Multiemployer Pension Reform Act of 2014

The spending bill passed by Congress includes major changes to multiemployer funding and withdrawal liability rules. In the aggregate, these changes are known as the Multiemployer Pension Reform Act of 2014 (the "Act"). We will summarize here the major changes from the perspective of employers contributing to multiemployer plans. Most of these changes become effective for plan years beginning after December 31, 2014.

Significant changes the Act makes include the following:

- Repeals the sunset provisions of the Pension Protection Act of 2006 ("PPA")
- Clarifies the position of an employer in the situation where an agreement in collective bargaining is not reached within 180 days of contract expiration
- Limits the effect that future required contribution increases will have on employer withdrawal liability
- Adds to the list of documents that a plan is required to provide to participants, beneficiaries, unions or employers upon request
- Increases PBGC premiums to be paid by multiemployer pension plans
- Makes various technical changes to the PPA rules
- Modifies rules regarding mergers of plans and partitioning of plans by the PBGC
- Adds a new zone status for seriously underfunded plans called "Critical and Declining" and allows a plan in that status to cut some previously protected benefits
- Extends PBGC guarantees to some pre-retirement death benefits

The Act does not contain any provisions to reduce or increase the withdrawal liability for employers that have already withdrawn from a multiemployer plan. In addition, Dexter Hofing does not expect the Act to have any significant effect on the withdrawal liability of employers that completely or partially withdraw from a plan over the next few years.

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Sunset Provision

Many of the provisions of PPA were scheduled to expire on December 31, 2014. It is clear that when PPA was drafted, the expectation was that the provisions would never be allowed simply to expire but that they would either be extended or revised. As the sunset date loomed near with no Congressional action, more and more employers and practitioners became very concerned about the potential for serious negative consequences if the law were simply allowed to expire. In some cases attorneys were recommending that clients take steps to withdraw from plans to avoid being caught by such expiration.

The Act eliminates the sunset provisions of the PPA so that, absent further legislation, the provisions should remain in effect indefinitely. This removes a significant source of uncertainty for contributing employers.

Contribution Increases Disregarded for Withdrawal Liability Purposes

In determining withdrawal liability and withdrawal liability payments, the Act requires plans to disregard any further contribution increases required under a Rehabilitation or Funding Improvement Plan. This will apply to contribution rate increases that go into effect during plan years beginning after December 31, 2014 and to automatic surcharges the obligation for which accrue on or after December 31, 2014.

Clarification of Rules Affecting Bargaining

PPA provides that if the bargaining parties fail to reach agreement within 180 days of contract expiration, the employer will be deemed to have elected the Default Schedule. However, it was not completely clear how this provision was intended to apply in the case of a bargaining agreement that expired after the employer was already on a Funding Improvement or Rehabilitation Schedule.

The Act clarifies this situation. For the first bargaining agreement after the plan enters Endangered or Critical Status, there is no change. If no agreement is reached within 180 days of contract expiration, the employer will be deemed to have elected the Default Schedule. However, for subsequent bargaining agreements, if an agreement is not reached after 180 days, the employer will be deemed to remain on the Schedule agreed to in the prior collective bargaining agreement, as updated and in effect on the date the collective-bargaining agreement expires.

Required Disclosure

The Act adds the following documents to the list of documents the plan must make available on request to participants, beneficiaries, unions and contributing employers:

- Current plan document including any amendments

- Latest summary plan description
- Current trust agreement including any amendments
- Upon request by the employer, that employer's participation agreement that relates to the current or any of the five immediately preceding plan years
- Form 5500
- The funding notice sent to participants
- Audited financial statements
- Latest Funding Improvement or Rehabilitation Plan (if applicable) and the contribution schedules applicable with respect to such Funding Improvement or Rehabilitation Plan

Although a number of plans have been voluntarily providing some or all of the above information, many have not. Under the Act, the plan is only required to disclose documents that have been in the possession of the plan administrator for less than six years (except for the plan document, summary plan description, trust agreement, and participation agreement).

PBGC Premium Increase

The Act increases PBGC premium rates to $26 per participant for the first plan year beginning after December 31, 2014 (the rate for 2014 was $12 per participant). In future years, this amount will increase automatically based on increases in the national average wage index defined in the Social Security Act.

Not later than June 1, 2016, PBGC is required to report to Congress showing whether premium levels are projected to meet obligations for the 10 and 20 year periods beginning with 2015. If not, PBGC is to propose a schedule of revised premiums.

Mergers and Partitions

The Act authorizes PBGC to take action to promote and facilitate mergers of multiemployer plan under certain circumstances. It also extensively modifies the rules regarding partitions of multiemployer plans. Notably, it imposes a 270 day deadline on the PBGC to respond to applications for partitions.

Benefit Suspensions

This is the section of the Act that has received the most publicity. The Act allows certain severely underfunded plans to reduce benefits that are otherwise protected. The Act refers to such benefit reductions as "suspensions" which can be either temporary or permanent.

<u>Critical and Declining Status</u> - The Act defines severely underfunded plans as being in "Critical and Declining Status". A plan is defined as being in Critical and Declining Status

for a plan year if it is satisfying one or more of the Critical Status triggers and if it is projected to become insolvent during the current plan year or any of the 14 succeeding plan years (or the 19 succeeding plan years if the plan has a ratio of inactive to active participants that exceeds 2 to 1 or if the funded percentage of the plan is less than 80%). For most plans in Critical Status, Dexter Hofing expects the 19-year rule to apply rather than the 14-year rule.

In determining whether a plan is in Critical and Declining Status, the plan actuary is to assume that each contributing employer in compliance with the Rehabilitation Plan will remain in compliance with the Rehabilitation Plan for the balance of the Rehabilitation Period (or a later date if the plan is using the "all reasonable measures" exception). This differs from the rules for other zone status certifications under which the actuary can only include contribution increases that have already been agreed to in bargaining. In addition, in making the determination the plan actuary is required to take into account any suspensions of benefits adopted in prior plan years that are still in effect.

Notice Requirement – In addition to the information currently included in the annual funding notice, the notice for a plan in Critical and Declining Status will be required to include (a) the projected date of insolvency, (b) a clear statement that such insolvency may result in benefit reductions and (c) a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency.

Requirement for Suspensions - Benefit suspensions are only allowed if the plan actuary certifies that, taking into account the proposed suspension (and, if applicable, a proposed partition), the plan is projected to avoid insolvency. In addition, the plan sponsor must determine that even though all reasonable measures to avoid insolvency have been taken, the plan is still projected to become insolvent unless benefits are suspended.

Limitations on Suspension - The benefit suspension cannot reduce benefits below 110% of the PBGC guaranteed level. Benefit reductions will not apply to participants who are age 80 or over. Participants between age 75 and 80 will be partially protected from the effects of the reduction. The table below shows the maximum amount by which benefits for a participant under age 75 with 30 years of service can be reduced:

Monthly Benefit	**PBGC Guarantee**	**110% of Guarantee**	**Potential Percentage Cut**
250.00	250.00	N/A	0.0%
500.00	457.50	500.00	0.0%
1,000.00	832.50	915.75	8.4%
2,000.00	1,072.50	1,179.75	41.0%
3,000.00	1,072.50	1,179.75	60.7%
4,000.00	1,072.50	1,179.75	70.5%
5,000.00	1,072.50	1,179.75	76.4%

Disability benefits cannot be suspended.

In the aggregate the suspension must be reasonably estimated to achieve but not materially exceed the level necessary to avoid insolvency. The suspensions must be equitably distributed across the participant and beneficiary population. The Act lists 11 characteristics that may be considered in allocating the suspensions but does not preclude consideration of other characteristics. In general, it appears that the Act gives the trustees fairly broad discretion in the way in which such cuts are allocated.

Special Rule for Central States - A special allocation rule applies to the Central States, Southeast and Southwest Areas Pension Fund. Any reductions in that plan's benefits must be allocated first, to the maximum extent permissible, to benefits attributable to service for an employer that withdrew without paying its full withdrawal liability (or the full amount agreed upon with the plan). After that, all other benefits not attributable to service with UPS would be suspended. Benefits attributable to service with UPS would only be suspended after other benefits have been suspended to the maximum extent allowable. (Note that neither Central States nor UPS are named in the Act. However we believe that this provision will apply only to this situation.)

Benefit Improvements - The Act contains detailed rules regarding benefit improvements subsequent to a benefit suspension.

Approval by Secretary of the Treasury – The plan is required to file for approval by the Secretary of the Treasury before implementing benefit suspensions. Within 30 days of receiving the application, the Secretary of the Treasury will publish a notice in the Federal Register and on its website soliciting comments from employers, unions, participants and beneficiaries. The Secretary of the Treasury is directed to approve or deny the application within 225 days after submission. The application is deemed approved unless the Secretary of the Treasury notifies the plan sponsor within the 225 days that it has failed to satisfy one or more of the required criteria.

Participant Ratification – Not later than 30 days after approval, the Secretary of the Treasury is directed to administer a vote of participants and beneficiaries. The suspension takes effect unless a majority of all participants and beneficiaries of the plan vote to reject the suspension (not simply a majority of those voting). For example, if a plan has 100,000 participants and beneficiaries, at least 50,001 of those participants and beneficiaries must vote to reject or the suspension will be effective.

Override of Negative Vote – In the case of a Systemically Important Plan, the Secretary of the Treasury in consultation with the PBGC and the Secretary of Labor can override a negative vote by participants and direct that the suspension be implemented. A Systemically Important Plan is defined as a plan where PBGC projects that the present value of projected financial assistance payments exceeds $1 billion if suspensions are not implemented. For years after 2015, the $1 billion threshold is indexed with the Social Security contribution and benefit base.

Emergence from Critical Status – A plan that has suspended benefits will emerge from Critical Status when it is (a) no longer certified as in Critical or Endangered Status and (b) projected to avoid insolvency.

Effect of Suspensions on Withdrawal Liability – Benefit suspensions are disregarded for withdrawal liability purposes unless the withdrawal occurs more than ten years after the effective date of the benefit suspension.

Guidance – The Secretary of the Treasury is directed to publish appropriate guidance to implement the suspension section of the Act within 180 days of enactment.

Technical Changes

Although we are categorizing these changes as "technical" changes, some of them may be very significant in certain situations.

Election to be in Critical Status - Dexter Hofing sees many plans that are currently in Endangered Status but that will almost certainly be in Critical Status over the next few years. This situation creates a number of problems. First, the trustees are required to develop a Funding Improvement Plan knowing that that Funding Improvement Plan will become obsolete after the plan enters Critical Status. Then, as soon as the plan enters Critical Status, the trustees need to go through the entire process again to develop a Rehabilitation Plan since the funding targets for a plan in Critical Status differ from those for a plan in Endangered Status.

A potentially more serious problem is that the Endangered Status rules do not always work well for a plan that is on the verge of entering Critical Status. The drafters of PPA recognized that some plans were so seriously underfunded that a Rehabilitation Plan designed to meet the targets would require contribution increases and/or benefit cuts that were simply unachievable. Thus, PPA includes a provision allowing for a Rehabilitation Plan simply to implement "all reasonable measures" to exit Critical Status at a date later than the end of the Rehabilitation Period or simply to forestall insolvency. The funding targets for a plan in Endangered Status do not contain any provision similar to this "all reasonable measures" provision. As a result, some plans have been required to implement a Funding Improvement Plan that includes contribution increases in later years that are clearly impractical with the intent that such increases will be revisited and made reasonable after the plan enters Critical Status.

The Act allows a plan that is not in Critical Status for the current year but that is projected to be in Critical Status within five years to elect to be in Critical Status. This election must be made within 30 days of the certification by the plan actuary. Once the selection is made, the plan can only emerge from Critical Status by meeting the standard requirements for emergence. The trustees cannot simply reverse the election to enter Critical Status.

Emergence from Critical Status - PPA provides a test for emerging from Critical Status that differs from the triggers that cause a plan to enter Critical Status. This created the potential for a plan to be in a position where it would exit Critical Status and then immediately reenter Critical Status - the so-called "revolving door". The Act eliminates the revolving door by making it clear that a plan will not exit Critical Status until all of the triggers for entering Critical Status have been reversed. It also adds a new requirement. A plan will not exit Critical Status if it is projected to become insolvent for any of the 30 succeeding plan years.

The Act also makes changes to the rules for emerging from Critical Status for a plan that has taken advantage of the amortization extensions allowed under PPA. Such plans will now find it easier to emerge from Critical Status and to avoid falling back into Critical Status.

Endangered Plans that Require No Action - Under PPA, it was possible for a plan to be in Endangered Status but be in a position where the Funding Improvement Plan required no contribution increases or benefit reductions. Under the Act, such a plan will simply not be classified as Endangered. The Act does require that the bargaining parties and the PBGC be notified that the plan would be in Endangered Status but for this provision.

Endangered Status Funding Improvement Plan Target - A plan in Endangered Status is required to have a Funding Improvement Plan designed to increase the funded percentage of the plan. The funding target under PPA is based on the funded percentage at the beginning of the Funding Improvement Period. Under the Act, this would change so that the funding target is based on the funded percentage at the time the plan is certified as being in Endangered Status. This change fixes two problems. First, under the PPA wording, the trustees were required to develop a Funding Improvement Plan before it was possible for them to know the exact target that plan was required to meet. Second, under the PPA wording, a plan that proactively implemented corrective measures earlier than it was required to do so was then required to meet a higher funding target than would have been required if they delayed such action.

The Act also makes other minor technical changes in the rules for Endangered Status plans.

Conforming Endangered Status and Critical Status Rules - The PPA rules for Endangered Status plans and Critical Status plans include some inconsistencies that are resolved by the Act. Under PPA, plans in Endangered Status were required to take steps to improve the funded status prior to the beginning of the Funding Improvement Period. No such requirement applied to plans in Critical Status. The Act removes that requirement for plans in Endangered Status. To be consistent with the Critical Status rules, the Act also eliminates the rule that a plan in Endangered Status cannot accept a collective bargaining agreement that provides for reduction in the level of contributions for any participants, a suspension of contributions with respect to any period of service, or any direct or indirect exclusion of younger or newly hired employees from plan participation. But, a collective bargaining agreement must still be consistent with the Funding Improvement Plan which may prohibit an agreement from containing provisions of that type.

Repeal of Reorganization Rules - The Multiemployer Pension Plan Amendments Act of 1980 included rules for severely underfunded plans. Such plans were referred to as being in "reorganization." Although most practitioners believe that the new funding rules in PPA rendered the reorganization rules unnecessary, they remained in the statute. This created an unnecessary complication for underfunded plans. The Act repeals the reorganization rules.

Guarantee for Preretirement Survivor Annuities - The Act extends the PBGC guarantees to preretirement death benefits in situations where the participant had not yet died as of the date on which the plan became insolvent or the plan terminated. This change applies for benefit payments becoming payable on or after January 1, 1985, except that it does not apply where the surviving spouse died before enactment of the Act.

The Act does not change the definition of "nonforfeitable" benefits but only changes the benefits that are guaranteed by PBGC. As a result, we do not expect this to change the benefits that are considered nonforfeitable for withdrawal liability purposes.

About Dexter Hofing

Dexter Hofing is an actuarial consulting firm specializing in assisting employers with multiemployer pension plan issues. Please see www.dexhof.com for additional information.

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