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Key Multiemployer Pension Reforms Moving in Congress

The House and the Senate have passed pension reform bills (H.R. 2830 and S. 1783, respectively) that will dramatically change the funding rules and actuarial reporting requirements for multiemployer plans. The House and Senate still must reconcile the differences between their two bills before they can pass a law. Negotiations to craft the final bill will probably begin in February 2006, but we do not expect final passage until March at the earliest.

Most of the new provisions will be effective for multiemployer plan years beginning in 2007, creating a need for Trustees and consultants to evaluate the legislative impact now and to prepare for compliance with its requirements under a short time frame. S.1783, but not H.R.2830, would sunset the new funding rules in 2015. This *Multiemployer Review* provides an overview of the pending legislation's main components.

General Funding Changes

Both H.R.2830 and S.1783 shorten the amortization periods for recognizing benefit improvements and gains and losses. New unfunded past service liabilities resulting from plan amendments improving benefits would be amortized over 15 years (down from 20 years, currently). Gains and losses from changes in actuarial assumptions would be amortized over 15, not 30, years. Existing amortization schedules and certain already bargained changes would continue to be governed by the current rules.

To address amortization extension requests that the IRS continues to defer action on, the bills would automatically grant a five-year amortization period extension if an application is made, the fund actuary certifies that certain conditions are met, and a required notice is provided to affected parties. However, the additional reduction in funding due to the use of a short-term federal rate does not appear to be available. By eliminating the effect of the low statutory rate, the funding relief available from a waiver might be reduced by 50% or more. The bills allow the IRS to approve up to an additional five-year extension of the amortization period under certain conditions.

Deduction of Employer Contributions

Both bills would substantially increase the deduction of employer contributions to the difference between the value of plan assets and 140% of the value of accrued benefits, thereby eliminating pressures to boost benefits to protect the deduction.

Actuary's Reports and Certifications

The bills would require both an annual actuarial valuation and an actuary's certification within 90 days after the plan year starts as to whether the fund is in "endangered" or "critical" status. The certification is based on the prior year's actuarial valuation report, projected forward to the current year. A fund is "endangered" if it: a) is less than 80% funded, or b) has an accumulated funding deficiency in the current year or is anticipated to have such a deficiency in any of the next six years. A fund is in "critical" status if it meets one of several tests—which differ slightly between the two bills—based on cash-flow, funding requirements compared to normal cost and interest on unfunded liabilities, near-term projected funding deficiencies, and/or percent funded. A failure of the actuary to certify will put the fund in critical status (under H.R.2830), or Trustees will be deemed to have violated the reporting requirements (under S.1783).

Special Funding Rules for Financially Troubled Plans

Both bills create funding obligations for endangered or critical plans. An endangered plan generally would have to improve its funding over a 10-year period. The House bill essentially requires endangered plans to make up one-third of their underfunding over 10 years, while the Senate bill requires the plan to become 80% funded or improve its funding ratio by at least 10% over the same period. Both bills allow 15 years for "seriously" underfunded plans (generally less than 70% funded) to improve their status, applying less strenuous requirements for improvement.

For plans in critical status, the Trustees and bargaining parties must amend the plan to provide for increased contributions, reduced plan expenditures (including plan mergers and consolidations), and/or reduced future benefit accruals to move the plan out of critical status

within 10 years. Alternatively, if the plan sponsor determines that such measures will not help the plan emerge from critical status within 10 years, the sponsor may take reasonable measures to forestall insolvency. Future accruals may not be reduced below 1% of required contributions or the actuarial equivalent of that amount. Additionally, the House bill permits Trustees to reduce retirement-type subsidies, early retirement benefits, supplemental benefit payment options, and benefit increases that have not been in effect for 60 months for certain participants.

Trustee Obligations

If the plan's funding status is endangered or critical, Trustees would have to act on specific items:

- **Notice**—Within 30 days after the actuary's certification, Trustees must provide notice of the plan's status to: participants and beneficiaries, bargaining parties, the PBGC, and the Treasury and Labor Secretaries.
- **Improvement options**—Trustees must adopt a funding improvement or rehabilitation plan within 240 days of the actuarial certification. Trustees must provide the bargaining parties various options to improve the funding status.
- **Operation restraints**—Generally, Trustees of plans in endangered or critical status are prohibited from: amending the plan to increase benefits; accepting collective bargaining agreements that reduce the contribution rate or exclude any groups of employees in the collective bargaining unit from the plan; and paying lump sums in excess of \$5,000. In addition, after adopting the funding improvement plan, Trustees may not accept any collective bargaining agreement that does not provide for a contribution rate consistent with the plan adopted.
- **Failure to adopt funding improvement plan**—If within 330 days of the start of the plan year the bargaining parties cannot agree on funding improvements for an endangered fund, Trustees must adopt a funding improvement plan. The House bill's requirements

would, in effect, require Trustees to adopt the option that relies only on reductions in accrued benefits.

- **Contributions for critical plans**—The bills require signatory employers to make additional contributions for critical-status plans: H.R.2830 calls for a 5% initial-year surcharge (10% annually thereafter) on contributions until the collective bargaining agreement is renegotiated to comply with the rehabilitation plan; S.1783 sets the rate based on the rehabilitation option that reduces future accruals and provides for the minimum contribution increase necessary to bring the plan out of critical status.
- **Track plan progress**—Each year, Trustees must track the plan's progress toward meeting the funding improvement goal and take further action if necessary. A failure to reach the funding improvement targets could result in an excise tax on contributing employers.

Withdrawal Liability Reforms

Both bills eliminate the reduction in withdrawal liability for withdrawals caused by sales or bankruptcy, as well as the 20-year cap on withdrawal liability payments. They also eliminate the special withdrawal rule for the trucking industry, make contracting out work subject to the partial withdrawal rules, and, for small employers, remove the presumption in favor of the Trustees' determination that a principal purpose of a transaction was to avoid or evade withdrawal liability.

Conclusion

The bills contain numerous other technical provisions implementing funding reforms. Although the bills now have specific differences, whatever emerges in the House and Senate agreement will create significant complexities and compliance challenges, both for Trustees and their advisors. For plans that are not well funded, Trustees will have to make difficult decisions and act within a short time frame. And unless the final bill allows Trustees to reduce early retirement and special supplemental benefits, severely troubled plans will find avoiding insolvency difficult.

Multiemployer Review: Update on Issues Affecting Taft-Hartley Plans is intended to provide information and analysis of a general nature. Application to specific circumstances should rely on separate professional guidance.

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