several months or more.

An application must be based on the market value of assets at the end of the quarter prior to the application. This requirement means trustees, the actuary, and plan professionals will have only three months to complete an application that reflects the plan's quarterly asset performance. As such, all trustee decisions will have to be in place to allow time to complete this process. It is important for trustees to understand that asset performance can materially change the benefit reductions.

The Treasury has 225 days to approve a submitted application.

The participant vote and certification of the vote will take approximately two months from the time the Treasury approves the application.

The exhibit below shows a summarized timeline for a suspension application submitted in December:

What assumptions have caused applications to be denied?

The actuarial assumptions used for the application will be closely scrutinized by the Treasury. The applications that have been denied so far were denied in large part due to the Treasury's determination that the assumptions used were unreasonable or inappropriate. More recent applications have learned from these denials and modified assumptions before submitting an application. Some of the specific assumptions that have led to an application denial are listed below:

- **Investment rate of return:** Using a single rate (rather than separate short-term and long-term rates) or using rates that are materially different from what the Treasury deems to be appropriate. In general, the Treasury has leaned heavily on the expectations described in the annual Survey of Capital Market Assumptions published by Horizon Actuarial Services, LLC.

- **Mortality:** Using an out-of-date mortality table and/or using a mortality assumption that does not anticipate future increases in life expectancy
- **Future industry activity:** Not incorporating historical data and trends when projecting contributions

Treasury has also commented on assumptions related to retirement rates, future participants, forms of payment, and lost participants. In particular, the assumptions need to be refined so that they are appropriate for a solvency projection, which is more sensitive to cash flow timing than a typical pension valuation. For more detail, please refer to the letters of denial posted on the Treasury's website at https://www.treasury.gov/services/Pages/Plan-Applications.aspx.

The Treasury is willing to discuss assumptions before getting too far into the application. While it will not approve any specific assumptions before the application is filed, it will provide guidance that will mitigate the chances of the application being rejected based on using unreasonable assumptions. Moreover, given that the assumptions affect the level of benefit suspensions needed, it is beneficial to have them refined as early in the process as possible.

How can a plan attempt to attract and retain active participants and signatory employers?

Maintaining a strong, active working population could be imperative to the success of a benefit suspension plan. Trustees should consider the impact benefit suspensions will have on their ability to retain and attract active participants and signatory employers. Many plans have attempted to retain a workforce by applying smaller benefit reductions to active participants and avoiding reductions to future accruals. To date, only one application has included a reduction to future accruals. Additionally, well-written communications and proactive meetings with participants and/or employers can explain a plan's situation and gain buy-in from the plan's stakeholders.

Can participants reject the suspensions?

Yes, but it is a high bar to clear. Once the application is approved by the Treasury, participants must vote on the suspension proposal. The suspensions will be permitted unless a majority of all eligible voters vote to reject the suspension. It may be difficult to reach a majority count for rejection under current law because a ballot that is not returned is effectively counted as accepting the suspensions. So far, none of the approved suspensions have been rejected by plan participants. The proposed Multiemployer Pension Recapitalization and Reform Plan would make rejecting a benefit suspension easier as it would only require that a majority of returned ballots reject the suspension.

What are some other complications of the application and voting process?

The protection that is provided by 110% of the PBGC guarantee is dependent on the form of payment and the retirement age. Therefore, for future retirees, the benefit suspension amount cannot be determined until the participant retires. This will require plan administrators to maintain additional data and will increase the complexity of benefit calculations. For current retirees, service is also needed to calculate the guarantee, and this data may not be readily available, especially for older retirees.

Some participants may not attend participant meetings, may ignore their mail, or may not be located due to incorrect mailing addresses. This means that some participants will be unaware of the benefit suspensions. Plan administrators will be asked to account for attempts to contact all participants.

The participant notices are based on census data as of a specific date. The plan administrator should consider tracking status changes that occur after the census date and before mailing the notices. For example, newly retired members may be confused if the figures in the notice are based on an unadjusted benefit prior to retirement.

Qualified domestic relations orders (QDROs) will add significant complications to the determination of benefit reductions. The PBGC provides limited guidance on how the guaranteed benefit is allocated between a participant and alternate payee. These rules should be reviewed before benefit suspensions are calculated for benefits affected by a QDRO.

Conclusion

There are no easy solutions for C&D plans. The decision to apply for benefit suspensions is a difficult one, but may be a plan's best option for restoring solvency under current law. Trustees should continue to monitor legislative activity that could affect an application. For those plans that do apply for a benefit suspension, review previous suspension applications for what made them successful or not. The lessons learned from prior applications provide a great road map and increase the likelihood of a successful application on the first submission.

EXHIBIT A: BENEFIT REDUCTIONS FOR APPROVED APPLICATIONS NOT ASSOCIATED WITH PARTITION

PLAN	GENERALIZED SUMMARY OF REDUCTION*
Alaska Ironworkers	26.5% uniform reduction
Int'l Association of Machinists	Maximum allowed reduction
Composition Roofers Local 42 Pension Fund	45% uniform reduction
IBEW Local Union 237 Pension Fund	For service prior to 2009, limited credited service per year to post-2008 limit and reduced benefit multiplier by 16.5%. After 2008, reduced benefit multiplier by 5%.
Ironworkers Local 16	0.75% per year prior to 80 for actives; 1.5% per year for non-actives
Ironworkers Local 17	Limited accrual to no more than $72 per year—effective reduction of 0% to 52%
Mid-Jersey Trucking Industry / Local 701	Weighted average of 28%; 0% if hired after June 30, 2009; otherwise varying percentages from 0% to over 60%.
New York Teamsters	18% reduction for actives and 29% reduction for non-actives
Plasterers Local #82	22% for actives and 31% for non-actives
Sheet Metal Workers Local Pension Fund (OH)	30% or 35% for inactives depending on retirement date, 25% for actives hired before May 1, 2006, no reduction for actives hired after
SW Ohio Carpenters	Step 1: Recalculate all in pay benefits using unsubsidized early retirement factors (ERFs). Step 2: 8% uniform reduction.
Toledo Roofers Local 134	Step 1: Eliminate early retirement subsidies. Step 2: Reduce to 175% of PBGC guarantee.
Western PA Teamsters	30% reduction with extended protection for some benefits
Western States Office & Prof. Employees	30% reduction

*These are simplified descriptions of the benefit suspensions. Applications that included partitions are not included. For the details, please refer to the Treasury's benefit suspension application website at https://www.treasury.gov/services/Pages/Plan-Applications.aspx.

CONTACT

Casey Baldwin
casey.baldwin@milliman.com

John Rowland
john.rowland@milliman.com