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Pension Funding Relief Enacted for Multiemployer Funds

Following many months of lobbying by companies and employee benefits organizations, pension funding relief provisions have finally been enacted. H.R. 3962, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, which was signed into law on June 25, provides much needed defined benefit plan funding relief for employers in today's difficult economic environment.

Introduction

Due to the severe economic conditions during the recent recession, many companies are facing substantially greater contribution requirements as a result of their participation in multiemployer defined benefit plans than anticipated, at a time when their own cash positions have been weakened. Fund trustees and contributing employers have been seeking pension funding relief for some time. The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (the 2010 Relief Act) contains provisions designed to ease the cash contribution burden for many multiemployer funds.

Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010

Pension Funding Relief – Multiemployer Plans

Amortization Extension of Net Investment Losses

Multiemployer plans that meet the “solvency test” (see below) may elect to treat the portion of any experience gain or loss attributable to "net investment losses" incurred in either or both of the first two plan years ending after August 31, 2008 as an item separate from other experience losses, to be amortized in equal annual installments over the period –

- beginning with the plan year in which such portion is first recognized in the actuarial value of assets, and
- ending with the last plan year in the 30-plan year period beginning with the plan year in which such net investment loss was incurred.

BUCK COMMENT. *Under the terms of the 2010 Relief Act, the period for amortizing the net investment loss is 29 years, not 30 years.*

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If this election is made, an extension of the amortization period by application to IRS under existing rules will not be available. If a plan has been granted an extension by the IRS under existing rules before this election is made, the total amortization period is limited to 30 years.

Net investment losses are to be determined based on the difference between actual and expected returns on assets under rules to be provided by the IRS.

> ***BUCK COMMENT.*** *The 2010 Relief Act is unclear on how net investment losses are to be determined and how the amortization extension is to be applied for plans that determine their minimum funding requirements on the basis of an actuarial value of assets, rather than the fair market value of assets.*

Expanded Asset Smoothing

Plans that meet the "solvency test" (see below) may change asset valuation methods to apply either or both of the following rules –

- for either or both of the first two plan years ending after August 31, 2008, spread the difference between expected and actual returns over a period of up to 10 years
- for either or both of the first two plan years beginning after August 31, 2008, limit the value of plan assets to a corridor of 80% to 130% of fair market value (instead of the otherwise applicable 80% to 120% corridor)

These changes are deemed to be approved by IRS.

If a plan sponsor elects to apply both extended amortization of net investment losses and the expanded asset smoothing for a plan year, any reduction in unfunded liability resulting from the application of the expanded smoothing will be treated as a separate amortization base to be amortized over 30 years.

> ***BUCK COMMENT****.* *The 2010 Relief Act does not specify the period for amortizing the reduction in unfunded liability resulting from the application of the expanded smoothing period, if the plan sponsor does not also elect extended amortization of net investment losses. Guidance issued under pre-PPA law concerning a change in asset valuation method provided for an amortization period of ten years and the IRS has informally indicated that multiemployer plans may continue to rely on at least some of that guidance. Further guidance from the IRS would be welcome.*

Solvency Test

A plan meets the solvency test if the plan's actuary certifies that the plan is projected to have sufficient assets to timely pay expected benefits and anticipated expenditures over the amortization period, taking into account any amortization extension and the expanded asset smoothing elections.

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Restrictions on Benefit Increases

If a plan sponsor elects to apply either the extended amortization of net investment losses or the expanded asset smoothing, the plan may not be amended to increase benefits during either of the 2 plan years immediately following a plan year to which such election is applicable, unless the amendment is required as a condition of qualification or to comply with other applicable law, or the plan's actuary certifies both of the following -

- Any benefit increase is to be paid for by additional contributions not allocated to the plan immediately before the election(s).
- The plan's funded percentage and projected credit balances for the 2 plan years are reasonably expected to be at least as high as the percentage and balances would have been if the benefit increase had not been adopted.

Reporting

Plan sponsors electing the amortization extension or the expanded asset smoothing, or both, must give notice to participants and beneficiaries, and inform the PBGC of the election(s) following rules to be provided by the PBGC.

Effective Date

The multiemployer plan provisions generally apply as of the first day of the first plan year ending after August 31, 2008, except that any election that affects the plan's funding standard account for the first plan year beginning after August 31, 2008 will be disregarded for purposes of applying the IRC Section 432 rules for plans in endangered or critical status to such plan year.

> ***BUCK COMMENT.*** *For calendar year multiemployer plans, certifications of the plan's status for its 2010 plan year were required to be made by March 31, 2010. The 2010 Relief Act does not explicitly address whether a plan's actuary is permitted to revise a certification that the plan was in endangered or critical status for a plan year after the first plan year ending after August 31, 2008.*

The provisions regarding restrictions on plan amendments increasing benefits are effective as of June 25, 2010, the 2010 Relief Act enactment date.

Conclusion

The 2010 Relief Act provides much needed relief to sponsors of defined benefit plans, and could allow employers to apply cash to their business operations that otherwise would have been contributed to multiemployer funds and participants of these funds to forego benefit cutbacks they would have otherwise had to endure. Buck's consultants are prepared to discuss the effect these provisions have on your funds.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.

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