Who really loses when a multiemployer pension plan fails?

By: David Pixley on June 16, 2017 on graydon.law

A broken promise is a terrible thing. Historically, defined benefit pension benefits were the holy grail of promises in the retirement plan world. But, things have changed, especially for multiemployer pension plans after the passing of the Kline-Miller Multiemployer Pension Reform Act of 2014 ("MPRA"). MPRA does not offer these plans a bailout. MPRA gives failing multiemployer pension plans a last chance to resurrect their funding status. In sum, the program available under MPRA allows plans to make substantial cuts to vested benefits. These cuts have never been permitted prior to MPRA.

Aside from the highly contentious debate over whether the program provided for under MPRA is good or bad, it presents unique challenges for the contributing employers. This is also true for the contributing employers of a plan that is at risk of failing, but has not applied for relief under MPRA. The employer is often at risk of being the "bad guy," but in a multiemployer pension plan, the employer is not even "the guy." These plans are jointly administered, for purposes of ERISA, by a board of trustees with representatives from both labor and management. The contributing employers do not manage the plan assets, are not the plan sponsor and do not get to vote on whether or not to approve a proposal to cut benefits under MPRA.

Employers are not in the driver's seat when it comes to multiemployer pension plans. The trustees are charged with making very unpopular and difficult decisions about how to try and save the plan and whether or not to submit an application to the Treasury Department to cut benefits under MPRA. But, often the person blamed is the employer that simply made contributions on behalf of the participants that are at risk of having their benefits slashed. Employees, retirees, and the general public will likely blame the employer for these broken promises. Although it's not the contributing employer's fault, it will be the one holding the bill and ultimate responsibility for these unfunded vested benefits. Not honoring the promises made by the multiemployer pension plan is a potential public relations disaster for the employer.

The employer can be one of the villains, or it can be the hero. It is possible to make these multiemployer pension plan participants whole. But, the employer faces a gauntlet of regulations, procedures, and potential confusion on the part of the plan participants. There

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are a myriad of factors for the employer to consider, including the number of affected employees, retirees and beneficiaries, the funding status of the multiemployer fund, the amount of unfunded vested benefits and potential withdrawal liability, and various spin-off and alternative funding options. Exiting a multiemployer pension plan can be accomplished and when done properly, the employer can avoid going down with the ship.

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