

Multiemployer Pension Reform Passed by Congress Expected to Become Law

On December 13, 2014, the Senate passed the “Multiemployer Pension Reform Act of 2014” (MEPRA) as part of the Consolidated and Further Continuing Appropriations Act, 2015, the omnibus government funding bill.¹ The House of Representatives had previously approved the bill on December 11, 2014. President Obama is expected to sign it into law.

MEPRA reflects many of the recommendations included in *Solutions not Bailouts*, the Report issued by the Retirement Security Review Commission of the National Coordinating Committee for Multiemployer Plans (Commission Report).² The one receiving the most attention is the provision that gives trustees of deeply troubled plans the ability to help their plans avoid insolvency by reducing some benefits (including benefits in pay status), subject to various safeguards and requirements.³

This *Bulletin* briefly describes the key provisions of MEPRA, which generally become effective for plan years beginning on or after January 1, 2015.

NO PPA’06 “SUNSET”

The multiemployer defined benefit plan funding provisions of the Pension Protection Act of 2006 (PPA’06), included a new remedial approach for plans heading toward or already in financial distress. These statutory

provisions were scheduled to expire (sunset) on the last day of the 2014 plan year. MEPRA eliminates the provision that triggered the sunset, and makes the remedial approach a permanent part of the law.

DOUBLING OF PBGC PREMIUMS

The Pension Benefit Guaranty Corporation (PBGC) multiemployer premium rate will double to \$26 per participant in 2015. Thereafter, it will be indexed to national wage growth.

REMEDATION FOR DEEPLY TROUBLED PLANS

Plans in critical status (commonly referred to as plans in the “red zone”) that also are in “declining status” may reduce some benefits, including benefits in pay status, subject to various requirements and limitations. This is referred to as “suspension” of benefits. As the funded status of a plan improves, suspended benefits could be reinstated. Key elements of suspension, which becomes effective on the date the bill is signed by the President, include:

- **Declining Status** A critical status plan is in declining status if it is projected to become insolvent within 15 years (20 years if the inactive to active participant ratio is more than 2 to 1, or if the plan is less than 80 percent funded).
- **Conditions for Suspension** Critical, declining status plans may suspend benefits only if the trustees determine that all reasonable measures to avoid insolvency have been (and continue to be) taken, but the plan is still projected to be insolvent, and suspensions would allow the plan to avoid insolvency indefinitely.
- **Limitations on Suspensions** Benefits in the aggregate cannot be suspended below the level necessary to avoid insolvency, and no benefit can be reduced below 110 percent of the PBGC guaranteed benefit. Disability pensions and benefits for those over age 80 may not be suspended. For participants who are between age 75 and 80, the reduction is phased out. Trustees

¹ The MEPRA legislative language is on the following page of the House Education and the Workforce Committee’s website: http://edworkforce.house.gov/uploadedfiles/bill_text_bipartisan_multiemployer_pension_reform.pdf. The text of MEPRA is designated as Division O of the larger omnibus funding bill.

² The Commission Report is available on the following page of the NCCMP website: <http://www.nccmp.org/forEmails/SolutionsNotBailouts.pdf>.

³ Not included in the Reform Act is the new “composite” plan design suggested in the Commission Report under the name of “target benefit.”

can consider many factors in their benefit suspension design determinations. These include issues of equity and the impact on retaining active participants and bargaining groups.

- **Treasury Approval** An application by a plan for benefit suspension is deemed to be approved after 225 days if Treasury has not approved or denied the application for suspension.
- **Participant Ratification** After approval, suspension will go into effect unless a majority of all participants vote to reject it. Even if participants reject suspension, Treasury can allow it to take effect if the plan is projected to cost the PBGC more than \$1 billion in financial assistance.

MERGERS AND PARTITIONS

The PBGC is given specific authority to help “facilitate” mergers upon request. The existing partition rules have been eliminated and replaced with an entirely new structure. For plans in critical and declining status where benefit suspension alone will not prevent insolvency, the PBGC may approve a partition to enable benefit suspension to work for the remaining part of the original plan. The PBGC must certify that its ability to meet its financial assistance obligations to other plans is not impaired by providing merger financial assistance to a plan or approving a partition of a plan.

OTHER CHANGES RELATED TO THE PPA’06 FUNDING RULES

Among the other changes included in MEPRA are the following:

- **Option to Elect Critical Status** Trustees of plans that will be in critical status in any of the next five years may elect to be in critical status in the current year.
- **Endangered-Status Exception** A plan that was in the green zone in the prior year will not enter the yellow zone in the current year (although otherwise currently required to do so) if the plan’s current provisions would be sufficient (with no further action) to allow the plan to emerge from yellow within 10 years.
- **Specifying Applicable Schedule When Initial Collective Bargaining Agreement (CBA) Expires** At CBA expiration, if the bargaining parties cannot agree on a new remedial contribution schedule, the prior schedule remains in effect.
- **Withdrawal Liability** MEPRA clarifies that surcharges are generally not taken into account for determining either withdrawal liability or the highest contribution rate. It also specifies that increases in contribution rates

to meet funding improvement or rehabilitation plans are generally now disregarded in determining both withdrawal liability and the highest contribution rate.

- **Conforming Endangered and Critical Status Operation Rules** The restrictions on benefit increases and contribution reductions in the funding plan adoption period and funding improvement period now parallel the rules for critical status plans.
- **Qualified Pre-retirement Survivor Annuities (QPSAs)** PBGC must guarantee QPSAs for spouses who are living on the MEPRA enactment date, retroactive to participant deaths on or after January 1, 1985.
- **Reorganization** The rarely used reorganization rules, which applied to weak but not yet insolvent plans and at times conflicted with the critical status rules, are eliminated.
- **Miscellaneous** Changes were made to the critical status emergence rules, the funded percentage target for endangered plans, and required disclosures.

IMPLICATIONS

The implementation of any new legislation raises many interpretive and operational issues and, in MEPRA, this is compounded by the immediacy of the effective dates. Segal consultants can work with fund counsel to help trustees understand the new legislation and the issues and options that it might present. If you have any questions about the content of the *Bulletin*, please contact your Segal consultant or the nearest Segal office.



As with all issues involving the interpretation or application of new laws, trustees should rely on the advice of fund counsel in interpreting and applying the Multiemployer Pension Reform Act of 2014.

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