

MULTIEMPLOYER REVIEW

Update on Issues Affecting Taft-Hartley Plans

Multiemployer Pension Reform Act of 2014

Bob Behar, EA, FSA, MAAA | Victor Harte, EA, MAAA | Nina Lantz, ASA, EA, MAAA

On December 16, 2014, President Obama signed the Consolidated and Further Continuing Appropriations Act of 2015 that includes the Multiemployer Pension Reform Act of 2014 (MEPRA), which impacts multiemployer defined benefit pension plans. A summary of these provisions is provided below. Unless otherwise specified, the new provisions will go into effect for plan years beginning after December 31, 2014. This review is based on our current understanding of the MEPRA provisions, which could change after the IRS publishes regulations or other specific guidance.

MEPRA provisions that apply to all multiemployer plans are discussed first, followed by provisions that impact plans depending on their Pension Protection Act (PPA) zone status (green zone or endangered status, endangered status, endangered and critical status, and critical status).

Provisions impacting all multiemployer DB plans

Pension Protection Act of 2006 made permanent. Certain multiemployer provisions of the PPA were scheduled to expire at the end of the 2014 plan year. MEPRA repealed the sunset provision, so plans must continue to operate as if the sunset clause had never existed.

Increase in PBGC premiums. MEPRA doubled the annual flat-rate multiemployer defined benefit (DB) plan PBGC premium to \$26 from \$13 per participant for plan years beginning in 2015. The premium will be indexed annually for inflation. No change was made to PBGC's maximum monthly guaranteed benefit for multiemployer plans.

PBGC guarantee of pre-retirement survivor benefits. The PBGC will now treat qualified pre-retirement survivor annuities for all participants as a guaranteed benefit. Previously, only survivor benefits for participants who died before plan termination were guaranteed.

Multiemployer plan disclosure rules. MEPRA lists items that multiemployer plans are required to provide to participants and

contributing employers upon written request. The list now includes the plan document, summary plan description, trust agreement, the requesting employer's participation agreement, the Form 5500, the annual funding notice, audit report, and funding improvement or rehabilitation plan including any related contribution schedules. Such requests are limited to once per year for any requested document, and for items produced annually, they must have been in the administrator's possession for less than six years.

Other changes. MEPRA made permanent the availability of a five-year automatic amortization extension of the unfunded actuarial liability and the ability to adopt or cease use of the shortfall method. It also repealed the reorganization rules.

Provisions impacting green zone or endangered status multiemployer plans

Voluntary election to be in critical status. If a multiemployer plan is certified as not being in critical status for a plan year, the trustees may elect the plan to be in critical status for that plan year if the actuary certifies that the plan is projected to be in critical status within the following five years. Such election must be made within 30 days of the actuarial certification for the plan year, and all the rules for critical status plans will apply beginning with the election year. If the election is available and not made, a notice of the plan's projected critical status must be sent to the PBGC.

Provisions impacting endangered status multiemployer plans

Projection to be in green zone within 10 years. If a multiemployer plan would otherwise enter endangered status but the actuary can certify that the plan is projected to be in the green zone at the end of the 10th plan year after the certification year, the plan will be certified in the green zone for the certification year. A notice must be sent to the bargaining parties and the PBGC informing them of this endangered status exception.

Target funded percentage for multiemployer plans in endangered status. The funded percentage as of the initial endangered year is to be used to determine the target funded percentage that multiemployer plans in endangered status are required to attain by the end of the funding improvement period. In addition, an accumulated funding deficiency must be avoided in the last year of the funding improvement period rather than in any year during that period.

Eliminating certain rules during the funding improvement and adoption periods. The restrictions on accepting collective bargaining agreements that reduce the level of contributions for any participants, suspend contributions with respect to any period of service, or exclude younger or newly hired employees from plan participation were eliminated during the funding improvement period but not during the funding improvement adoption period. Also, the requirement that seriously endangered plans take all reasonable actions (e.g., applying for amortization extensions, using the shortfall method) during the funding improvement adoption period in order to increase the plan's funded percentage and to postpone an accumulated funding deficiency at least one year was eliminated.

Provisions impacting endangered and critical status multiemployer plans

Applicable contribution schedule when parties fail to adopt a schedule in bargaining. For plans in endangered or critical status, where the parties have agreed to a contribution schedule in accordance with an existing funding improvement or rehabilitation plan and the bargaining parties fail to adopt an updated contribution schedule within 180 days following the expiration date of the collective bargaining agreement, the updated contribution schedule in effect at the expiration of the bargaining agreement shall go into effect.

Changes in withdrawal liability rules. A couple of changes were made to the withdrawal liability rules except for plans using the direct attribution method. First, the 5% or 10% employer contribution surcharges imposed on employers prior to the bargaining parties adopting the rehabilitation plan are not considered in the determination of the highest contribution rate for the withdrawal liability payment schedule. In addition, any supplemental contributions required by a funding improvement or rehabilitation plan are to be disregarded in the calculation of the withdrawal liability assessment and the determination of the highest contribution rate used for the withdrawal liability payment schedule. However, these supplemental contribution exclusions appear to be limited to contributions that are not linked to benefits. It is not clear whether supplemental contributions required by a funding improvement or rehabilitation plan should be excluded in determining

the amount of withdrawal liability with respect to contributions made in plan years beginning prior to December 31, 2014.

The exclusion of funding improvement or rehabilitation plan contributions in the determination of the withdrawal liability amount will cease at the end of the collective bargaining agreement in effect when the plan emerges from endangered or critical status. However, any increase in the contribution rate under the funding improvement or rehabilitation plan will continue to be disregarded in the determination of the highest contribution rate for withdrawal liability payment schedule calculations.

The PBGC has been charged with the development of simplified rules with respect to these withdrawal liability changes.

Provisions impacting critical status multiemployer plans

Rules for emerging from critical status. When testing whether a multiemployer plan emerges from critical status, the actuary must include certain amortization extensions when projecting a plan's credit balance and must perform a test to demonstrate whether the plan is projected to be solvent over the next 30 years. A plan that has emerged from critical status will not reenter critical status unless it is projected to have an accumulated funding deficiency in the next 10 years, taking into account certain amortization extensions, or the plan is projected to become insolvent within 30 years. This new reentry rule was intended to fix the "revolving door" problem.

Plan mergers, partitions, and benefit suspensions. A new status for very poorly funded multiemployer plans was created called "critical and declining status." The PBGC may help facilitate a plan merger and provide financial assistance if at least one of the plans is in critical and declining status. Trustees of such plans may apply to partition the plan or suspend benefits if certain requirements are met. These provisions are addressed in more detail in a separate Milliman *Multiemployer Review*.

Please contact a Milliman multiemployer plan consultant to better understand how these new MEPPA provisions may impact your multiemployer pension plan.

Bob Behar, EA, FSA, MAAA, is a consulting actuary with the Chicago office of Milliman. Contact him at bob.behar@milliman.com.

Victor Harte, EA, MAAA, is a principal and consulting actuary with the Woodland Park, New Jersey, office of Milliman. Contact him at victor.harte@milliman.com.

Nina Lantz, ASA, EA, MAAA, is a principal and consulting actuary with the Portland, Oregon, office of Milliman. Contact her at nina.lantz@milliman.com.

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.