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EBP COMMENTATOR

THE NEWSLETTER OF THE BDO EMPLOYEE BENEFIT PLAN AUDIT PRACTICE



THE IMPACT OF SOCIAL SECURITY NUMBERS ON EMPLOYEE BENEFIT PLANS

Social Security numbers (SSNs) in employee benefit plans (EBP) are a topic of growing concern for multiple reasons. Employee benefit plans are faced with SSNs that belong to individuals who are deceased, that belong to other individuals, and some that are invalid altogether. In the September 11, 2014 session on Retirement Hot Topics, Internal Revenue Service (IRS) representatives indicated that with over 200 million SSNs issued, approximately 40 million of those numbers are erroneously connected to more than one person.

One significant challenge regarding inaccurate SSNs is the difficulty in distributing benefits. For example, distributions to a participant with an invalid SSN may not be processed properly; therefore, participants who are required to take minimum distributions may be subject

to a penalty of 50% if they are unable to withdraw required amounts by the applicable deadline. Also, balances cannot be rolled over into another account until an accurate SSN is obtained. This creates complications for plans with cash-out clauses as plan administrators are unable to force participants with small balances out until they can obtain valid SSNs for those participants.

Employers should use caution to ensure accuracy of SSNs. In the event that errors are noted, the Social Security Administration office has a Social Security number verification service available to employers to make corrections. This service is available via mail, telephone, and online at <http://www.ssa.gov/employer/ssnv.htm>.

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MULTIEMPLOYER PENSION REFORM ACT OF 2014

ON DECEMBER 16, 2014, THE PRESIDENT SIGNED INTO LAW THE MULTIEMPLOYER PENSION REFORM ACT OF 2014 (MPRA), WHICH WAS PART OF THE CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT OF 2015.

MPRAs reflect many of the recommendations that had been specifically suggested by joint business and labor leaders via the National Coordinating Committee for Multiemployer Plans (NCCMP). The MPRA makes sweeping changes to current law governing multiemployer pension plans.

The four main components of the MPRA are:

- Pension Benefit Guaranty Corporation (PBGC) premium increases
- Technical modifications to the Pension Protection Act of 2006 (PPA) and other rules applicable to multiemployer plans
- Benefit suspensions for certain critical status (red zone) plans
- Plan mergers and partitions

PBGC Premium Increases

The PBGC multiemployer premium rate has doubled from \$13 to \$26 per participant effective in 2015. The per-participant dollar amount will be indexed to wage inflation after 2015.

PPA Technical Modifications

The MPRA made a number of technical modifications to the rules governing multiemployer plans. Unless it is otherwise stated, these modifications are effective for plan years beginning after December 31, 2014.

Some of the changes include:

- **Sunset Repeal.** The sunset provision in the PPA for certain funding rules has been eliminated. For example, special rules for critical status (red zone), endangered status (yellow zone plans), and seriously endangered plans (orange zone plans) are now a permanent feature of the Employee

Retirement Income Security Act of 1974 (ERISA).

- **Red Zone Status Election.** The MPRA allows a plan, not yet in critical status (not in the red zone), to elect red zone status for a plan year if the plan's actuary projects that the plan will be in critical status in any of the five following plan years.
- **Elimination of the Revolving Door for Critical Status Plans.** The MPRA provides corrective rules that prevent critical status (red zone) plans emerging from critical status from re-entering critical status. The tests for entering and emerging from critical status, under the prior law, contained certain inconsistencies that caused a revolving door effect.
- **Default Contribution Schedules.** If a collective bargaining agreement (CBA) expires and the bargaining parties are unable to agree to a new contribution schedule, the existing CBA's contribution schedule that provides for contributions in accordance with a funding improvement plan will remain in effect.
- **Calculation of Withdrawal Liability.** Benefit reductions, contribution increases, and contribution surcharges can be disregarded when calculating withdrawal liability effective for benefit reductions and contribution increases that go into effect during plan years beginning after December 31, 2014 and surcharges that accrue on or after December 31, 2014.

Benefit Suspensions

A new zone status, "critical and declining status," has been created. Plans in this status may suspend accrued benefits as well as benefits of participants and beneficiaries

currently in pay status. A "critical and declining status" plan is defined as a plan that is projected to become insolvent within 15 years, or is projected to become insolvent within 20 years if either the plan's ratio of inactive to active participants is greater than 2-to-1 or the plan is less than 80% funded. This is the definition of a critical status plan under the PPA rules (a red zone plan).

Trustees of declining status plans are given wide latitude to design a benefits suspension. The trustee can choose to implement a temporary or permanent reduction of any current or future payment obligation to any participant or beneficiary whether or not they are in pay status.

Mergers and Partitions

The merger and partition rules are also effective for plan years beginning after December 31, 2014.

The MPRA provides new rules for mergers with the assistance of the PBGC. Once requested by the plan sponsor, the PBGC will take appropriate action to promote and facilitate a merger if it determines that the merger is in the interests of participants in all of the plans.

Financial assistance may be provided for a merger if it is necessary to enable one or more plans to avoid or postpone insolvency if the agency reasonably expects that the assistance will reduce the PBGC's expected long-term loss for the plans involved and such assistance is necessary for the merged plan to become or remain solvent.

AICPA GUIDANCE REGARDING USE OF UPDATED MORTALITY TABLES

The AICPA has released guidance regarding use of the recently released, updated mortality tables (which we announced in our [Fall 2014 Special Defined Benefit Plan Edition](#)) in computing benefit liabilities for EBPs. This guidance is in the Technical Question and Answer (Technical Q&A) under Section 3700, *Pension Obligations*, Section 3700.01, *Effect of New Mortality Tables on Nongovernmental Employee Benefit Plans (EBPs) and Nongovernmental Entities That Sponsor EBPs* (Technical Q&A 3700.01). Technical Q&A 3700.01 specifically addresses the impact of the updated mortality tables on financial statements that were not issued by the publication date of the updated mortality tables and indicates that generally accepted accounting principles (GAAP) requires the use of “a mortality assumption that reflects the best estimate of the plan’s future experience.” GAAP requires an entity to evaluate available evidence through the date financial statements are available to be issued (the Q&A also cites FASB ASC 855-10-55-1, which states that information that becomes

available after the balance sheet date may be indicative of conditions that existed before the balance sheet date).

In our opinion, the crux of Technical Q&A 3700.01 is its statement that “Updated mortality tables are based on historical trends and data that go back many years; therefore, the existence of updated mortality conditions is not predicated upon the date that the updated mortality tables are published. Management of a nongovernmental EBP or a nongovernmental sponsoring entity should understand and evaluate the reasonableness of the mortality assumption chosen....and document its evaluation and the basis for selecting the mortality tables it decided to use for its current financial reporting period.” As such, these updated mortality tables may represent significant evidence for certain plans that should be evaluated by the sponsor and plan management before financial statement issuance occurs. For further details, see http://www.aicpa.org/interestareas/frc/downloadabledocuments/tqa_sections/tqa_section_3700_01.pdf.

HELPFUL WEBSITES

<http://www.dol.gov/ebsa/>

<http://www.efast.dol.gov>

<http://www.irs.gov/>

<http://ebpaqc.aicpa.org>

<http://asc.fasb.org>

UPDATED BROKER FIDUCIARY RULES SUBMITTED

IN FEBRUARY 2015, THE DEPARTMENT OF LABOR (DOL) SUBMITTED AN UPDATED, PROPOSED “CONFLICT-OF-INTEREST” RULE TO THE OFFICE OF MANAGEMENT AND BUDGET FOR A 90-DAY INTERAGENCY REVIEW PROCESS.

While the rule will not be made public until the review process is complete, there is media speculation that the approval process will be expedited in order to limit further opposition as this rule has been hotly contested since being originally proposed over four years ago.

While specifics have not been released, a FAQ on the DOL’s website states that with this revised rule the DOL is seeking a “a balanced approach that improves protections for retirement savers, ensures that advisers provide advice in their client’s best interest, and also minimizes any potential disruptions to all the good advice in the market.” Additionally, the White House’s announcement of the rule cited a newly released report from the President’s Council of Economic Advisers and indicated that “misaligned incentives” influence brokers to steer clients into higher-cost products and that over \$1 trillion of individual retirement accounts are invested in products with conflict-of-

interest generating payments. It is these payments to brokers that the “conflict-of-interest” rule is expected to address.

Based on a recent leaked memo discussing the updated rule, some predict that this version of the rule will be less stringent than the original proposed rule as a form of compromise to opponents of the expanded fiduciary regulations. With both the White House and Congress entering the fray, stay tuned for the rule’s public release.



BDO EBP PRACTICE

BDO is nationally recognized in the field of employee benefit plan consulting and auditing. We audit approximately 1,600 plans nationwide, ranging from 100 participants to close to 300,000 participants. Our engagements are staffed with accountants experienced with all types of audits including defined contribution (401(k), profit sharing, ESOP, and 403(b) plans), defined benefit (pension, cash balance) and health and welfare plans.

In addition, BDO has a National Employee Benefit Plan Audit Group that meets regularly to develop training and guidance and discuss updates in the industry and auditing practices. Our professionals are regular presenters at local, state and national seminars. BDO's professionals continue to be extensively involved with the American Institute of Certified Public Accountants (AICPA) National Conferences on Employee Benefit Plans. Many of our professionals serve in leadership roles in the accounting profession as senior advisors and are active members of several governing boards and CPA societies. For example, our professionals currently serve on various AICPA committees, such as the AICPA's Joint 403(b) Plan Audit Task Force (we are proud to have representation at the chair level for this committee) and the AICPA Technical Standards Subcommittee of the Professional Ethics Executive Committee. BDO's EBP professionals have also served on the AICPA Employee Benefit Plan Audit Quality Center Executive Committee (immediate past chair) and the Employee Benefit Plan Expert Panel in the past.

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