

MULTIEMPLOYER ALERT

Update on Issues Affecting Taft-Hartley Plans

Temporary Funding Relief for Multiemployer Plans

On December 23, 2008, President Bush signed the “Worker, Retiree, and Employer Recovery Act of 2008” (H.R.7327) (WRERA). Significant, coordinated lobbying efforts by labor organizations, employers, employer associations, and benefits practitioners led to the successful outcome. The WRERA provides temporary funding relief to multiemployer defined benefit pension plans in light of the current economic crisis.

This *Multiemployer Alert* focuses on WRERA provisions that demand immediate or near-term decisions by multiemployer plan trustees.

Freeze of Zone Status

The WRERA allows plan trustees “to freeze” (i.e., retain) their plan’s 2008 zone status for the 2009 plan year. For example, if a plan was certified as “green” (not endangered, seriously endangered, or critical) for the plan year beginning January 1, 2008, and would otherwise be endangered, seriously endangered, or critical for the 2009 zone certification, the trustees may elect to retain the “green” status for 2009.

Some non-calendar year plans are allowed to look back to their 2007 funding levels. Plans with a 2008 plan year commencing after October 1, 2008 may not yet have had an initial zone certification completed, while plans with an October 1, 2008 plan year were required to file their 2008 certifications on or before December 29, 2008. In these cases, the WRERA allows the actuary to complete a zone certification for the 2007 plan year (as if one had been required), and allows the trustees to freeze their plan’s 2008 zone status on that basis.

In addition, a multiemployer plan that was certified as endangered (yellow), seriously endangered (orange), or critical (red) for its 2008 plan year would not be required to update its funding improvement plan, rehabilitation plan, or contribution schedules in 2009, if the trustees elect the freeze option.

The freeze in zone status as well as the ability to delay updating funding improvement plans or rehabilitation plans are available only for one year.

Election and Notice of One-Year Freeze

If the trustees decide to elect the one-year freeze, the following applies:

Timing of Election

The decision “to freeze” must be filed with the IRS in a manner to be prescribed by the IRS. The election to freeze must be included with the annual zone certification if the decision to freeze was made prior to the date the annual certification is submitted to the IRS.

If an election to freeze is made after the date the annual zone certification is filed with the IRS, the election must be submitted to the IRS no later than 30 days after such election.

Election Notice

If the trustees elect to freeze the plan’s zone status, the trustees must send participants, beneficiaries, bargaining parties, the PBGC, and the DOL a notice of the election and such other information as the Secretary of the Treasury (in consultation with the Secretary of Labor) may require. The notice must be sent no later than 30 days after the annual zone certification if the certification includes the freeze election, or no later than 30 days after the election if the election is made after the annual zone certification is filed.

Excise Taxes and Surcharges

If the plan would have been in critical status except for the freeze election, employers are still shielded from the minimum funding excise taxes, and the surcharge on employer contributions does not apply.

Endangered or Critical Notice

If a plan is “green” due to this election, the plan will not be required to provide the *Notice of Endangered Status* or the *Notice of Critical Status*, as applicable, to its participants, beneficiaries, bargaining parties, the IRS, or the DOL.

However, if the plan would have been in critical status but is in endangered status by reason of this election, the plan is required to provide the *Notice of Endangered Status*.

Election of a 3-Year Extension of the Funding Improvement or Rehabilitation Period

If a multiemployer plan is certified to be in endangered or critical status for a plan year beginning in 2008 or 2009, the trustees may elect to extend the plan's funding improvement or rehabilitation period from 10 to 13 years. If the plan is severely endangered, the trustees may elect to extend the funding improvement period from 15 to 18 years.

[NOTE: Practitioners are divided on the question of whether trustees are entitled to extend the timeline for the plan's funding improvement or funding rehabilitation plan (as described above) if they elect to freeze their 2008 zone status for the 2009 plan year.]

To Freeze or Not to Freeze

The decision whether or not to elect the one-year freeze may in some cases be difficult. A number of factors will enter into this decision, including

- the bargaining agreement expiration dates;
- the severity of the 2008 investment losses;
- whether it is better to be certified endangered or critical in 2008 or 2009 in order to make use of the 3-year extension of the funding improvement or rehabilitation periods (see Note above);
- whether the plan can improve its long-term funding situation only by going critical (red zone) and eliminating adjustable benefits; and
- whether the new administration offers additional funding relief.

For more information about the WRERA, please contact your Milliman consultant.

Multiemployer Alert: 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.