



## RIA Special Study: Appropriations Act Includes Multiemployer Pension Reform & Other Provisions

### Multiemployer Pension Reform Provisions

As the Pension Benefit Guaranty Corporation (PBGC) stated in its 2014 Annual Report, its multiemployer program insures the benefits of more than 10 million workers and retirees in 1,400 plans. When multiemployer plans fail, PBGC provides financial assistance so the plans can pay benefits at no more than PBGC's statutory multiemployer benefit guarantee level. PBGC cautioned that, although the multiemployer program's assets are sufficient to meet the needs of the current insolvent plans, its assets are insufficient to cover benefits for plans expected to become insolvent in the near future. In 2014, PBGC's multiemployer insurance program's deficit rose to \$42.4 billion, compared with \$8.3 billion in 2013, said PBGC.

**New law.** The bipartisan reform legislation, introduced by Rep. John Kline (R-MN), Chairman of the House Education and the Workforce Committee, and Rep. George Miller (D-CA), Senior Democrat, is designed to give multiemployer pension plans the tools they need to remain viable, the sponsors said. (Committee on Education and the Workforce News Release, 12/2014; Senate Finance Committee News Release, 12/11/2014; PBGC Annual Report, 11/2014).

According to the committee news release, the legislation provides multiemployer pension plans with the flexibility necessary to keep the plans from going under, includes reforms to protect taxpayers, and provide trustees with new tools to save troubled plans. Specifically, the Act:

. . . effective on date of enactment, precludes PBGC from using 2015 Appropriations Act funds to take action in connection with an [ERISA § 4062\(e\)](#) event. Such an event takes place where, as a result of the cessation of operations at a facility by an employer maintaining a single-employer plan, more than 20% of the active participant base associated with the cessation is separated from employment );

. . . on date of enactment, eliminates the sunset provision that would have applied to the automatic five-year extension of the full-funding amortization periods for multiemployer plans under the Pension Protection Act (PPA) (Subtitle C of Title II of the PPA, P.L. 109-280, 8/17/2006, as repealed by Act Sec. 101(a) Div O);

. . . for plan years beginning after Dec. 31, 2014, allows the plan sponsor of a multiemployer plan that isn't in critical status for a plan year, but that is projected by the plan actuary to be in critical status in any of the succeeding five plan years under specified rules, to elect to be in critical status effective for the current plan year. The election must be made not later than 30 days after the date of the required annual certification on whether the plan is in endangered or critical status (Code Sec.

432(b)(4)(A), as amended by Act Sec. 102(b)(1)(A) Div O);



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. . . for plan years beginning after Dec. 31, 2014, revises the rules for when a multiemployer plan is in critical status, provides a new set of circumstances under which a plan is deemed to have emerged from critical status, and limits the circumstances under which a plan that has emerged from critical status reenters critical status. ( [Code Sec. 432\(e\)\(4\)\(B\)](#) , as amended by Act Sec. 103(b) Div O);

. . . for plan years beginning after Dec. 31, 2014, provides that a multiemployer plan is in endangered status for a plan year if the plan isn't in critical status for the plan year, and isn't described in Code Sec. 432(b)(5). A multiemployer plan is described in Code Sec. 432(b)(5) if: (a) as part of the actuarial certification of endangered status under [Code Sec. 432\(b\)\(3\)\(A\)](#) for the plan year, the plan actuary certifies that the plan is projected to no longer be in endangered status under [Code Sec. 432\(b\)\(1\)\(A\)](#) (the 80% funding level requirement) or [Code Sec. 432\(b\)\(1\)\(B\)](#) (the accumulated funding deficiency requirement), by the end of the tenth plan year ending after the plan year to which the certification relates, and (b) the plan was not in critical or endangered status for the immediately preceding plan year ( [Code Sec. 432\(b\)\(1\)](#) , as amended by Act Sec. 104(b)(1)(A) Div O);

. . . for plan years beginning after Dec. 31, 2014, eliminates as part of a reorganization of the rules for operating plans during the adoption and improvement periods, the provisions: (1) for a plan in "seriously endangered status," requiring the plan sponsor take all reasonable actions-consistent with the plan's terms and applicable law to achieve an increase in the plan's funded percentage and postponement of an accumulated funding deficiency for at least one additional plan year; and (2) during any funding improvement period, prohibiting the plan sponsor from accepted a collective bargaining agreement or participation agreement for the multiemployer plan that provided for a reduction in the level of contributions for any participants, a suspension of contributions for any period of service, or any new (direct or indirect) exclusion of younger or newly hired employees from plan participation. ( [Code Sec. 432\(d\)](#) , as amended by Act Sec. 106(b) Div O);

. . . for plan years beginning after Dec. 31, 2014, changes the corrective contribution schedules to be used for implementing and enforcing funding improvement and rehabilitation plans for underfunded multiemployer plans, where the parties to a collective bargaining agreement fail to agree on a plan. This includes the schedule imposed where there's been a failure to adopt a funding improvement plan ( [Code Sec. 432\(c\)\(7\)\(A\)](#) , as amended by Act Sec. 107(b)(1) Div O) and where there's been a failure to adopt a rehabilitation plan ( [Code Sec. 432\(e\)\(3\)\(C\)\(i\)](#) , as amended by Act Sec. 107(b)(2) Div O);

. . . for plan years beginning after Dec. 31, 2014, repeals Code Sec. 418 (reorganization status), Code Sec. 418A (notice of reorganization and funding requirements), Code Sec. 418B (minimum contribution requirement), Code Sec. 418C (overburden credit against minimum contribution requirement), and Code Sec. 418D (adjustments in accrued benefits). (Code Secs. 418, 418A, 418B, 418C, and 418D, as repealed by Act Sec.

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108(b)(1)(A) Div O) Thus, the Code's reorganization rules for multiemployer plans, with the exception of [Code Sec. 418E](#) , which concerns insolvent plans, are repealed;

. . . consolidates and expands the separate rules for disregarding benefit reductions in determining withdrawal liability (i.e., the withdrawal liability adjustment rules) to (1) allow contribution increases be disregarded, and (2) describe how these rules apply to increases in the contribution rate if the plan emerges from endangered or critical status. In addition, the Act clarifies the period during which the special [Code Sec. 432\(f\)\(4\)](#) rules apply. These changes are effective for benefit reductions and increases in the contribution rate or other required contribution increases that go into effect during plan years beginning after Dec. 31, 2014, and to surcharges the obligation for which accrue on or after Dec. 31, 2014 ( [Code Sec. 432\(f\)\(3\)](#) , Code Sec. 432(g)(1), [ERISA § 305\(f\)\(3\)](#) , and [ERISA § 305\(g\)](#) , as amended by Act Sec. 109 Div O);

. . . provides that, for purposes of [ERISA § 4022A\(a\)](#) , in the case of a qualified preretirement survivor annuity payable to the surviving spouse of a participant under a multiemployer plan which becomes insolvent under [ERISA § 4245\(b\)](#) or [ERISA § 4281\(d\)\(2\)](#) , or is terminated, such annuity will 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. ( [ERISA § 4022A\(c\)\(4\)](#) , as amended by Act Sec. 110(a) Div O) This amendment is retroactively applicable to multiemployer plan benefit payments becoming payable on or after Jan. 1, 1985, except where the surviving spouse has died before the date of enactment;

. . . for plan years beginning after Dec. 31, 2014, provides new rules giving the PBGC authority to facilitate mergers between multiemployer plans. When requested to do so by the plan sponsors, PBGC may take actions as PBGC deems appropriate to promote and facilitate the merger of two or more multiemployer plans by providing training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies ( [ERISA § 4231\(e\)\(1\)](#) , as amended by Act Sec. 121(a) Div O);

. . . for plan years beginning after Dec. 31, 2014, modifies the procedures for partitioning multiemployer plans. Upon the application by the plan sponsor of an "eligible multiemployer plan" for a partition of the plan, PBGC may order a partition of the plan in accordance with [ERISA § 4233](#) . ( [ERISA § 4233\(a\)\(1\)](#) , as added by Act Sec. 122(a) Div O);

. . . increases PBGC premium rates for multiemployer defined benefit plans from \$13 per participant to \$26 after 2014 ( [ERISA § 4006\(a\)\(3\)\(A\)\(vi\)](#) , as amended by Act Sec. 131(a)(1) Div O), indexed for inflation for post-2015 plan years ( [ERISA § 4006\(a\)\(3\)\(M\)](#) , as amended by Act Sec. 131(a)(1) Div O);

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. . . effective on date of enactment, allow trustees of severely underfunded plans to adjust vested benefits without violating the **Code Sec. 411(d)(6)** "anti-cutback" rule, which may enable deeply troubled plans to survive without a federal bailout. Specifically, if a multiemployer pension plan is in "critical and declining status," the **Code Sec. 432(a)(2)** rehabilitation plan rules must be applied, and the plan sponsor may by plan amendment suspend benefits if certain requirements are met (Code Sec. 432(a)(3), as amended by Act Sec. 201(b)(1) Div O); and

. . . for plan years that begin after Dec. 31, 2013, expands the exemption from the general funding standards, that now applies to cooperative and small employer charity (CSEC) plans, to certain charitable employers that provide services for children. ( **Code Sec. 414(y)** , as amended by Act Sec. 3(b)(1) Div P).

### **Exclusion for Expatriate Health Plans**

For plans issued or renewed on or after July 1, 2015, the Act provides that, with limited exceptions, "expatriate health plans" are exempt from various ACA provisions. Expatriate health plans are group health plans and similar plans, that meet various requirements, one of which is that substantially all of the primary enrollees in the plan are "qualified expatriates." (Act Sec. 3 Div M)

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