Multiemployer Pension Reform Act of 2014

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xerox

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Multiemployer Pension Reform Act (MPRA)

Background
Legislative Activity

The Pension Protection Act of 2006 (PPA)

- Changed the funding rules for multiemployer plans including requiring annual actuarial certifications on the a plan’s zone status
- Some provisions of PPA were set to sunset on December 31, 2014

NCCMP *Solutions, Not Bailouts* / GAO Report / PBGC Report

- Reports describing the severe funding deficiencies of multiemployer plans and the multiemployer PBGC fund that insures these plans
- NCCMP offered potential remedies

Multiemployer Pension Reform Act (MPRA)

- Enacted on December 16, 2014 as part of “Chromnibus Bill”
- Generally effective for plan years beginning after December 31, 2014
- Permanently extends PPA provisions set to expire
- Implemented many of the remedies proposed by NCCMP
- RFI Issued by the Treasury and PBGC for comments

Background
PBGC Multiemployer Program

2014 PBGC Annual Report:

- PBGC multiemployer program covers 10M workers & retirees in about 1,400 plans
- 90% probability of PBGC multiemployer fund to become insolvent by 2025
- Program's deficit grew from $1 billion in 2009 to **> $42 billion** in 2014

See: *http://pbgc.gov/documents/2014-annual-report.pdf*

PBGC Update:

- During 2014, paid $97M in financial assistance to 53 multiemployer plans covering 52,000 retirees and beneficiaries
- Projected annual financial assistance payments in 2020 > $400M to about 85 plans

Background
PBGC Multiemployer Program (Cont'd)

PBGC Premiums (prior to MPRA):

- 2014: $12 per participant
- Compare to single-employer: $49 per participant plus 1.4% of unfunded vested benefits

PBGC Guaranteed Benefits (prior to MPRA):

- Coverage for basic benefits at normal retirement age, most early retirement benefits, annuity benefits for survivors of plan participants, and disability benefits.
- Maximum monthly benefit varies by years of service and accrual
- 100% of first $11/month plus 75% of next $33/month, per year of service with a maximum of $35.75/month

Unlike single employer coverage, PBGC multiemployer guaranteed benefits are not indexed, adjusted for retirement age or form of payment.

MPRA Increase on PBGC Premiums

MPRA Change → Increase in PBGC Premiums

- Per participant premium increased from $13 to $26 effective for plan years beginning in 2015
- Per participant premium is indexed to wage inflation for plan years beginning after 2015 (rounded to nearest multiple of $1)
- PBGC required to submit new report by June 1, 2016
  - Analysis of whether new levels are sufficient to meet projected obligations for 10 and 20 year periods
  - If not sufficient, propose a revised premium schedule that is sufficient

Increase in PBGC premiums under MPRA are projected to extend the PBGC insolvency by 2 years; however increased financial assistance under MPRA could offset or decrease this improvement.

MPRA Changes to PBGC Guaranteed Benefits

MPRA Change → Expansion of PBGC Guaranteed Benefits

PBGC guarantee benefit extended to Qualified Preretirement Survivor Annuities for spouses alive as of December 16, 2014 retroactive to participant deaths occurring after December 31, 1984.

Based on a March 2015 study by the PBGC, the reduction to PBGC guaranteed benefit levels for participants of multiemployer plans expected to become insolvent in the near future are anticipated to be more dramatic than the reduction experienced by participants of currently insolvent plans. See *http://pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf*

PPA Overview
Actuarial Certification

Fund actuary must certify by the 90th day of plan of every year:

1) Plan's zone status

2) Whether the plan is making scheduled progress under its Funding Improvement or Rehabilitation Plan (as applicable)

Plan's zone status is based on projections using:

- Liabilities from most recent valuations completed at beginning of projections reflecting any significant changes that have occurred during the year using reasonable actuarial assumptions for projections
- Current asset information
- Projected Industry Activity <u>from Trustees</u>
- Contribution rates and benefit accruals under current Collective Bargaining Agreements (CBAs)/Rehabilitation Plan/Funding Improvement Plan

Funding percentages based on <u>Unit Credit</u> Liability

PPA Overview
Funding Status Tests

Critical

<u>Meets one:</u>

- Funded % < 65% ***AND*** (MVA + Contributions over next 7 years) < (Benefits + Expenses over next 7 years)
- Projected to have funding deficiency within 4 years *(5 years if Funded % <= 65%)*
- ***(***Normal Cost + Interest on Unfunded Liability) > Contributions ***AND*** PV inactive benefits > PV active benefits ***AND*** Projected to have funding deficiency within 5 years
- (MVA + PV 5 years of contributions) < (PV 5 years of benefits + administrative expenses)

Seriously Endangered

- Not in Critical Status ***AND***
- Funded % < 80% ***AND***
- Expected to have funding deficiency within 7 plan years

Endangered

- Not in Critical Status ***AND***
- Meets <u>one:</u>
  - Funded % < 80%
  - Expected to have funding deficiency within 7 plan years

Green

- Not In Critical, Seriously Endangered Endangered

PPA Overview
Critical Status Operational Rules

Automatic Action:

- Removal of non-increasing annuities (except corrective retroactive payments and automatic cash outs)

Notice of Critical Status

- Due not later than 30 days after certification

Surcharges

- Begin 30 days after notification to critical status and surcharges in effect
- 5% first year; 10% for subsequent years
- Payable until agreement adopted compliant with Rehabilitation Plan

Rehabilitation Plan

- Adoption not later than 240 days following required certification date
- Establish schedules of benefits and contributions to allow the plan to emerged from Critical status by the end of the Rehabilitation Period
- If not reasonably achievable, objective is to take all reasonable measure to forestall insolvency
- Rehabilitation Plan updated annually

Adjustable Benefits

- Rehabilitation plan schedules can remove some benefits, rights & features with some restrictions
- Notice required 30 days prior to effective date
- Ignored in liability determination for withdrawal liability purposes
- Reflected in liability determination for funding purposes

PPA Overview
Endangered/Seriously Endangered Operational Rules

Notice of Endangered / Seriously Endangered Status

- Due not later than 30 days after certification

Funding Improvement Plan

- Adoption not later than 240 days following required certification date
- Establish schedules of benefits and contributions to allow the plan to emerged from Endangered / Seriously Endangered status by the end of the Funding Improvement Period
- Funding Improvement Plan updated annually

MPRA Modifications to Funding Rules

Summary of Modifications Under MPRA

Added New Statuses:

- Projected to be Critical
- Critical and Declining
- Special Green status

Clarified rules for emergence from Critical Status

Modified Critical/Endangered/Seriously Endangered operational rules

Added corrective plan schedules when failure to adopt in bargaining

Disregard certain contribution increases for Withdrawal Liability

MPRA Modifications to Funding Rules
Projected to be Critical

MPRA Change to Certification ➡	Must also state if plan is expected to be in critical within next five years

If plan certified as projected to be critical, Trustees can make an election to be in critical status in the current year within 30 days of certification

- If election to be Critical is made:
  - Must notify Secretary of Treasury within 30 days of certification or any other date provided by Secretary
  - Follow all critical status rules

- If no election to be Critical is made:
  - Must notify PBGC within 30 days after certification

Election cannot be revoked; must follow normal emergence rules

MPRA Modifications to Funding Rules
Critical and Declining Status

MPRA Change to Certification ➡ Added Critical and Declining Status

Critical and Declining Test:

I. Plan is Critical **AND**
II. Projected to be insolvent within 15 years,
[Projected to be insolvent within 20 years, if either:
- Inactive to active participant ratio is greater than 2 to 1, or
- Funded percentage is less than 80%]

MPRA Change to Certification ➡ Projection Assumptions

For determining whether a plan is in Critical and Declining status:

- If reasonable, permitted to assume each contributing employer compliant with a schedule of the rehabilitation plan continues to be compliant through the end of the rehabilitation period or later time
- Shall take into account any benefit suspensions adopted in a prior year still in effect

MPRA Modifications to Funding Rules
Critical and Declining Status (cont'd)

MPRA Change to Funding Notice → Additional Information Required

- Projected insolvency date
- Clear statement that insolvency may result in benefit reductions
- Statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency

New Annual Funding Notice requirements effective for notices due after December 31, 2015

Change to Form 5500 Schedule MB → Additional Information Required
(not part of MPRA)

- Projected year of insolvency

Schedule MB changes effective for 2014 Plan Year filings

MPRA Modifications to Funding Rules
Special Green Status

MPRA Change to Certification → New Special Green Status

Special Green Status Test:

I. Plan was certified as green (not critical or endangered) status in prior year,

AND

II. Meets endangered or seriously endangered status criteria in current year, but plan actuary can certify that will not be in endangered status at end of 10^{th} year from certification year

Notice required to be sent to PBGC and bargaining parties

MPRA Modifications to Funding Rules

Summary of Zone Statuses PPA vs. MPRA

PPA	MPRA
Green	Green
	Special Green Status
	Projected to be Critical (and no election to be Critical)
Endangered	Endangered
Seriously Endangered	Seriously Endangered
Critical	Projected to be Critical (and election made to be Critical)
	Critical
	Critical & Declining

MPRA Modifications to Funding Rules
Other Technical Modifications

- Clarified rules for emergence from Critical status
- Clarified that Funded Percentage for endangered plans is measured from the first plan year the fund is certified to be in endangered status
- Aligned Funding Improvement Period restrictions to be consistent with Rehabilitation Period restrictions
- Removed reorganization rules
- Provided corrective plan schedules for failing to adopt in bargaining:
  - MPRA clarified that the same contribution schedule be imposed that had been updated under the Funding Improvement Rehabilitation Plan in effect on the date the CBA expires

MPRA Modifications to Funding Rules
Withdrawal Liability

MPRA Clarification → Contributions Used for Withdrawal Liability

Under PPA:

- Increases in contributions under Funding Improvement or Rehabilitation Plan and surcharges are not included for determining employer allocation of withdrawal liability
- PPA not explicit on payment schedule
- Adjustable benefits ignored for unfunded vested benefit calculation

Under MPRA:

- Contribution increases* under Funding Improvement or Rehabilitation Plans and surcharges disregarded for determining employer allocation **and payment schedule**
  - Exemption stops after the expiration date of the CBA in effect when the plan emerges from critical/endangered status. However, contribution increases will continue to be disregarded in the highest contribution rate determination for the years the plan was in critical/endangered status for purposes of determining the payment schedule.
- PBGC to provided a simplified method

**except for increases in work levels, employment, compensation or permitted increases in benefits including an increases in future benefits accruals*

MPRA New Disclosure Requirements

- Documents that must be provided to participants, employee representatives and employers upon written request:
  - Current plan document and amendments
  - Latest Summary Plan Description (SPD)
  - Current trust agreement and amendments
  - Annual report (Form 5500)
  - Annual Funding Notice
  - Actuarial reports (including sensitivity analysis)
  - Investment manager reports
  - Audited financial statements
  - Funding waiver requests
  - Latest funding improvement plan or rehabilitation plan and associated contribution schedules, if applicable
  - Current employer's participation agreement for no more than previous five years (employers)

MPRA New Disclosure Requirements *(cont'd)*

- Documents can only be requested once in a 12-month period
- Periodic documents that are in plan administrator's possession for 6 years or more do not have to be provided
- Employee representatives and employers permitted to file suit to enforce disclosure requirements

Generally, information previously available under various ERISA sections, but MPRA made rights more specific and provided for enforcement

MPRA Benefit Suspensions

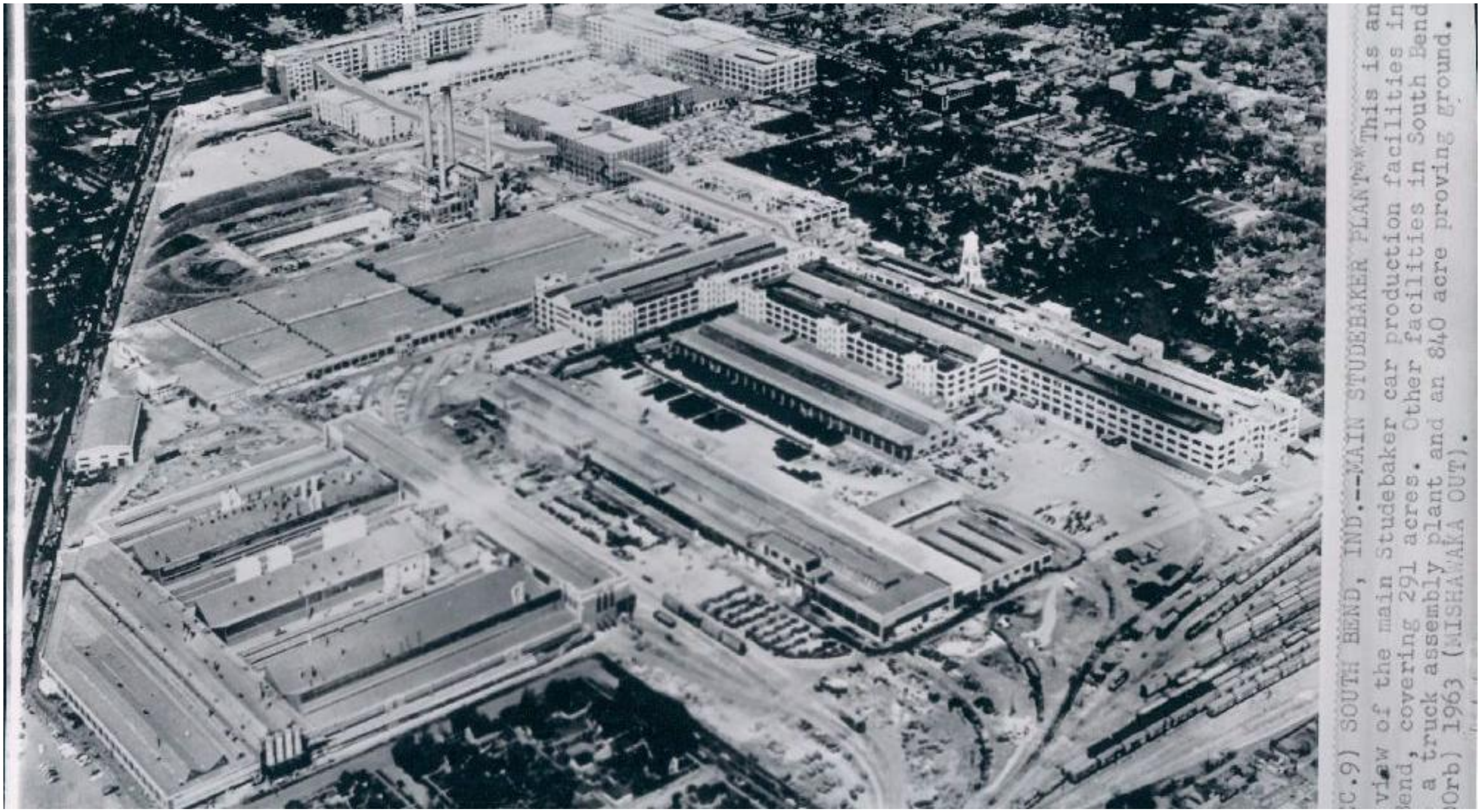
MPRA Change → Introduction of Benefit Suspensions for Deeply Troubled Plans

Plans eligible for benefit suspensions if:

- Plan certified critical and declining
- Trustees determine all reasonable measures have been taken and continue to be taken to avoid insolvency
- Actuary must certify that the plan is projected to avoid insolvency, taking into account proposed suspension of benefits

Plans are not liable for any benefit payments not made as result of suspension. Benefit suspensions under MPRA allows reduction in benefits protected under IRC Section 411

MPRA Benefit Suspensions
Background – ERISA Anti-Cut Back Rules



MPRA Benefit Suspensions

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MPRA Benefit Suspensions
Reasonable Measures Considerations

In determining whether all reasonable measures have been taken, the Plan Sponsor may take into consideration one or more:

- Current and past contribution levels
- Levels of benefit accruals (including any prior reductions
- Prior reductions (if any) of adjustable benefits
- Prior suspensions (if any) of benefits
- Impact on solvency of the subsidies and ancillary benefits available to actives
- Compensation levels relative to employees in the participants' industry
- Competitive and other economic factors facing contributing employers
- Impact of benefit & contribution levels on retaining active participants and bargaining groups
- Impact of past and anticipated contribution increases under the plan on employer attrition and retention levels
- Measures undertaken by the plan sponsor to retain or attract contributing employers

MPRA Benefit Suspensions
Benefit Suspension Limitations

Can suspend accrued and projected benefits on a temporary or permanent basis with the following restrictions:

- Not below 110% of PBGC multiemployer guaranteed benefit amount
- Suspension in aggregate must be reasonably estimated to avoid insolvency and not materially exceed
- Not reduced for participants older than 80. Reduction phased-in for participants between 75 and 80.
- No suspension of disability benefits
- Equitable distribution of suspensions

Suspensions would end if benefits improvements given to actives, unless certain conditions are met.

MPRA Benefit Suspensions
Equitable Distribution Considerations

Suspension must be equitably distributed across participants and beneficiaries, however, plan sponsor may take into account one or more:

- Age and life expectancy
- Length of time in pay status
- Amount of benefit
- Type of benefit (survivor, normal retirement, early retirement)
- Extent to which participant or beneficiary is receiving a subsidized benefit
- Extent to which participant or beneficiary has received post-retirement benefit increases
- History of benefit increases and reductions
- Years to retirement for active employees
- Any discrepancies between active and retiree benefits
- 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
- Extent to which benefits are attributed to service with an employer that failed to pay its full withdrawal liability

MPRA Benefit Suspensions
Application Process

Plans required to submit application to Treasury

- Applications will be published on Treasury's website
- Notice will be published in the Federal Register soliciting comments from contributing employers, employee organizations, participants and beneficiaries of the plan and other interested parties
- Within 30 days, plan sponsor must send notice to participants and beneficiaries

Participant ratification required

- Suspension goes into effect unless a majority of all participant and beneficiaries of the plan vote to reject suspension
- Treasury can override if "systemically important plan" (PBGC obligations>$1B)

Retiree representative for plans with 10,000 or more participants

Application deemed approved unless rejected within 225 days

PBGC Financial Assistance
Overview

PBGC pays financial assistance to multiemployer plans in the form of loans in the event of insolvency

MPRA expands PBGC's financial assistance to plan mergers and partition to avoid insolvency

PBGC financial assistance takes two forms:

- Periodic payments to pay for guaranteed benefits to participants and cover administrative expenses of the plan
- A one-time or non-periodic payment to purchase annuities or to facilitate merger of the plan with a healthier plan

Plans may receive one or both types of financial assistance

MPRA Expanded PBGC Assistance
Plan Mergers: Non-Financial Assistance

MPRA Expansion	➡	PBGC Can Facilitate Mergers by Offering General (Non-Financial) Assistance

PBGC can take action to promote and facilitate a merger if, after consultation with Participant and Plan Sponsor Advocate:

- It is in the interest of participants of at least one of the plans
- Not reasonably expected to be adverse to overall interests of participants in all plans

Facilitation may include:

- Training
- Technical assistance
- Mediation
- Communication with Stakeholders
- Support with related requests to other government agencies

MPRA Expanded PBGC Assistance
Plan Mergers – Financial Assistance

MPRA Expansion	→	PBGC Can Facilitate Mergers by Providing Financial Assistance to Some Mergers

PBGC can provide financial assistance to enable one or more plans to avoid or postpone insolvency

- One or more of the plans must be in critical and declining status
- PBGC expects assistance will reduce the PBGC's expected long-term loss for plans involved
- Assistance is necessary for the merged plan to become or remain solvent
- PBGC certifies that its ability to meet current financial assistance obligations will not be impaired
- Cost paid exclusively from PBGC multiemployer pool

PBGC must notify certain legislative committees within 14 days of such financial assistance being provided

MPRA Expanded PBGC Assistance
New Partition Rules

MPRA Change ➡ Changed and Expanded Requirements for Partition

PBGC can partition a plan upon application if:

- Plan is in critical and declining status
- PBGC determines sponsor has taken all reasonable steps to avoid insolvency (including maximum benefit suspensions permitted)
- PBGC expects assistance will reduce the PBGC's expected long-term loss for the plan and the partition is necessary for the plan to remain solvent
- PBGC certifies that its ability to meet current financial assistance obligations will not be impaired
- Cost paid exclusively from PBGC multiemployer pool

Notifications:

- To participants within 30 days after application is submitted
- PBGC must notify certain legislative committees 14 days of partition order

MPRA Expanded PBGC Financial Assistance
New Partition Rules

Upon approval of partition, a successor plan is created with the minimum liability transferred in order for the prior plan to remain solvent

Prior Plan:

- Pays benefits in excess of PBGC guaranteed benefit and benefit that otherwise would have been paid if partition did not occur
- For 10 years following partition, pays PBGC premiums for both plans

Successor Plan:

- Only pays benefits up to the PBGC guaranteed benefit amount
- The prior plan’s administrator and plan sponsor would also take on these roles for successor plan

Note: If employer withdraws within 10 years, liability assessed under both plans

New 4062(e)
Background on Statute prior to MPRA

Substantial Cessations of Operations under ERISA 4062(e) occurs if:

- Cessation of operations at a facility in any location ***AND***
- As a result of the cessation, more than 20% of the active participants covered by the Plan are separated from the employer

- Must report to PBGC within 60 days after event has occurred

- If the plan is underfunded on a PBGC benefit (termination) liability basis the PBGC can enforce additional plan contributions or employer to post a bond (for a pro-rata portion of the unfunded), else PBGC could impose a lien.

- Definitions of Eligible Plan Participants and Cessation of Operations were unclear causing dispute in whether an event had occurred

- In 2014, PBGC imposed a moratorium on 4062(e) enforcement

New 4062(e)
Changes Under MPRA

- Moratorium on enforcement lifted in January
- Changed 4062(e) event threshold from 20% to 15% based on new definition of Eligible Employees
- Defined key terms:
  - Workforce Reduction
  - Eligible Employees are any employees eligible to participate in an employer pension benefit plan (encompasses DB or DC plans)
  - Cessation of Operations
- Exemptions to reportable event:
  - Plans with > 90% funding percentage based on <u>PBGC vested liability for premiums</u>
  - Small plans with < 100 participants
  - For a sale, if affected employees are brought into the buyer’s pension plan

New 4062(e)
Changes Under MPRA

- Liability based on Unfunded Vested Benefits based upon PBGC premium purposes

- Allowed for payments of additional contributions to be made in equal annual payments of 1/7th the unfunded vested benefits determined using PBGC premium basis over 7 years

- PBGC will look at credit worthiness of plan sponsor in determining whether to enforce measures of additional security for the plan

- New law effective December 16, 2014 and applied to both new and old events except where settlements were reached by June 1, 2014

- Final regulations and technical guidance expected to be published

Q&A

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