Overview
The Multiemployer Pension Reform Act of 2014 (MPRA) is comprehensive legislation affecting multiemployer pension plans. MPRA makes technical changes to certain provisions contained in the Pension Protection Act of 2006 (PPA), grants trustees of plans unprecedented tools to bolster funding levels, and provides additional resources to the Pension Benefit Guaranty Corporation (PBGC).

This memo provides a discussion of the key provisions of MPRA, how they differ from current law and the practical implications for plans, trustees and contributing employers.

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I. Technical Amendments and Corrections to PPA and MPPAA

A. Repeal of Sunset Provisions:
Certain provisions of PPA relating to annual certifications and required actions for plans with deteriorating financial health were scheduled to sunset for plan years beginning after December 31, 2014. Provisions in place requiring endangered (yellow) and critical (red) to adopt and operate under funding improvement plans (FIP) or rehabilitation plans were set to continue in effect after the sunset. This presented some confusion and uncertainty.

MPRA permanently extends the PPA critical and endangered status funding rules which had been scheduled to sunset on December 31, 2014. (Sec. 101).

B. Election to Enter Critical Status Early:
If a plan is projected by the actuary to be in critical status (red) in any of the next 5 plan years, it may elect critical status for the current plan year. The plan is required to provide notice of such election to the PBGC and Secretary of Treasury within 30 days of the date of certification by the actuary. (Sec. 102).
For example, if the plan actuary certifies that the plan is not in critical status (red) for 2015, but is projected be in critical status (red) for 2020, the plan sponsor may elect (in the 30 day period) for the plan to be in critical status (red) for 2015. Then 2015 would be considered the initial critical year for purposes of developing a rehabilitation plan. If a plan is in critical status, adjustable benefits may be reduced and a rehabilitation plan aimed at restoring the financial health of the plan must be adopted. A board of trustees may determine it is prudent to enter into critical status early and implement a rehabilitation plan to address future problems.

C. **Emerging from Critical Status:**
PPA created a revolving-door problem for critical status plans, where 1 year it would exit critical status only to re-enter the following year. MPRA essentially makes it more difficult for a plan to emerge, while avoiding falling back into critical status.

A plan may not emerge from critical status from the plan if 1) it meets one or more of the criteria of ERISA Sec. 305(b)(2), 2) is projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years taking into account any extension of amortization periods; and 3) is projected to become insolvent for any of the 30 succeeding plan years. (Sec. 103).

For plans which have an automatic extension of amortization under § 304(d)(1), the plan is permitted to emerge from critical status if it satisfies the last 2 criteria: 1) the plan is not projected to have an accumulated funding deficiency for the plan year or any of the 9 succeeding plan years; and 2) the plan is not projected to become insolvent for any of the 30 succeeding plan years.

D. **Endangered Status Rules Not Applicable if No Action is Required:**
A plan which is no longer projected to be in endangered status as of the end of the 10th plan year after the plan year in which the certification is made is not to be treated as endangered for the current plan year, provided that the plan was not in critical or endangered status for the immediately preceding plan year. The plan is required to provide notice to the PBGC of this. (Sec. 104).

The effect of this is that plans which would have otherwise been classified as endangered, and required to adopt a funding improvement plan, can avoid doing so. For example, if in 2014 a plan was in neither endangered nor critical status (green), and the actuary certifies that in 2015 the plan would be in endangered status (yellow), but would be in neither endangered nor critical status (green) at the end of 2025, the plan would not be considered endangered (yellow) for 2015.

E. **Funding Improvement Plans:**
Under PPA, a plan was required to develop a FIP using a funding target based on the projected funding percentage at the beginning of the funding improvement period. This was problematic because the plan was required to adopt a FIP before it was possible to know the exact target the plan was required to meet. Also, a plan which proactively implemented corrective measures earlier than was required was then required to meet a higher funding target than it would have otherwise been required had it delayed action. MPRA fixes this to make the funding target based on the funding percentage at the time the plan is certified as being in endangered status.

In preparing a FIP, under MPRA the funding target is based on the actual funding percentage when the plan is certified as being in endangered status, not the projected funding status at the beginning of the funding improvement period. (Sec. 105).
F. **Endangered and Critical Status Rules:**
Under PPA, there were inconsistencies between the rules for endangered and critical status plans. This is corrected through making endangered status plans subject to the same requirements of critical status plans.

The changes include (1) the prohibition on increasing future benefit accruals, unless the actuary certifies that the increase is paid out of contributions not required by the FIP, and (2) the prohibition on accepting a collective bargaining agreement in the period between the certification of endangered or critical status and the adoption of the FIP or rehabilitation plan which CBA provides for a reduction in the level of contributions for any participants, a suspension of contributions with respect to any period of service, or any direct or indirect exclusion of younger or newly hired employees from participating in the plan. (Sec. 106).

G. **Renewal Schedules and Bargaining Parties:**
There was some ambiguity under PPA about bargaining and the failure to adopt a FIP or rehabilitation plan. Under PPA, if a CBA expires while a plan is in critical or endangered status, and the bargaining parties fail to reach an agreement within 180 days of expiration of the contract, the default schedule providing for benefit accrual reductions with no required contribution rate increase will be deemed adopted. PPA did not address what was required for subsequent agreements if the plan was still in critical or endangered status when the original CBA expired.

For subsequent CBAs where a plan continues to be in endangered or critical status, if an agreement is not reached after 180 days the default contribution schedule, as updated and in effect on the date the CBA expires, applies. (Sec. 107).

H. **Reorganization Rules:**
For underfunded plans there were requirements under MPPAA for reorganization. Some of these were repealed entirely and others were amended to provide that critical status rules would prevail in the event of a conflict.

II. **New Zones**
Though not technically outlined in MPRA, there are certain new options available to plans which will enter or exit PPA established zones in the future. Relying on the color schemes of the prior zones is helpful in distinguishing between them.

A. "Pink" - projected to be critical status in 5 succeeding plan years:
As discussed in section I(B) above, a plan which is projected by the actuary to be in critical status (red) in any of the next 5 plan years may elect critical status for the current plan year. (Sec. 102).

B. "Olive" – projected to be in neither endangered nor critical status in 10 plan years:
As discussed in section I(D) above, a plan which is no longer projected to be in endangered status as of the end of the 10th plan year after the plan year in which the certification is made without any further action, such as increasing contribution rates or reducing benefit accruals, is not to be treated as endangered for the current plan year, provided that the plan was not in critical or endangered status for the immediately preceding plan year. The plan is required to provide notice to the PBGC of this. (Sec. 104).
C. “Gray” – critical status and projected to become insolvent during current or next 14 plan years:
As discussed in section VIII below, a plan which meets any of the critical status factors and is
projected to become insolvent during the current plan year or any of the 14 succeeding plan years
(19 succeeding plan years if the plan has a ratio of inactive to active participants that exceeds 2 to 1
or if the funding percentage of the plan is less than 80 percent) is considered to be in critical and
declining status. A plan is insolvent if the available resources are not sufficient to pay benefits when
due for the plan year. (Sec. 201).

Annual certifications and funding notices must include information identifying whether the plan is
in critical and declining status for the current plan year, and if so the projected date of insolvency, a
statement that such insolvency may result in a benefit reduction and a statement about the actions
the plan sponsor has taken to prevent insolvency.

III. Withdrawal Liability

A. Contribution Increases:
For purposes of calculating withdrawal liability under § 4211, an employer is allocated their
proportional share of the plan’s unfunded vested benefits. MPRA provides that any surcharges or
contribution increases required by a rehabilitation plan or a FIP are not to be considered in
determining a withdrawing employer’s allocable share of unfunded vested benefits. This provision
however is no longer applicable when the CBA in effect when the plan emerges from critical or
endangered status expires. (Sec. 109).

Similarly, under § 4219(c) a withdrawing employer’s annual payment is a product of its highest
contribution rate during the last 10 plan years in which the withdrawal occurs. MPRA provides that
such charges or contribution increases required by a rehabilitation plan or a FIP are to be disregarded
in determining the highest contribution rate\(^1\). This provision applies regardless of the plan’s status
at the time an employer withdraws.

The effect of this change is that employers withdrawing from a plan which had implemented a
rehabilitation or funding improvement plan requiring surcharges or contribution increases will owe
less withdrawal liability and their annual payments will be lower, provided that the employer
withdraws from the plan either before or at the expiration of the CBA when the plan emerges from
critical or endangered status. As this provision takes effect for plan years beginning after December
31, 2014, it may take some time for the changes to be realized.

B. Benefit Reductions:

\(^1\) This provision is effective for plan years beginning after December 31, 2014. It should be noted that a
court has already ruled that the “highest contribution rate” does not include surcharges or contributions
increases required under a rehabilitation or FIP. See Board of Trustees of the IBT Local 863 Pension Fund v.
employer withdrawing from a plan that implemented surcharges or contribution increases could contest a
withdrawal liability assessment if the highest contribution rate used included those surcharges or
contribution increases for all plan years. This court did not hold that surcharges or contribution increases
are to be disregarded from calculating an employer’s allocable share of the unfunded vested benefits
under § 4211.
Discussed in detail in section VIII, MPRA allows plan in critical and declining status to reduce and suspend benefits. This reduction in benefits, however, does not change a plan’s unfunded vested benefits for purposes of calculating an employer’s withdrawal liability under § 4201, unless the withdrawal occurs more than ten years after the effective date of a benefit suspension.

A suspension of benefits will decrease a plan’s unfunded vested benefits. Employers who contribute to a plan which implements a benefit suspension must continue to contribute for at least 10 years following the suspension in order for their withdrawal liability to decrease; an employer who withdraws prior to the 10 year mark will not experience a reduction.

C. Elimination of Prohibited Transaction Restriction:
Previously a settlement between a plan and a withdrawing employer settling a withdrawal liability assessment for less than the full amount of the assessment may have, arguably, been subject to the prohibited transaction rules, and potentially a breach of fiduciary duty, unless it met one of the prohibited transaction exemptions.

MPRA eliminates the prohibited transaction rule relating to transactions between plans and parties in interest to the extent the prohibited transaction applies to any plan arrangement relating to withdrawal liability. With this, a plan will have greater flexibility in agreeing to withdrawal liability settlements that are appropriate for the plan.

IV. Benefit Guarantees for Qualified Pre-Retirement Survivor Annuities (QPSAs)
MPRA extends the PBGC guarantees to pre-retirement death benefits where the participant has not yet died as of the date on which the plan became insolvent or terminated. This applies for benefit payments that became payable on or after January 1, 1985, but does not apply where the surviving spouse has died before MPRA’s effective date.

V. New Required Disclosures of Plan Information
MPRA expands the information that plans must provide on written request to participants, beneficiaries, employee representatives and contributing employers. Previously, a plan was only required to provide the actuarial and financial reports and a copy of any application for extension of the time to satisfy the minimum funding standard. Though some plans may have provided additional information on request – such as the SPD – there was no requirement to do so.

MPRA requires that a plan furnish the plan document, and any amendments thereto, the latest SPD, the current trust agreement, and any amendments thereto, participation agreements, annual reports, plan funding notice, actuarial report, financial report, audited financial statements, applications for extension of the time to satisfy the minimum funding standard, and any rehabilitation and FIP along with the contribution schedules. (Sec. 111).

Contributing employers will benefit from having additional access to information about the plan and its operation.

VI. Plan Mergers and Partitions
A. Mergers:
MPRA expands the ability of the PBGC to facilitate mergers between plans when requested to do so. In order to take actions it deems appropriate, PBGC must find that 1) the transaction is in the
interests of the participants of at least one of the plans, and 2) is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans. Along with providing training, technical assistance, mediation, communication with stakeholders and support with related requests to other government agencies, PBGC may provide financial assistance to facilitate a merger if all of the following conditions are met:

1. One or more of the plans is in critical and declining status (projected to be insolvent within 15 plan years).
2. PBGC reasonably expects financial assistance will reduce PBGC’s long-term loss with respect to the plans.
3. PBGC reasonably expects that the financial assistance is necessary for the merged plans to become or remain solvent.
4. PBGC certifies that its ability to meet existing financial obligations will not be impaired by providing financial assistance in connection with the merger.
5. The assistance is paid exclusively from the fund for basic benefits guaranteed for multiemployer plans.

(Sec. 121).

B. Partitions:
MPRA extensively revises the partition rules. Previously, only vested benefits attributable to a bankrupt employer could be partitioned. No longer is the availability of a partition limited to benefits attributable to a bankrupt employer.

Under MPRA, a plan in critical and declining status (projected to be insolvent within 15 plan years), that has taken all reasonable measures to avoid insolvency, including implementation of benefit suspensions can be considered for partition.

In reviewing a partition application, PBGC must reasonably expect that partition of the plan will reduce PBGC’s expected long-term loss with respect to the plan and that partition is necessary for the plan to avoid insolvency. PBGC must certify to Congress that its ability to pay guaranteed benefits for other plans will not be impaired by the partition and, if PBGC bears any of the costs associated with the partition, the costs will be paid exclusively out of the fund for basic benefits guaranteed for multiemployer plans.

The Plan is required to notify participants and beneficiaries of its partition application within 30 days of filing, and PBGC is required to make a determination regarding the application within 270 days.

If approved, the liabilities transferred from the old plan to the new plan – the one created by the partition – cannot be more than what is necessary to keep the old plan solvent. The new plan will be sponsored and administered by the same parties who sponsored and administered the old plan. The new plan is considered a successor plan to which the PBGC minimum benefit guarantee applies. The old plan must pay the greater of the PBGC minimum benefit guarantee or the amount payable under the plan’s terms, taking into account any benefit suspensions.

Following partition, the old plan must pay PBGC premiums on behalf of participants whose benefits were partitioned to the new plan for 10 years. If the old plan improves benefits in that 10 year period following partition, the old plan must pay to PBGC an amount equal to the lesser of the total...
value of the increase in benefit payments for such year attributable to the benefit improvement or the total benefit payments from the plan created by the partition for such year. (Sec. 122).

C. Employers Withdrawing from Partitioned Plans:
If an employer withdraws from a plan that was partitioned within 10 years following the PBGC’s partition order, the employer’s withdrawal liability will be calculated for both the old and new plans. If the employer withdraws more than 10 years after the order, the withdrawal liability will be calculated only with respect to the old plan.

VII. PBGC Premium Increases
Currently, the PBGC premium is $12 for each individual who is a participant in a plan during the applicable plan year. For plan years beginning after December 31, 2014, the premium doubles to $26.

For plan years thereafter, the premiums are indexed based upon increases in the national wage index.

In 2016 PBGC is required to report to Congress whether the increases are sufficient to maintain guaranteed benefit levels for 10 and 20 year periods beginning in 2015. If PBGC reports that the premium levels are insufficient, PBGC is to propose a schedule of revised premiums sufficient to meet such obligations.

VIII. Benefit Suspensions
A bedrock principle of multiemployer plans since the passage of ERISA has been guaranteed vested benefits for participants, referred to as the “anti-cutback rule.” For the first time, MPRA permits plans meeting certain criteria to suspend and reduce benefits after following numerous procedural requirements.

A. “Suspension of Benefits” Defined:
Under MPRA, a “suspension of benefits” is defined as the “temporary or permanent reduction of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the suspension of benefits.”

B. Available Only to Certain Plans:
Only critical and declining status plans may suspend benefits. A critical status plan is considered to be in declining status if it is expected to become insolvent during the current or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive to active participants of more than 2 to 1 or if the funded percentage of the plan is less than 80 percent). (Sec. 201).

In projecting whether a plan is in critical and declining status, the plan actuary is to assume that each contributing employer will continue to comply with its contribution obligations under the rehabilitation plan and is permitted to take into account any benefit suspensions adopted in a prior plan year that are still in effect.

Annual certifications and funding notices must include information identifying whether the plan is in critical and declining status for the current plan year, and if so the projected date of insolvency, a statement that such insolvency may result in a benefit reduction and a statement about the actions the plan sponsor has taken to prevent insolvency.
C. **Requirements for Implementing Suspension:**

1. **Selection of Retiree Representative**
   A plan which has more than 10,000 participants and is anticipating submitting an application to suspend benefits must, no later than 60 days prior to the submission of the application, select a participant of the plan in pay status to act as a retiree representative, who may also be a trustee of the plan. The retiree representative is designated to advocate for the interests of the retired and deferred vested participants and beneficiaries throughout the benefit suspension application and approval process. The retiree representative is entitled to seek legal and actuarial support, which reasonable expenses are to be paid for by the plan.

2. **Conditions for Suspension**
   For a plan to suspend benefits, it must be shown that:
   1) The plan actuary certifies that with the proposed suspension of benefits in effect until they expire by their own terms, or indefinitely if no expiration date is given, the plan will avoid insolvency.
   2) The plan sponsor determines in a written record to be maintained throughout the period of the suspension, that the plan is still projected to become insolvent unless benefits are suspended, although all reasonable measures have been taken, and continue to be taken during the period of suspension, to avoid insolvency. Such factors that may be taken into account by the plan sponsor include:
      a. Current and past contribution levels.
      b. Levels of benefit accruals, and any prior reductions in the rate of accruals.
      c. Prior reductions, if any, of adjustable benefits.
      d. Prior suspensions, if any, of benefits.
      e. Impact on plan solvency on the subsidies and ancillary benefits available to plan participants.
      f. Compensation of active participants relative to employees in the participants’ industry generally.
      g. Competitive and other economic factors facing contributing employers.
      h. Impact of benefit and contribution levels on retaining active participants and bargaining groups under the plan.
      i. Impact of past and anticipated contribution increases under the plan on employer attrition and retention levels.
      j. Measures undertaken by the plan sponsor to retain or attract contributing employers.

3. **Limitations on Suspension**
   There are a number of technical constraints on formulating the benefit suspensions:
   1) The monthly benefit may not be reduced below 110 percent of the PBGC guaranteed monthly benefit on the date of the suspension.
   2) Benefits cannot be suspended for participants over 80 years old. Participants between 75 and 80 years old are partially protected from the effects of the reduction. No disability benefits may be suspended.
   3) The suspension must be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.
   4) Where a plan is also being partitioned, the suspension may not take effect prior to the effective date of the partition.
5) Suspensions are to be equitably distributed across the population, taking into account factors that may include:
   a. Age and life expectancy.
   b. Length of time in pay status.
   c. Amount of benefit.
   d. Type of benefit: survivor, normal retirement, early retirement.
   e. Extent to which participant is receiving a subsidized benefit.
   f. Extent to which participant has received post-retirement benefit increases.
   g. History of benefit increases and reductions.
   h. Years to retirement for active employees.
   i. Any discrepancies between active and retiree benefits;
   j. Extent to which active participants are reasonably likely to withdraw support for the plan, accelerating employer withdrawals from the plan and increasing the risk of additional benefit reductions for participants in and out of pay status.
   k. Extent to which benefits are attributed to service with an employer that has failed to pay its full withdrawal liability.

6) In formulating a suspension across a population, the suspension is to be applied:
   a. First, to the maximum extent possible to benefits attributable to a participant’s service for an employer which withdrew from the plan and failed to pay (or is delinquent in paying) the full amount of its withdrawal liability under § 4201(b)(1) or an agreement with the plan.
   b. Second, to all other benefits that may be suspended.
   c. Third, to benefits under a plan directly attributable to a participant’s service with any employer which has prior to the enactment of MPRA:
      i. Withdrawn from the plan in a complete withdrawal and has paid the full amount of its withdrawal liability.
      ii. Assumed liability for providing benefits to participants and beneficiaries pursuant to a CBA in a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan.

4. Suspension Process
   a) Application and Notice
      Concurrently with its application for suspension that must be submitted to the Secretary of Treasury, the plan is required to provide notice of the proposed suspension to: 1) participants and beneficiaries; 2) contributing employers; and 3) employee organizations who represent participants for collective bargaining purposes. The Treasury shall promulgate a model notice and issue regulations on the form and manner of the delivery of the notice.

      The notice must contain:
      1) Sufficient information to enable participants and beneficiaries to understand the effect of the proposed suspension, including an individualized estimate of such effect.

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2 Though MPRA does not mention either by name, this provision is tailored to address the Central States, Southeast and Southwest Areas Pension Fund and UPS.
2) A description of the factors considered by the plan sponsor in designing the benefit suspension.

3) A statement that the application for approval of any suspension of benefits shall be available on the website of the Department of Treasury and that comments on the application will be accepted.

4) Information as to the rights and remedies of participants and beneficiaries.

5) A statement describing the appointment of a retiree representative, if applicable, including the date of appointment, identifying information about the representative (including whether he/she is a plan trustee) and how to contact such representative.

6) Information on how to contact the Department of Treasury for further information and assistance where appropriate.

An application for a suspension of benefits must be submitted to the Secretary of Treasury, which will consult with the PBGC and Secretary of Labor.

b) Review of Application
Within 30 days, the Secretary of Treasury is required to publish a notice of the proposed suspension in the federal register and on its website seeking comments from contributing employers, employee organizations, plan participants and beneficiaries. The application must be approved or denied within 225 days. The plan sponsor’s determinations are to be accepted unless the Secretary of Treasury, in consultation with the PBGC and Secretary of Labor, conclude they are clearly erroneous. If the application is denied notice shall be provided to the plan sponsor detailing the specific reasons for the rejection, including reference to the specific requirement not satisfied.

c) Participant and Beneficiary Vote
No suspension of benefits shall take effect without a vote of participants. Within 30 days after the approval of an application, the Secretary of Treasury, together with the PBGC and Secretary of Labor, are to administer a vote of participants and beneficiaries of the plan. The suspension is to go into effect unless a majority of the participants vote to reject the suspension. The plan sponsor is to provide a ballot for the vote, approved by the Secretary of Treasury, together with the PBGC and Secretary of Labor.

The ballot must include the following:
1) A statement from the plan sponsor in support of the suspension.
2) A statement in opposition to the suspension compiled from comments received.
3) A statement that the suspension has been approved by the Secretary of Treasury, together with the PBGC and Secretary of Labor.
4) A statement that the plan sponsor has determined that the plan will become insolvent unless the suspension takes effect.
5) A statement that insolvency of the plan could result in benefits lower than benefits paid under the suspension.
6) A statement that insolvency of the PBGC would result in benefits lower than benefits paid in the case of plan insolvency.

The regulations also suggest that additional steps may be necessary to inform participants about the proposed suspensions, including in-person meetings, telephone or internet-based communications, mailed information or other means.
d) Treasury Override
Within 14 days after a vote of participants and beneficiaries rejecting a suspension of benefits, the Secretary of Treasury, together with PBGC and Secretary of Labor, shall determine whether a plan is “systemically important.” A systemically important plan is one which the PBGC projects that the present value of financial assistance payments exceeds $1,000,000,000 if suspensions are not implemented and the plan becomes insolvent. This value is indexed for calendar years beginning in 2015.

Within 90 days after the results of the vote are certified, if the plan is determined to be systemically important, the Secretary of Treasury may, notwithstanding the rejection of the suspension by participants, permit the plan sponsor to implement the suspension of benefits, or permit a modified suspension as directed by the Secretary of Treasury, together with the PBGC and Secretary of Labor.

e) Authorization to Suspend
If the participants vote in favor of the suspension, or it is determined that the plan is systemically important and the participants’ rejection of the suspension is overridden, permitting the implementation of the suspension, the Secretary of Treasury, together with the PBGC and Secretary of Labor, shall issue a final authorization to suspend not later than 7 days after the vote, or prior to the end of the 90 day period.

f) Re-application if Application Denied or Rejected
If a suspension is prohibited from taking effect because either the Secretary of Treasury, together with the PBGC and Secretary of Labor deny the application or the participants reject it, and the plan is not considered systemically important, the plan sponsor is permitted to submit a new suspension application.

D. Court Challenges to Suspension of Benefits:
An action by the plan sponsor challenging the denial of an application for suspension of benefits by the Secretary of Treasury, together with the PBGC and Secretary of Labor is permitted after the denial, and must be brought within 1 year.

An action challenging a suspension of benefits may be brought only after the final authorization is given, and must be brought within 1 year. The standard of review to be applied by a court is the same as review of an agency decision. The suspension of benefits is not to be overturned by the court unless it finds that the suspension is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority or limitations, or short of statutory right; or without observance of procedure required by law.

A court is not permitted to enter a temporary injunction, unless it finds a clear and convincing likelihood that the plaintiff will prevail on the merits of the case.

MPRA specifically provides that no participant or beneficiary affected by a benefit suspension shall have a cause of action.

E. Benefit Improvements:
A benefit improvement is defined as any resumption of suspended benefits, increase in benefits, increase in the rate at which benefits accrue or an increase in the rate at which benefits become non-forfeitable.

A plan with a benefits suspension in effect may provide benefit improvements, except that the plan cannot increase liabilities through the improvement for any participant or beneficiary not in pay status, unless such an improvement is accompanied by equitable benefit improvements for all participants and beneficiaries whose benefit commencement dates were before the first day of the plan year for which the benefit improvement for a participant not in pay status took effect, and the plan actuary certifies that after taking into account such improvements the plan is projected to avoid insolvency indefinitely.

The projected value of the liabilities for benefit improvements for participants not in pay status cannot exceed the projected value of liabilities for benefit improvements for participants in pay status.

The increase in total liabilities for benefit improvements are to be equitably distributed among participants whose benefit commencement dates were before the first day of the plan year taking into account the same factors considered in suspending benefits.

The plan is permitted to resume benefits for participants only in pay status if the value is equitably distributed, taking into account the same factors considered in suspending benefits.

A plan may increase benefits even if it increases liabilities for participants not in pay status if the Secretary of Treasury, together with the PBGC and Secretary of Labor, determines the increase is reasonable and provides for only a *de minimis* increase in the plan’s liabilities, or such increase is required as a condition of qualification under the Internal Revenue Code, or to comply with other applicable law.

F. Special Rule for Emergence from Critical Status Following Implementation of Suspension of Benefits

A plan certified to be in critical and declining status which has implemented a suspension of benefits shall not emerge from critical status until: 1) the plan is no longer certified to be in critical or endangered status; and 2) the plan is projected to avoid insolvency.