

CLIENT BULLETIN

Congress Passes Multiemployer Pension Reform; President Signs Into Law

On Saturday night, December 13, the Senate passed the "budget bill", the *Consolidated and Further Continuing Appropriations Act, 2015 (H.R.83)*, which was signed into law by the President on December 16, 2014. The law was often referred to in the press as the "CRomnibus" bill. The bill was given this name as it was a mash-up of an "omnibus bill", which is how Congress funds the government when things are working normally, and a "continuing resolution" (CR), which is how Congress funds the government when it can't come to a deal.

Included as an amendment to the bill was the *Multiemployer Pension Reform Act of 2014 ("MEPRA")* passed by the House a few days earlier and reported on in *Special Bulletin 2014-59*. MEPRA pertains to multiemployer defined benefit pensions. MEPRA was based on the *Solution Not Bailouts* proposed by the NCCMP Retirement Security Review Commission. Most of the provisions of MEPRA are effective January 1, 2015.

Major Highlights in MEPRA include:

- Extending the "yellow" (endangered) and "red" (critical) status rules in Code Section 432 indefinitely by removing the December 31, 2014 "sunset" date.
- Allowing Plan sponsors to "elect" red zone status if the plan is projected to be "red" in the next five years;
- Doubling the annual multiemployer PBGC premium from \$13 to \$26 per participant;
- Creating a new "zone" of plans in "critical and declining status" for which the plan sponsor can suspend or reduce benefit payments to preserve the plan financially. Strict rules apply that limit the plans which can apply for such relief as well as numerous procedural protections for participants, such as limits on cuts, required notices, the involvement of the IRS, DOL and PBGC, participant voting on such a plan and other procedures.

Resource Documents

The following documents are provided as an aid to understand *MEPRA*. A summary of *MEPRA* will follow.

[House Report 113-55](#) – contains the explanation of the addition of *MEPRA* to the House bill and the text of *MEPRA* which is a new *Division O*—Multiemployer to the budget bill.

[MEPRA in Word](#) – A specially prepared document with an interactive Table of Contents for ease of context and use.

[MEPRA – Title II Remediation Measures For Deeply Troubled Plans in Word](#) – A specially prepared document with an interactive Table of Contents for ease of context and use.

MEPRA – [Mergers](#) and [Partitions](#) – Explanation of the law with relevant section of *MEPRA* included.

[Code 432](#)- A redline of Code 432 after amendment by *MEPRA*.

Discussion

MEPRA is comprised of two Titles. Title I contains *Modifications To Multiemployer Plan Rules* in the form of amendments to the *Pension Protection Act of 2006 (PPA)*, changes to the *Multiemployer Plan Mergers and Partitions rules*, a doubling of the annual PBGC multiemployer plan premium from \$13/participant to \$26/participant.

Title II concerns new rules about *Remediation Measures For Deeply Troubled Plans*. A plan's Fund Actuary and Fund Counsel should be consulted for details as the following is a "bird's eye" view of the law. The details are myriad. Once guidance is issued it will hopefully clear up any "gray" areas.

Endangered plans are commonly referred to as "yellow zone" plans and critical status plans as "red zone" plans. We will use the terms interchangeably. Comments by United Actuarial Services (UAS) actuaries are shown under a section as "**UAS Comment:**"

TITLE I—Modifications To Multiemployer Plan Rules

Subtitle A—Amendments to Pension Protection Act of 2006

- *Repeal of sunset of PPA funding rules* [Sec. 101]
The section of the *PPA* "sunsetting" the funding rules applicable to multiemployer plans in endangered and critical status plans was repealed. These funding rules remain in effect indefinitely as modified by *MEPRA*.
- *Election to be in critical status.* [Sec. 102]
A plan sponsor of a multiemployer pension plan not in critical status for a plan year but which is projected by the plan actuary under the annual *PPA* "zone" certification to be in critical status in any of the succeeding five plan years may,

not later than 30 days after the date of the certification, may elect to be in critical status effective for the current plan year. Notice must be given to the Treasury Department and PBGC within 30 days.

UAS Comment: *This provision gives sponsors of some endangered and seriously endangered plans access to remedies that are currently only available to critical plans. This may allow for less draconian (severe) plan changes to meet PPA goals.*

- *Clarification of rule for emergence from critical status.* [Sec. 103]
Corrects problem of critical status plan emerging from critical status one year but immediately returning to critical status because of different treatment of amortization extensions to plans entering and exiting critical status.
- UAS Comment:*** *This provision may also lower the funding improvement targets for some plans in critical status, making it easier for plans to emerge from the red zone.*
- *Endangered status not applicable if no additional action is required.* [Sec. 104]
States that a plan is not considered in “endangered” status if no additional action to emerge from endangered status is needed and the plan was a “green zone” plan (i.e. not in endangered or critical status) in the immediately preceding plan year.
- *Correct endangered status funding improvement plan target funded percentage.* [Sec. 105]
A technical change concerning the calculation of the plan’s funded percentage in devising a funding improvement plan for a plan in endangered status.
- *Conforming endangered status and critical status rules during funding improvement and rehabilitation plan adoption periods.* [Sec. 106]
Conforms certain sections of Code 432(d) about endangered plans to match Code 432(f) on critical status plans.
- *Corrective plan schedules when parties fail to adopt in bargaining.* [Sec. 107]
Clarifies how updates to a funding improvement or rehabilitation plan coordinate with the bargaining process.
- *Repeal of reorganization rules for multiemployer plans.* [Sec. 108]
Repeals the multiemployer “reorganization” rules under Sections 4241, 4242, 4243, 4244, and 4244A and the corresponding Code Sections 418, 418A, 418B, 418C, and 418D.

UAS Comment: *This provision corrects an oversight in PPA. Reorganization rules existed prior to PPA to improve funding for troubled plans. The critical status rules of PPA replaced these requirements, but the prior rules were never repealed. Hence, plans were technically subject to both requirements.*

- *Disregard of certain contribution increases for withdrawal liability purposes.* [Sec. 109]
Specifies that contribution increases required to meet a funding improvement plan or rehabilitation plan are ignored when determining withdrawal liability. Also directs the PBGC to prescribe simplified methods for applying this change in determining withdrawal liability and payment amounts.
- *Guarantee for pre-retirement survivor annuities under multiemployer pension plans.* [Sec. 110]
Requires the PBGC to guarantee payment of the qualified preretirement survivor annuity (QPSA) payable to the surviving spouse of a participant in an insolvent or terminated multiemployer pension plan. In such a case, the QPSA shall not be treated as forfeitable solely because the participant has not died as of the date on which the plan became so insolvent or the termination date. This amendment applies with respect to QPSAs payable on or after January 1, 1985, except it shall not apply if the surviving spouse has died before the date of the enactment of this Act (December 2014).
- *Required disclosure of multiemployer plan information.* [Sec. 111]
Clarifies the disclosure rules of ERISA Section 101(k) apply to multiemployer defined benefit plans and adds additional items to be disclosed. Under ERISA Section 101(k), each administrator of a multiemployer defined benefit plan shall, upon written request, furnish to any plan participant or beneficiary, employee representative, or any employer that has an obligation to contribute to the plan a copy of certain documents, which now include:
 - the current plan document (including any amendments thereto),
 - the latest summary plan description of the plan,
 - the current trust agreement (including any amendments thereto), or any other instrument or agreement under which the plan is established or operated,
 - in the case of a request by an employer, any participation agreement with respect to the plan for such employer that relates to the employer's plan participation during the current or any of the five immediately preceding plan years,
 - the 5500 filed for any plan year,
 - the plan funding notice for any plan year,
 - audited financial statements of the plan for any plan year, and
 - in the case of a plan which was in critical or endangered status for a plan year, the latest funding improvement or rehabilitation plan, and the contribution schedules applicable with respect to such funding improvement or rehabilitation plan (other than a contribution schedule applicable to a specific employer).

Subtitle B—Multiemployer Plan Mergers and Partitions Mergers.

- *Mergers* [Sec. 121]
States when the PBGC may facilitate the merger of two or more multiemployer plans and the conditions for financial and other assistance the PBGC can offer. "[Click here](#)" for a more detailed explanation.
- *Partitions of eligible multiemployer plans.* [Sec. 122]
Sets rules for when the PBGC may order a "partition" of a multiemployer pension plan. "[Click here](#)" for a more detailed explanation.

Subtitle C—Strengthening the Pension Benefit Guaranty Corporation

- *Premium increases for multiemployer plans.* [Sec. 131]
Doubles the PBGC annual multiemployer premium to \$26 per participant and indexes the premium to reflect inflation. It also requires the PBGC to report to Congress by June 1, 2016 regarding the adequacy of these premium levels.

TITLE II—Remediation Measures for Deeply Troubled Plans

- *Conditions, limitations, distribution and notice requirements, and approval process for benefit suspensions under multiemployer plans in critical and declining status.* [Sec. 122]

This section contains detailed rules on **voluntary** remediation procedures for *multiemployer plans in critical and declining status* ("deeply troubled" plans).

Under the rules a critical status plan shall be treated as in "*critical and declining*" status if the plan is projected to become insolvent during the current plan year or any of the 14 succeeding plan years (19 succeeding plan years if the plan has a ratio of inactive participants to active participants that exceeds two to one or if the funded percentage of the plan is less than 80%).

The plan sponsor of a plan in *critical and declining* status for a plan year may suspend benefits **only** if **all** of the following conditions are met:

- The plan actuary certifies that the plan is projected to avoid insolvency with the suspensions.
- The plan sponsor certifies that all reasonable measures have been taken to avoid insolvency. (The law provides a list of factors that can be considered for this purpose.
- The benefit suspensions are within the limits provided by law. They cannot decrease a benefit to less than 110% of the PBGC guarantee level, nor by more than the amount necessary to reasonably avoid insolvency. No reductions can be made for participants over age 80 (phase in for 75-80), or for participants on disability.
- Benefit reductions must be equitably distributed, though various factors such as age, benefit amount, etc. can be considered.

- The plan must notify all participants, employers, and labor organizations of the suspensions.
- The plan must receive approval from the IRS, PBGC, and DOL . The application is deemed approved if no action has been taken in 225 days. Note that the application will be posted in the Federal Register and be subject to a 30 day public comment period.
- After government approval the suspension plan must be put to a vote of participants. For plans with more than \$1B of potential PBGC liability, the government may permit the suspensions to go into effect even if the participants vote against it.
- For plans with more than 10,000 participants a retiree representative must be selected to review the suspension request.

***UAS Comment:** This provision provides a route for some very troubled plans to avoid insolvency that otherwise would not have been able to do so. This is especially true for plans in declining industries where the ongoing active population small relative to the retirees and other inactives. It is clearly a last resort after everything else that can be done has been done. The process will be highly public and there are a lot of hurdles to be met.*

A follow-up *Client Bulletin* will take a look at these rules under Title II in greater detail.

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