

EFFECTIVE JANUARY 24, 2022

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Withdrawal Liability

Trump's PBGC to Look at New Arbitration Rules

The Trump administration has set on its regulatory agenda a new proposed Pension Benefit Guaranty Corporation rule that will make changes to the arbitration procedures for employers that withdraw from multiemployer pension plans.

The proposal was set in motion last year when the American Arbitration Association requested approval of new procedures that would increase the fees parties pay for arbitration over multiemployer pension fund withdrawal liability. Those fees haven't changed since 1986.

The Trump administration's regulatory agenda, released July 20, also indicates that the PBGC will propose a rule that will make changes to the reporting, disclosure, and valuation for certain terminated or insolvent multiemployer plans. The PBGC is the federal government's backstop for private defined benefit plans.

The agency also added to its list of new proposed rulemakings one that "would codify current PBGC practice governing the production of official information or testimony by PBGC employees in certain proceedings."

The codification proposal is "a procedural rule that we have on our agenda to clarify how we process requests for employees to provide official information or to testify about official PBGC information," and it will have a comment period, an agency official told Bloomberg BNA in an email.

Final Rules in Pipeline President Donald Trump's promise to roll back regulations appears to not have affected the PBGC. Other than the new multiemployer plan proposed rules, the agency indicated that it will push forward with several projects that date to the Obama era, including a few that are moving into the final stage.

The agency indicated that it is aiming to finalize a rule in September that would expand its missing participants program to include multiemployer plans, small professional service employer plans, and individual account plans such as 401(k)s and profit-sharing plans. The rule would take effect starting next year.

The program helps find people owed benefits from fully funded, PBGC-insured single-employer pension plans that have ended. The expanded program would be voluntary for plans not covered by PBGC insurance, the agency said on its website last September after releasing the proposed rule.

Plan sponsors have been looking forward to the guidance since it was proposed last year, so they're glad to see it moving ahead, Harold J. Ashner, a partner in the law firm of Keightley & Ashner LLP in Washington and a former PBGC official, told Bloomberg BNA.

"The regulatory agenda suggests that they're on track with their plans to implement the missing participants changes effective Jan. 1, 2018, and that's good news for the regulated community," he said.

The PBGC is also close to finalizing a rule that would facilitate mergers of financially troubled multiemployer defined benefit plans with healthier ones. The Multiemployer Pension Reform Act of 2014 gave the PBGC authority to aid plan mergers once the agency determines a merger will benefit the participants of a plan without harming the participants and beneficiaries of the healthier plans involved.

The proposed rule, issued June 6, 2016, gave guidance to plans in requesting PBGC action relating to a merger. To pave the way for a merger, the agency can provide financial assistance, training, technical assistance, mediation, and communication to those affected.

By SEAN FORBES

To contact the reporter on this story: Sean Forbes in Washington at sforbes@bna.com

To contact the editor responsible for this story: Jo-el J. Meyer at jmeyer@bna.com