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Multiemployer Pension Plans: Solving the Anticipated Insolvency of PBGC Program, a Bipartisan Endeavor

The "gone fishing" sign is still hanging on the doors of Congress, with recess continuing through the upcoming Labor Day weekend. Meanwhile, financial fears surrounding multiemployer pension plans have been stoked once again following reports highlighting the looming insolvency of the PBGC's multiemployer plan insurance program.

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Background

With the Central States, Southeast and Southwest Areas Pension Plan headed to insolvency, and a bid to rescue it rejected by the Treasury Department, the endangered future of the PBGC's multiemployer defined benefit pension plan insurance program has come into sharp focus. Indeed, throughout 2016, the underfunding of covered multiemployer plans has been on both Republicans' and Democrats' radar.

Voices Heard

Concerns about the health (or lack thereof) of multiemployer plans and the financial pressure it puts on the PBGC multiemployer plan insurance program is not confined to one party or another. This bipartisan issue has been featured in numerous forums. Notably, the topic was highlighted in all of the following:

- President Obama's 2017 budget proposal requesting $15 billion additional revenue through both a variable rate premium and an exit premium that would be assessed on employers upon withdrawal from a plan
- The GOP House blueprint (A Better Way) recommending setting premium levels that would reflect PBGC's financial needs and protect retirees, while ensuring that plans are well funded and employers remain in the voluntary pension plan system
- A Senate Finance Committee hearing on multiemployer plans focusing on steps to take to ensure the system does not fail

- A bipartisan House Education and the Workforce Committee statement issued by Chairman John Kline (R-MN) and Ranking Member Bobby Scott (D-VA) in response to Treasury's Central States decision, noting that "Congress will continue its efforts to strengthen the multiemployer pension system"
- A Hillary Clinton briefing also in response to Treasury's Central States decision, stating that Congress must find a solution that "ensures workers and retirees can enjoy the secure retirement they've earned"

Reports Released

Data and other information included in the Congressional Budget Office report — Options to Improve the Financial Condition of the PBGC Multiemployer Program (CBO Report) and the PBGC report — Multiemployer Pension Reform Act of 2014 Report (MPRA Report) — give credence to Republicans' and Democrats' collective concerns. Moreover, reading the CBO and PBGC reports may cause many to lose confidence and reinforce beliefs that efforts to improve the financial condition of the PBGC's multiemployer plan insurance program will be anything but successful. Notwithstanding, employers and plan sponsors with multiemployer plans may want to get a better understanding of the gravity of the situation, as well as potential fixes that would impact them if implemented.

Facts and Figures

Before we consider the options outlined in the CBO Report, below is some background of the PBGC multiemployer insurance program.

Years	Comment
1974	Created as part of ERISA to guarantee a portion of multiemployer plan benefits in the event of plan termination, but implementation delayed due to concern by Congress about the program's financial viability
1980	Strengthened by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA) which, among other things, changed the insured event to insolvency (i.e., insufficient funds to pay benefits and expenses), increased premium rates, and established new funding and lower benefit coverage rules for financially weak plans to address the program's expected insolvency
2014	Modified by the Multiemployer Pension Reform Act (MPRA) which, among other things, permits certain financially distressed multiemployer plans to suspend payment of accrued benefits and provides new rules on partitions and mergers. (For additional information on the MPRA, as well as proposed regulations under it, and legislation to repeal and modify it, please see our October 12, 2015 edition of *Legislate* and our February 17, 2016 and January 12, 2015 issues of *For Your Information*)
2015	Had a net deficit of $52.3 billion at the end of FY 2015, with liabilities of $54.2 billion and assets of $1.9 billion (MPRA Report)
2016	Covers about 10 million participants, with $850 billion in promised benefits in plans with about $400 billion in assets (CBO Report)
2017 – 2026	Claims by participants in insolvent plans expected to be about $9 billion, with only $6 billion payable in light of the program's expected insolvency in 2025 (CBO Report)
2027 – 2036	Claims by participants in insolvent plans expected to be about $35 billion, with only $5 billion payable from anticipated premiums collected during those 10 years (CBO Report)

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Options to Fix

With the future of the program in jeopardy, improving its financial status is of vital importance. Although there are a variety of potential options, the ones outlined in the CBO Report generally are as follows:

- Increase minimum employer contributions to the plan
- Decrease risky investments of trust assets
- Increase PBGC premiums
- Decrease maximum benefits guaranteed by the program
- Provide federal funding to the PBGC to support more partitions of multiemployer plans in financial distress (for additional information on partitions, see our January 4 *For Your Information*)
- Provide federal funding to recapitalize the PBGC and consider fully or partially privatizing multiemployer plan insurance

Employers Bracing For Impact

Importantly, all employers involved with multiemployer plans — even those with plans that are healthy and not at risk — could be affected if any of the options outlined in the CBO Report are implemented. The impact could extend beyond a direct financial hit that would occur if premium or funding obligations are increased. For example, union negotiations could be affected, particularly if they include a potential reduction in benefits for current employees or retirees. In turn, this may result in bargaining challenges and create an enhanced risk of adverse outcomes, including strikes or lockouts.

At this time, it's uncertain which option outlined in the CBO Report, if any, will be implemented in an effort to save the PBGC multiemployer plan program from becoming bankrupt. The PBGC has estimated solving the problem with revised premiums aimed at addressing the inadequacy of the current premium levels available for the PBGC to meet its future obligations. They estimate a minimum 59% increase would be needed to ensure the program is solvent for 10 years and 363% to ensure solvency for 20 years.

PBGC Premiums and Budget Gimmicks

Bipartisan and bicameral efforts to ensure that any premium increases are tied to the needs of the PBGC insurance programs (both single and multiemployer plans), and to stop any budget gimmicks whereby increases offset federal government spending unrelated to pension plans are in the works. Specifically, the Pension and Budget Integrity Act of 2016 (**S. 3240** and **H.R. 4955**) introduced earlier this year would prohibit this practice. (Please see our **July 18** and **April 18** issues of *Legislate* for background.)

Although the PBGC program is running at a deficit and is projected to have its coffers depleted by 2025, premium increases are permitted only by congressional action. Whether Congress will further increase the annual per plan participant premium of $27 (the $26 premium set by the MPRA, as indexed) in the magnitude PBGC suggests is yet to be determined. For details on the most recent PBGC premium hikes, see our November 2, 2015 *FYI Alert.*

> **Comment.** As noted in the CBO report, if PBGC increases are imposed, there is a risk that employers will withdraw from the plans. Importantly, any withdrawals from financially healthy plans would accelerate the risk of insolvency for the already financially troubled program.

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Looking Ahead

Upon their return from recess following the Labor Day weekend, we expect that both Republicans and Democrats will be focused on appropriations bills. September 30 is the last day of the 2016 fiscal year, and funding must be secured to ensure that government operations will continue on October 1. Last year, Congress relied on a series of continuing resolutions to fund the government from October 1 through December 18, at which time it signed into law the Consolidated Appropriations Act, 2016. It would be no surprise if this year we see more of the same.

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