Important Issues To Consider in Connection with Lockdowns: Lockdown Restrictions Could Hurt Small Business Retirement Plans

The Issue: The issue is whether federal pension law should contain rules that restrict either the number or length of "lockdowns" of qualified pension plans.

The Issue: The issue is whether federal pension law should contain rules that restrict either the number or length of "lockdowns" of qualified pension plans.

Background: A "lockdown"-also called a "lock-out" or a "transaction suspension period"-is a necessary administrative procedure required to insure smooth and accurate movement of plan participants' assets when a pension plan changes service providers. It is a time during which no plan participant may make changes to his or her pension plan account; e.g., during a lockdown, plan participants may not order transfers among investment options, take in-service withdrawals or loans, or receive final distributions.

Reports on consequences to plan participants from the Enron bankruptcy indicate that Enron's 401(k) plan was subject to a lockdown period just prior to the time that Enron declared bankruptcy and trading in its stock was suspended. This prevented plan participants from selling their Enron stock as it was further falling in value. During the lockdown period, which began on October 26 and ended on November 13, the value of Enron stock fell from $15.40 to $9.98. Unfortunately, even before the Enron 401(k) plan lockdown, Enron's stock had already lost almost 70 percent of its value.

Lockdowns Are Necessary: Typically a lockdown is needed when an employer changes its pension plan service provider. It is analogous to changing ordinary checking accounts. Time is required for outstanding checks to clear, and for the new account to be set up. Similarly, accurate records cannot be compiled, transmitted, and set up by the new pension plan service provider if investment changes, loan activity and/or withdrawals are ongoing during the transfer. During such a lockdown period, participant records and plan assets must be reconciled before they are turned over to the new service provider, which must then set up a new recordkeeping system for the plan. If participant records are in good order, the lockdown can often be less than a week. However, it may take much longer, particularly for small business retirement plans where records may be more difficult to gather.

Survey Results: ASPPA surveyed retirement plan administrators on their typical experiences with lockdowns. We received feedback from over 200 firms responsible for administrating over 85,000 retirement plans that permit participants to direct the investment of their retirement accounts. On average lockdowns for the plans surveyed last between three to four weeks. However, survey respondents indicated that they can last two months or even longer when records are difficult to gather. Notice in advance of the lockdown is virtually always given and on average it is at least 30 days notice. Finally, the survey showed that lockdowns are relatively infrequent-happening usually only once every three to four years.

Gather the Facts First: The appropriate response to the Enron situation requires gathering all the relevant facts before legislating. It requires safeguarding the interests of plan participants working for economically healthy employers operating economically healthy pension plans, as well as protecting plan participants against the problems that caused the Enron pension plan collapse.

Early suggestions-including preventing lockdown altogether or drastically limiting the number or length of lockdowns-would potentially hurt pension plan participants who are building a secure retirement through their pension plan. It is crucial that in the search for the appropriate response to the collapse of the Enron pension plan, the retirement plans of law-abiding, profitable companies not be seriously compromised.

Lockdowns Must Be Allowed: A pension plan must be allowed a reasonable lockdown period in order to operate in a fluid economy. Pursuant to ERISA's fiduciary rules, qualified retirement plans must be administered in the best interest of plan participants. In virtually all cases, plan sponsors properly comply with this fiduciary requirement. Lawsuits are pending arguing that Enron violated its fiduciary responsibility by instituting a lockdown to prevent further liquidation of its stock by plan participants and thus a further decline in stock value. Where a plan contains no employer stock, and is invested entirely in publicly-traded mutual funds for example, no potential for any such manipulation by company management exists.

ASPPA Position: Congress should review lockdown rules with as much attention to the rights and needs of plan participants in economically healthy plans as to the rights and needs of those impacted by the Enron tragedy. Lockdowns are necessary for all qualified retirement plans, and unrestricted lockdown periods are particularly important to small business retirement plans that lack the uniformity and automation that allow large plans to process changes more quickly. Restrictions on lockdowns are particularly inappropriate when a plan contains no company stock, the situation with almost all small business retirement plans, since there is absolutely no opportunity for manipulation to the detriment of plan participants.

For More Information contact Brian H. Graff, 703.516.9300 or Danea M. Kehoe (202) 547-7566.

Return to ASPPA Government Affairs   Visit the ASPPA web page