



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1

[TD 9735]

RIN 1545-BM89

Administration of Multiemployer Plan Participant Vote on an Approved Suspension of Benefits under MPRA

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: The Multiemployer Pension Reform Act of 2014 (MPRA) pertains to multiemployer plans that are projected to have insufficient funds, at some point in the future, to pay the full plan benefits to which individuals will be entitled (referred to as plans in “critical and declining status”). The sponsor of such a plan is permitted to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions are satisfied (referred to as a “suspension of benefits”). A suspension of benefits is not permitted to take effect prior to a vote of the participants of the plan with respect to the suspension. This document contains temporary regulations that provide guidance relating to the administration of that vote. These temporary regulations affect active, retired, and deferred vested participants and beneficiaries of multiemployer plans that are in critical and declining status as well as employers contributing to, and

sponsors and administrators of, those plans. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking (REG-123640-15) on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: Effective date: These temporary regulations are effective on **[INSERT DATE OF PUBLICATION OF DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability date: These temporary regulations apply on and after June 17, 2015, and expire on June 15, 2018.

FOR FURTHER INFORMATION CONTACT: The Department of the Treasury MPRA guidance information line at (202) 622-1559 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These temporary regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget under control number 1545-2260.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referenced notice of proposed rulemaking on this subject in the Proposed Rules

section in this issue of the **Federal Register**.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 432(e)(9) of the Internal Revenue Code (Code), as amended by the Multiemployer Pension Reform Act of 2014 (MPRA), permits plan sponsors of certain multiemployer plans to reduce the plan benefits payable to participants and beneficiaries (referred to as a “suspension of benefits”) if specified conditions are satisfied. One key condition is that any such plan must be projected to have insufficient funds, at some point in the future, to pay the full benefits to which individuals will be entitled under the plan (referred to as a plan in “critical and declining status”).

Under section 432(e)(9)(H), no suspension of benefits may take effect prior to a vote of the participants of the plan with respect to the suspension. Section 432(e)(9)(H) requires that the vote be administered by the Secretary of the Treasury, in consultation with the Pension Benefit Guaranty Corporation and the Secretary of Labor (generally referred to in this preamble as the Treasury Department, PBGC, and Labor Department, respectively), within 30 days after approval of a suspension application. The plan sponsor is required to provide a ballot for a vote (subject to approval by the Treasury Department, in consultation with the PBGC and the Labor Department). The statute specifies information that the ballot must contain, including a statement in opposition to the proposed suspension that is compiled from comments received on the application.

On June 19, 2015, the Treasury Department and the Internal Revenue Service published temporary regulations (TD 9723) under section 432(e)(9) in the **Federal Register** (80 FR 35207) (June 2015 temporary regulations). The June 2015 temporary regulations provide general guidance regarding section 432(e)(9) and outline the requirements for a plan sponsor of a plan that is in critical and declining status to apply for a suspension of benefits and for the Treasury Department to begin processing such an application. A notice of proposed rulemaking cross-referencing the temporary regulations (REG-102648-15) was also published in the same issue of the **Federal Register** (80 FR 35262). Both the June 2015 temporary regulations and the related proposed regulations reflect consideration of comments received in response to the Request for Information on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014 published in the **Federal Register** on February 18, 2015 (80 FR 8578) (February 2015 request for information).

The June 2015 temporary regulations and the related proposed regulations set forth many of the rules relating to the participant vote under section 432(e)(9)(H). However, neither the June 2015 temporary regulations nor the related proposed regulations provide detailed guidance on how the Treasury Department would administer the vote.

Explanation of Provisions

Overview

These temporary regulations provide guidance relating to the administration of the participant vote required under section 432(e)(9)(H). These temporary regulations reflect consideration of comments received in response to the February 2015 request

for information. The Treasury Department consulted with the PBGC and the Labor Department on these temporary regulations.

A participant vote requires the completion of three steps. First, a package of ballot materials is distributed to eligible voters. Second, the eligible voters cast their votes and the votes are collected and tabulated. Third, the Treasury Department (in consultation with the PBGC and the Labor Department) determines whether a majority of the eligible voters has voted to reject the proposed suspension. The June 2015 temporary regulations define eligible voters as all plan participants and all beneficiaries of deceased participants.

Under these temporary regulations, the Treasury Department is permitted to designate a service provider or service providers to facilitate the administration of the vote. The service provider may assist in the steps of distributing the ballot package to eligible voters and collecting and tabulating the votes. These temporary regulations provide that if a service provider is designated to collect and tabulate votes, then the service provider will provide the Treasury Department with the report of the results of the vote, which includes a breakdown of the number of eligible voters who voted, the number of eligible voters who voted in support of and to reject the suspension, and certain other information. The Treasury Department will use that information to determine (in consultation with the PBGC and the Labor Department) whether a majority of eligible voters has voted to reject the suspension.

Distribution of the ballot package

These temporary regulations provide that the ballot package sent to eligible voters includes the approved ballot and a unique identifier for each eligible voter. The

unique identifier, which is assigned by the Treasury Department or a designated service provider, is intended to ensure the validity of the vote while maintaining the eligible voters' privacy in the voting process.

These temporary regulations provide guidance on the plan sponsor's statutory requirement to provide a ballot. Because the ballot for each eligible voter is accompanied by a unique identifier, the plan sponsor cannot itself distribute the ballot. Instead, the plan sponsor is responsible for furnishing a list of eligible voters so that the ballot can be distributed on the plan sponsor's behalf. The list must include the last known mailing address for each eligible voter (except for those eligible voters for whom the last known mailing address is known to be incorrect). The plan sponsor must also provide a list of eligible voters whom the plan sponsor has been unable to locate using reasonable efforts. In addition, the plan sponsor must furnish current electronic mailing addresses for certain eligible voters, who are identified below. The plan sponsor must also furnish the individualized estimates provided to eligible voters as part of the earlier notices described in section 432(e)(9)(F) (or, if an individualized estimate is no longer accurate for an eligible voter, a corrected version of that estimate) so that an individualized estimate can be included with the ballot for each eligible voter. These materials must be provided no later than 7 days after the date the Treasury Department has approved an application for a suspension of benefits.

Under these temporary regulations, the plan sponsor is responsible for paying all costs associated with the ballot package, including postage. This is because the section 432(e)(9)(H)(iii) requirement that the plan sponsor provide a ballot means that the plan sponsor is responsible for the cost of providing the ballot package to eligible

voters, including the costs associated with printing, assembling and mailing those ballot packages.

These temporary regulations provide that ballot packages will be distributed to eligible voters by first-class U.S. mail. A supplemental copy of the mailed ballot package may also be sent by an electronic communication to an eligible voter who has consented to receive electronic notifications. For example, if the ballot sent by first-class U.S. mail is not received, a supplemental ballot may be provided by electronic mail.

These temporary regulations provide additional detail on the plan sponsor's duty to communicate with eligible voters. As part of this communication requirement, these temporary regulations provide that the plan sponsor must notify certain eligible voters (using an electronic communication) that the ballot package is being mailed by first-class U.S. mail. The eligible voters who must be notified under this rule are those who received the notice of the proposed suspension under section 432(e)(9)(F) in electronic form and those who regularly receive plan-related electronic communications from the plan sponsor.¹ This notification must be sent promptly after the plan sponsor is informed of the ballot distribution date. This notification in electronic form ensures that those eligible voters who ordinarily expect to receive communications from the plan sponsor in electronic form are aware that a ballot package will arrive via first-class U.S. mail. Under these temporary regulations, this notification is sent by the plan sponsor, rather than a service provider, so that the communication comes from a familiar source,

¹ The plan sponsor is also permitted to send this notification to any other eligible voters for whom the plan sponsor has an electronic mailing address.

which would make it less likely that the communication is delivered to a “spam” or “junk” mail folder.

The plan sponsor will have previously made reasonable efforts to contact individuals whose mailed initial notices were returned as undeliverable, and the mailing addresses for the ballot packages that are furnished by the plan sponsor will reflect updates as a result of those reasonable efforts. These temporary regulations require the plan sponsor to make similar reasonable efforts to locate eligible voters after being notified that their ballots were returned as undeliverable.

Voting by eligible voters and collection and tabulation of votes

In accordance with section 432(e)(9)(H)(ii), these temporary regulations require that the Treasury Department (in consultation with the PBGC and the Labor Department) administer the participant vote no later than 30 days following the date of approval of an application for a suspension of benefits. These temporary regulations interpret the term “administer a vote” to mean that the voting period must begin (but need not end) within the 30-day timeframe. As a result, these temporary regulations require that ballot packages be distributed no later than 30 days after the application has been approved and specify that the voting period begins on the ballot distribution date. Although the temporary regulations allow for distribution of ballot packages up to 30 days following approval of an application for suspension of benefits, it is generally expected that ballot packages will be distributed well before that deadline.

These temporary regulations specify that the voting period generally will remain open until the 30th day following the date the Treasury Department approves the application for a suspension of benefits. However, the voting period will not close

earlier than 21 days after the ballot distribution date. In addition, the Treasury Department (in consultation with the PBGC and the Labor Department) is permitted to specify a later end to the voting period in appropriate circumstances. For example, an extension might be appropriate if, near the end of the original voting period, there are significant technical difficulties with respect to the collection of votes and those technical difficulties are not resolved in time to provide eligible voters with sufficient time to cast their votes.

These temporary regulations specify that votes must be collected and tabulated using an automated voting system under which each eligible voter must furnish a unique identifier in order to cast a vote. Such a system will be designed to record votes both electronically (through a website) and telephonically (through a toll-free number that will accommodate a touch-tone or interactive voice response). This will permit any voter who lacks internet access or, for any reason, is not comfortable voting via a website, to cast a vote using a toll-free number. It is expected that the system will provide reasonable support to facilitate eligible voters' use of the system's electronic and telephonic features. These temporary regulations clarify that votes are permitted to be cast using only these methods and that responses returned by any other means are invalid.

The temporary regulations do not provide for the collection of votes using paper ballots because casting votes using a website or a telephonic system will be convenient for participants and will save time and money while providing reliable results. Providing a third voting option by also permitting votes to be cast using paper ballots would require additional time, in order for ballots to be returned by mail and authenticated and

counted by hand. Voting by marking and mailing back paper ballots would also entail significant additional costs to process (such as employing additional personnel for processing and providing return postage and envelopes). The temporary regulations therefore reflect the conclusion that the most efficient and fairest approach to implementing the statutory provisions on administration of the vote on an approved suspension of benefits is to provide eligible voters with sufficient time to carefully consider the information furnished to them before casting their votes while seeking to avoid unnecessary time and expense processing those votes once they have been cast. The automated methods of voting, collecting, and tabulating votes set forth in these temporary regulations also have been used by pension plans for other types of elections that involve voting by plan participants (including retirees).

Determination that a majority of eligible voters has voted to reject the suspension

Within 7 days after the end of the voting period, these temporary regulations provide that the Treasury Department (in consultation with the PBGC and the Labor Department) will either certify that a majority of all eligible voters has voted to reject the suspension or, if a majority of eligible voters did not vote to reject the suspension, issue a final authorization to suspend. These temporary regulations permit the Treasury Department (in consultation with the PBGC and the Labor Department) to establish necessary policies and procedures to facilitate the vote. These policies and procedures may include, but are not limited to, establishing a process for an eligible voter to challenge the vote. It is expected that the Treasury Department will resolve any challenges before the conclusion of the 7-day period following the end of the voting period.

Items related to the contents of the ballot

Under these temporary regulations, the statement in opposition to the proposed suspension that is compiled from comments received on the application will be prepared by the Labor Department. Under these temporary regulations, this statement in opposition must be written in a manner that is readily understandable to the average plan participant. It is intended that the statement in opposition will be written in a manner to ensure parity with the statement in support of the suspension. If there are no comments in opposition to the proposed suspension, then the statement in opposition will indicate that there were no such comments.

These temporary regulations provide that a model ballot may be published in the form of a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin.

Effective/Applicability Date

As with the previously published temporary regulations, these regulations apply on and after June 17, 2015, and expire on June 15, 2018.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules

section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Contact Information

For general questions regarding these temporary regulations, please contact the Department of the Treasury MPRA guidance information line at (202) 622-1559 (not a toll-free number). For information regarding a specific application for a suspension of benefits, please contact the Department of the Treasury at (202) 622-1534 (not a toll-free number).

List of Subjects in 26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.432(e)(9)-1T(h) is amended by revising paragraph (h)(2) and adding paragraphs (h)(3)(iv) and (v) and (h)(7) and (8) to read as follows:

§1.432(e)(9)-1T Benefit suspensions for multiemployer plans in critical and declining status (temporary).

* * * * *

(h) * * *

(2) Participant vote--(i) In general. The participant vote described in paragraph

(h)(1)(i) of this section requires completion of the following steps--

(A) Distribution of the ballot package described in paragraph (h)(2)(iii) of this section to the eligible voters;

(B) Voting by eligible voters and collection and tabulation of the votes, as described in paragraph (h)(2)(iv) of this section; and

(C) Determination of whether a majority of the eligible voters has voted to reject the suspension, as described in paragraph (h)(2)(v) of this section.

(ii) Designation of service provider for limited functions. The Secretary of the Treasury is permitted to designate one or more service providers to perform, under the supervision of the Secretary, any of the functions described in paragraphs (h)(2)(i)(A) and (B) of this section. If the Secretary designates a service provider to perform these functions then the service provider will provide the Secretary with a written report of the results of the vote, including (as applicable)--

(A) The number of ballot packages distributed to eligible voters;

(B) The number of eligible voters to whom ballot packages have not been provided (because the individuals could not be located);

(C) The number of eligible voters who voted (specifying the number of affirmative votes and the number of negative votes cast); and

(D) Any other information that the Secretary requires.

(iii) Distribution of the ballot package to the eligible voters--(A) Ballot package.

The ballot package distributed to each eligible voter shall consist of--

(1) A ballot, approved under paragraph (h)(3)(iii) of this section, which contains the items described in section 432(e)(9)(H)(iii) and paragraph (h)(3)(i) of this section; and

(2) A unique identifier assigned to the eligible voter for use in voting.

(B) Plan sponsor responsibilities--(1) In general. This paragraph (h)(2)(iii)(B) sets forth the responsibilities of the plan sponsor with respect to the distribution of the ballot package to the eligible voters.

(2) Furnish information regarding eligible voters. No later than 7 days following the date the Secretary of the Treasury has approved an application for a suspension of benefits under paragraph (g) of this section, the plan sponsor must furnish the following-

(i) A list of all eligible voters;

(ii) For each eligible voter, the last known mailing address (or, if the plan sponsor has been unable to locate that individual using the standards that apply for purposes of paragraph (f)(1)(i) of this section, an indication that the individual could not be located through reasonable efforts);

(iii) Current electronic mailing addresses for those eligible voters identified in paragraph (h)(2)(iii)(B)(4) of this section; and

(iv) The individualized estimates provided to eligible voters as part of the earlier notices described in section 432(e)(9)(F) (or, if an individualized estimate is no longer accurate for an eligible voter, a corrected version of that estimate).

(3) Communicate with eligible voters. In accordance with section 432(e)(9)(H)(iv) and paragraph (h)(1)(ii) of this section, the plan sponsor is responsible for communicating with eligible voters, which includes--

(i) Notifying the eligible voters described in paragraph (h)(2)(iii)(B)(4) of this section that a ballot package is being distributed by first-class U.S. mail; and

(ii) Making reasonable efforts (using the standards that apply for purposes of paragraph (f)(1)(i) of this section) as necessary to locate eligible voters for whom the plan sponsor has received notification that the mailed ballot packages are returned as undeliverable so that ballot packages can be sent to those eligible voters.

(4) Eligible voters to receive electronic notification. Those eligible voters whom the plan sponsor must notify electronically are--

(i) Eligible voters who previously received the notice described in paragraph (f) of this section in electronic form (as permitted under paragraph (f)(3)(ii) of this section), and

(ii) Any other eligible voters who regularly receive plan-related communications from the plan sponsor in electronic form.

(5) Method of notifying certain eligible voters. The notification described in paragraph (h)(2)(iii)(B)(3)(i) of this section for an eligible voter must be made using the electronic form normally used to send plan-related communications to that voter (or the form used to provide the notice in paragraph (f) of this section, if different). The plan sponsor must send this notification promptly after being informed of the ballot distribution date (within the meaning of paragraph (h)(2)(iii)(D) of this section) and the notification must include the ballot distribution date.

(6) Pay costs associated with distribution. The plan sponsor is responsible for paying all costs associated with printing, assembling, and distributing the ballot package, including postage.

(C) Required method of distributing ballot package. Ballot packages must be distributed to eligible voters by first-class U.S. mail. A supplemental copy of the mailed ballot package may also be sent by an electronic communication to an eligible voter who has consented to receive electronic communications.

(D) Timing. Ballot packages will be distributed to eligible voters no later than 30 days after the Secretary of the Treasury has approved an application for a suspension of benefits under paragraph (g) of this section. The date on which the ballot packages are mailed to the eligible voters is referred to as the ballot distribution date.

(iv) Collection and tabulation of votes cast by eligible voters--(A) Voting period. The voting period begins on the ballot distribution date. The voting period generally remains open until the 30th day following the date the Secretary of the Treasury has approved an application for a suspension of benefits under paragraph (g) of this section. However, the voting period will not close earlier than 21 days after the ballot distribution date. In addition, the Secretary (in consultation with the PBGC and the Secretary of Labor) may specify a later date to end the voting period in appropriate circumstances.

(B) Required use of automated voting system. Votes must be cast using an automated voting system that meets the requirements of paragraph (h)(2)(iv)(C) of this section. Votes cast by any other method are invalid.

(C) Automated voting system. An automated voting system meets the requirements of this paragraph (h)(2)(iv)(C) only if the system--

(1) Collects votes cast by eligible voters both electronically (through a website) and telephonically (through a toll-free number using a touch-tone or interactive voice response); and

(2) Accepts only votes cast during the voting period by an eligible voter who provides the eligible voter's unique identifier described in paragraph (h)(2)(iii)(A)(2) of this section.

(D) Policies and procedures. The Secretary of the Treasury (in consultation with the PBGC and the Secretary of Labor) may establish such policies and procedures as may be necessary to facilitate the administration of the vote under this paragraph (h)(2). These policies and procedures may include, but are not limited to, establishing a process for an eligible voter to challenge the vote.

(v) Determination of whether a majority of the eligible voters has voted to reject the suspension. Within 7 calendar days after the end of the voting period, the Secretary of the Treasury (in consultation with the PBGC and the Secretary of Labor) will--

(A) Certify that a majority of all eligible voters has voted to reject the suspension that was approved under paragraph (g) of this section, or

(B) Issue a final authorization to suspend as described in paragraph (h)(6) of this section.

* * * * *

(3) * * *

(iv) Statement in opposition to the proposed suspension. The statement in opposition to the proposed suspension that is prepared from comments received on the application, as required under section 432(e)(9)(H)(iii)(II), will be compiled by the Secretary of Labor and will be written in accordance with the rules of paragraph (h)(3)(ii) of this section. If no comments in opposition are received, the statement in opposition to the proposed suspension will include a statement indicating that there were no such comments.

(v) Model ballot. A model ballot may be published in the form of a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin.

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(7) Effective/applicability date. Paragraph (h)(2) and paragraphs (h)(3)(iv) and (v) of this section apply on and after June 17, 2015.

(8) Expiration date. The applicability of paragraph (h)(2) and paragraphs (h)(3)(iv) and (v) of this section expires on June 15, 2018.

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John M. Dalrymple

Deputy Commissioner for Services and Enforcement.

Approved: August 25, 2015

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).
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