



HR & BENEFITS UPDATE

US and UK Agree to Share Information & Cooperate On Pension Security As US Defined Benefit Plan Sponsors Face Tough New Defined Benefit Plan Funding Requirements

November 5, 2009

Rising business failures, constricting budgets, employment losses and other business and workforce dislocations associated with the recent economic downturn are adding new urgency to efforts by U.S. and international leaders to act to mitigate threats to the security of worker pensions.

In response to these concerns, the U.S. Pension Benefit Guaranty Corp. (PBGC), the United Kingdom's The Pensions Regulator and Pension Protection Fund recently have reached an information sharing agreement intended to help the agencies in both countries protect retirement benefits earned by workers and retirees on both sides of the Atlantic. Meanwhile, businesses that sponsoring defined benefit pension plans now are required to comply with newly released final Internal Revenue Service regulations that increase minimum contributions required by many sponsors, and impose other new mandates designed to accelerate plan funding and otherwise promote greater security of these benefit programs in an economically challenged business environment.

Under a [Memorandum of Understanding](#), signed on November 4, 2009, the three agencies will share any unrestricted information that advances the security of defined benefit plans sponsored by private sector companies. Confidential financial information from those companies will not be shared. While the agreement facilitates broad access to data, intelligence, and other records, it is not legally binding. Additionally, the agencies are not compelled to lend assistance to each other, especially if legal proceedings are underway, and such assistance would be contrary to the interests of either country. The agreement can be canceled at any time by any party.

The Pensions Regulator oversees private sector defined benefit plans in the UK and is charged with protecting the retirement benefits of plan members. The Regulator is also charged with reducing the risk of claims for compensation from the Pension Protection Fund (PPF). The PPF was created to pay compensation to members of eligible defined benefit pension plans when the plan's sponsor was unable to pay benefits.

The PBGC is a federal corporation created under the Employee Retirement Income Security Act of 1974. It currently guarantees payment of basic pension benefits earned by 44 million American workers and retirees participating in over 29,000 private-sector defined benefit pension plans. The agency receives no funds from general tax revenues. Operations are financed largely by insurance premiums paid by companies that sponsor pension plans and by investment returns.

The Memorandum of Understanding is one of a variety of actions that the U.S. regulators are taking as part of their efforts to shore up the security of private retirement benefits and funding. On October 15, 2009, the Internal Revenue Service published final regulations regarding the “Measurement of Assets and Liabilities for Pension Funding Purposes; Benefit Restrictions for Underfunded Pension Plans” construing the amended single employer defined benefit plan minimum funding rules in Internal Revenue Code (“Code”) §§ 430(d), 430(f), 430(g), 430(h)(2), 430(i), and 436, added to the Code by the Pension Protection Act of 2006 (PPA '06), Public Law 109-280 (120 Stat. 780) taking into account subsequent amendments made by the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA '08), Public Law 110-458 (122 Stat. 5092). These new final regulations implement new federal rules that accelerate the time within which employers are required to fund defined benefit retirement benefit commitments made in single employer defined benefit pension plans and impose other complicated new requirements intended to improve the funding and security of these programs. As implementation of these new rules proceeds, the PBGC is working to respond to the growing wave defined benefit pension plans whose plan sponsors have already gone bankrupt or otherwise have proven unable to meet already existing funding obligations.

If you have questions about or need assistance evaluating or complying these minimum funding rules or other employee benefit, employment, compensation, workplace health and safety, corporate ethics and compliance practices, concerns or claims, please contact the author of this article, Curran Tomko Tarski LLP Labor & Employment Practice Group Chair Cynthia Marcotte Stamer. Board Certified in Labor & Employment Law by the Texas Board of Legal Specialization and Chair of the American Bar Association RPTe Employee Benefits & Other Compensation Group, Ms. Stamer has more than 20 years experience advising and representing employers, plan sponsors and fiduciaries, and others about these and other related workforce, benefits, compensation and compliance matters. Ms. Stamer also speaks and writes extensively on these and other related matters. For additional information about Ms. Stamer and her experience or to access other publications by Ms. Stamer see [here](#) or contact Ms. Stamer directly. For additional information about the experience and services of Ms. Stamer and other members of the Curran Tomko Tarski LLP team, see [here](#).

Other Information & Resources

We hope that this information is useful to you. If you found this update of interest, you also may be interested in some other HR & Benefit Updates, including:

- [**Congress Considering Extending & Expanding Group Health Plan COBRA Subsidy Mandates On Heels of Enactment of Expanded Military Leave-Related Family Leave Mandates**](#)
- [**November 15, 2009 Is Deadline To Send Required Group Health Plan Medicare Part D “Creditable Coverage” Notice**](#)
- [**IRS Updates Procedures Qualifying Small Employers Can Use To Qualify To Report Employment Taxes Annually Rather Than Quarterly**](#)
- [**Senate Finance Bill Finishes Drafting & Releases For Review the America’s Healthy Future Act Bill Language**](#)

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