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Multiemployer Pension Reform Act of 2014

The Multiemployer Pension Reform Act of 2014 was enacted on December 16, 2014. The new law makes a number of changes to the funding and PBGC rules for multiemployer pension plans. The changes include a PBGC premium hike for multiemployer plans, new rules that would allow certain financially distressed multiemployer plans to suspend accrued benefits, technical modifications to various ERISA and tax code rules for multiemployer plans, and new rules on plan partitions and mergers.

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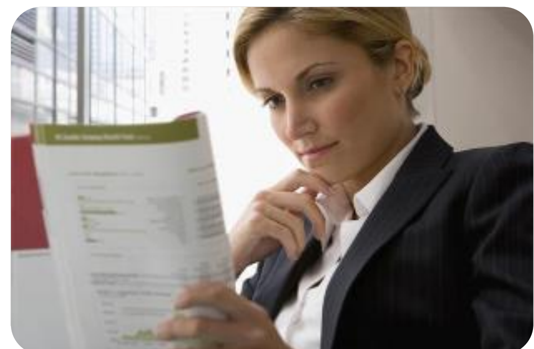
Background

The Multiemployer Pension Reform Act of 2014 (MPRA) was signed into law by President Barack Obama on December 16, 2014. The Act is set forth in Public Law 113-235 (H.R. 83) — legislation that provides funding for most of the federal government for fiscal year 2015. The MPRA is intended to address an expected insolvency of the PBGC's insurance program for multiemployer pension plans.

In November 2014, the PBGC's 2014 annual report recorded a $42.4 billion deficit in the multiemployer insurance program. This is a $34 billion increase in the deficit for the program as compared to the prior year. The reason for the increase is 16 multiemployer pension plans that the PBGC predicts will need financial assistance within the next ten years — with two of those plans expected to need assistance in excess of $26 billion.

Earlier in 2014, the PBGC's 2013 projections report had already predicted that the multiemployer insurance program was in danger of running out of money. The PBGC projected that the risk of insolvency for the program was great than 50% in 2022, and reached a 90% risk of insolvency by 2025.



There is little legislative history for MPRA, with less than a week elapsing between its public unveiling and passage by Congress. The legislative text was first unveiled publicly on Tuesday, December 9, 2014, as part of an amendment offered by Representatives John Kline (R-MN) and George Miller (D-CA) to H.R. 83. Mr. Kline is the Chairman of the Education and the Workforce Committee in the House of Representatives, and Mr. Miller is the most senior

Democrat on that committee. The Rules Committee accepted the amendment as part of H.R. 83 the next day, and on Thursday, December 11, 2014, the House approved H.R. 83. Two days after that on Saturday, December 13, 2014, the Senate also approved H.R. 83.

MPRA has four main components — discussed in greater detail below:

- PBGC premium hike
- Technical modifications to the Pension Protection Act of 2006 (PPA) and other rules applicable to multiemployer pension plans, including elimination of the sunset provisions of PPA
- Benefit suspensions for certain critical status (red zone) plans
- Plan mergers and partitions

NCCMP Input

Many of the provisions in MPRA were proposed by the National Coordinating Committee for Multiemployer Pension Plans (NCCMP). The proposal — titled Solutions not Bailouts — was developed by a special commission convened by NCCMP comprised of several dozen employers, unions, and organizations representing both parties. See our **January 3, 2014** *Legislate* for more information on the NCCMP proposal.

PBGC Premium Hike

MPRA Section 131 contains the PBGC premium hike — with premiums for multiemployer plans rising from $13 to $26 per participant, effective in 2015. For later years, the per-participant dollar amount is indexed to wage inflation.

PBGC is required under MPRA to report to Congress whether premium levels — taking into account the newly increased premiums — are sufficient for the PBGC to meet its guaranty obligations, and, if not, propose a schedule for premiums sufficient to meet those obligations.

PPA Technical Modifications

Sections 101 through 111 of MPRA make a number of technical modifications to the rules governing multiemployer pension plans. These modifications are effective for plan years beginning after December 31, 2014, except as otherwise noted.

- **Section 101 – sunset repeal.** MPRA eliminates the sunset in the PPA for certain multiemployer pension plan funding rules, such as the special rules for critical status (red zone), endangered status (yellow zone plans) and seriously endangered plans (orange zone plans), by making these rules a permanent feature of ERISA. (See our December 5, 2014 *Legislate* for more information on the PPA sunset provisions.)
- **Section 102 – red zone status election.** MPRA permits a plan that is not yet in critical status (not in the red zone) to elect such status for a plan year if the plan's actuary projects that the plan will be in critical status in any of the five succeeding plan years.
- **Section 103 – ending the revolving door for critical status plans.** MPRA provides corrective rules that prevent critical status (red zone) plans emerging from such status from re-entering such status. Under the prior law, the tests for entering into and emerging from critical status plans contained certain inconsistencies, which resulted in a revolving door effect.

- **Section 104 – no yellow/orange zone status if no action needed.** A plan that had been in the green zone in the preceding year will not enter endangered or seriously endangered status (yellow/orange zone) if the plan's actuary certifies that the plan is projected not to be in endangered or seriously endangered status as of the end of the tenth year from the certification year.
- **Section 105 – clarification of target funded percentage for yellow/orange zone plans.** The target funded percentage for an endangered and seriously endangered status plan (yellow/orange zone) is determined using the plan's funded percentage for the first plan year for which the plan is certified to be endangered or seriously endangered.
- **Section 106 – operational rules for yellow/orange zone plans.** An endangered or seriously endangered status plan (yellow/orange zone) is subject to operational rules during the adoption and term of a funding improvement plan similar to the rules that apply to critical status (red zone) plans. This includes limitations on plan amendments that are inconsistent with the funding improvement plan.
- **Section 107 – default contribution schedules.** The existing contribution schedule in a collective bargaining agreement (CBA) that provides for contributions in accordance with a funding improvement plan will remain in effect if the CBA expires and the bargaining parties are unable to agree to a new schedule.
- **Section 108 – reorganization rules.** The MEPPA 1980 multiemployer plan reorganization rules are repealed.
- **Section 109 – calculation of withdrawal liability.** Benefit reductions, contribution increases, and contribution surcharges are generally disregarded when calculating withdrawal liability. This provision is effective for benefit reductions and contribution increases that go into effect during plan years beginning after December 31, 2014, and to surcharges that accrue on or after December 31, 2014.
- **Section 110 – survivor benefits protected by PBGC.** PBGC will guarantee qualified preretirement survivor annuity benefits for the surviving spouse of a plan participant who had not yet died as of the date the multiemployer plan became insolvent or terminated. This provision is retroactively effective to January 1, 1985 for surviving spouses who are still alive.
- **Section 111 – new disclosure upon request rules.** Documents that a plan administrator of a multiemployer pension plan must provide to participants, employee representatives, and employers upon written request are revised to include the current plan document and SPD, the current trust agreement, the annual report (Form 5500) for the plan, annual plan funding notice, actuarial reports, investment manager reports, audited financial statements, funding waiver requests, and the latest funding improvement or rehabilitation plan and contribution schedules (if applicable). The documents can only be requested once in a 12 month period — and there is no duty to provide certain documents that are in the plan administrator's possession for six years or more. Additionally, an employer must be provided upon request with any participation agreement for the current or immediately preceding five plan years. Employee representatives and employers are permitted to file suit to enforce the disclosure requirements and obtain appropriate equitable relief to remedy disclosure violations.

Benefit Suspensions

Section 201 of MPRA creates a new zone status — the "critical and declining status." Plans in this status may suspend accrued benefits — including benefits of participants and beneficiaries currently in pay status. A "critical and declining status plan" is defined as a critical status plan under the PPA rules (a red zone plan) that is projected

to become insolvent within 15 years, or is projected to become insolvent within 20 years if either the plan's ratio of inactive to active participants is greater than 2-to-1 or the plan is less than 80% funded.

The legislation gives wide latitude to a critical and declining status plan's trustees to design a benefits suspension — allowing for a temporary or permanent reduction of any current or future payment obligation to any participant or beneficiary, whether or not in pay status. Some constraints are placed on the trustees' decision to reduce benefits, including the following:

- The plan's actuary must certify that the plan is projected to avoid insolvency, taking into account the benefit suspension. The benefit suspension in the aggregate must be reasonably estimated to achieve, but not materially exceed, the amount necessary to avoid insolvency.
- For any participant, benefits may not be reduced below 110% of the PBGC's guarantee for multiemployer plans. Currently, that guarantee is $12,870 annually for a participant with 30 years of service.
- Benefits may not be reduced for participants older than 80, with a phase-in of reductions for participants between ages 75 and 80. Benefits based on disability (as defined under the multiemployer pension plan) may not be suspended.
- An application must be made to the US secretary of the Treasury for approval of a benefit suspension.
- Plan participants must be permitted to vote on whether to approve a benefit suspension, and a suspension may not go into effect if a majority votes no. The secretary of the Treasury is required to administer the vote. However, the secretary is permitted to disregard the results of an election in the case of a "systemically important plan" — defined as a plan that the PBGC projects would need more than $1 billion (indexed) in financial assistance from the agency if the suspension of benefits is not implemented.

The new rules permitting a suspension of benefits are effective immediately. It is likely that the Treasury Department and IRS will issue guidance on these new rules in the near future.

Mergers and Partitions

Section 121 of MPRA provides new rules for plan mergers with PBGC assistance. Upon request by the plan sponsors, the PBGC will take such actions it deems appropriate to promote and facilitate a merger — provided that it determines that the merger is in the interests of participants of at least one of the plans and is not reasonably expected to be adverse to the overall interest of participants in all of the plans. PBGC assistance may include training, technical assistance, mediation, communication with stakeholders, support with requests to other government agencies, and financial assistance. The PBGC is permitted to provide financial assistance for a merger that is necessary to enable one or more plans to avoid or postpone insolvency — provided that the agency reasonably expects that the assistance will reduce the PBGC's expected long-term loss for the plans involved and such assistance is necessary for the merged plan to become or remain solvent.

Section 122 provides new rules for partitions of multiemployer pension plans. The PBGC is given authority to partition a plan upon application from a plan sponsor. A plan is eligible if:

- The plan is in critical and declining status.

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- The PBGC determines that the plan sponsor has taken all reasonable steps to avoid insolvency — including the maximum benefit suspensions permitted for critical and declining status plans.
- The PBGC reasonably expects that the partition will reduce the corporation's long-term loss with respect to the plan and the partition is necessary for the plan to remain solvent.
- The PBGC certifies to Congress that its ability to meet existing financial assistance obligations to other plans will not be impaired by the partition.
- The cost to the PBGC arising from the partition is paid exclusively from the fund established for basic benefits guaranteed by the multiemployer insurance program.

A PBGC partition order must transfer the minimum amount of plan liabilities necessary for the partitioned plan to remain solvent. Participants whose benefit was transferred to the plan created by the partition order are entitled to receive a benefit from the partitioned plan equal to the excess of their monthly benefits over the guaranteed benefit paid by the PBGC. Additional rules apply to a partitioned plan for determining withdrawal liability and liability for PBGC premiums.

The merger and partition rules are effective for plan years beginning after December 31, 2014.

In Closing

The MPRA makes a number of key changes to the rules governing multiemployer pension plans, many of which had been specifically suggested by joint business and labor leaders via the NCCMP. We expect that guidance on many of the provisions will be issued by Treasury and the PBGC in the coming months.

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