FELRA & UFCW
Pension Fund

Summary of the Multiemployer Pension Reform Act of 2014 ("MPRA")

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MPRA Topics

- Amendments to PPA
- Multiemployer Mergers and Partitions
- PBGC Premium Increases
- Remediation Measures for Deeply Troubled Plans

Amendments to PPA

- Repeal sunsets for both PPA and 431(d) amortization extensions
- PPA Zone Status Changes
  - Special Rule to Remain Safe
  - Election to be in Critical Status
  - Critical and Declining Status
- Emergence From Critical Status
- Funding Improvement Plan Requirements
- Withdrawal Liability Changes
- Miscellaneous

Sunset of PPA Rules Repealed

- Plans continue with
  - Annual zone status certifications
  - Funding Improvement / Rehabilitation Plans
  - Amortization extensions (431(d))
  - Use of shortfall funding method

PPA Zone Status Changes

- Special rules allow certain Endangered plans to be deemed “Safe”
- Plans projected to be Critical within 5 years can elect Critical status now
- Special rules for plans projected to become insolvent

SUMMARY OF PPA ZONE STATUS	
OLD LAW	**NEW LAW**
SAFE	SAFE
	SAFE DUE TO SPECIAL RULE
ENDANGERED	ENDANGERED
SERIOUSLY ENDANGERED	SERIOUSLY ENDANGERED
CRITICAL	PROJECTED CRITICAL 5 YRS
	CRITICAL
	CRITICAL AND DECLINING

Special Rule to Remain Safe (Olive)

- Eligibility
  – Plans that were “Safe” in prior year
  – Must be Endangered in current year if not for this rule
  – Plan is projected to become “Safe” after 10 years without making any plan changes

- Notice to bargaining parties and PBGC is still required

Election to be in Critical Status (Pink)

- Eligibility: projected to be Critical within the 5 years
- Timing
  - Trustees can elect to be Critical within 30 days after initial certification
  - Notice to Secretary, critical notice to participants, unions, and employers within 30 days after election
  - If not elected, must notify the PBGC
- Year of election is treated as the initial Critical year, not the date the Critical criteria are satisfied, no opting out, all other rules remain
- For plans electing, certification projections must reflect future FIP contribution increases (if any) beyond the CBA expiration dates

Critical and Declining Status (Maroon)

- Eligibility
  - Meets prior Critical rules
  - Projected insolvency within 15 years (or 20 years if inactive to active ratio is greater than 2 to 1 or funded status is less than 80%)
- Rules
  - Current Critical rules apply
  - Expanded information on notices (disclose insolvency date, that benefits may be reduced, and what actions if any were taken to prevent insolvency)
- Projections may include contribution increases beyond current CBA (if reasonable)
- Plans certified in Critical and Declining Status may be eligible to suspend benefits and / or partition

Zone Status Action Summary

SUMMARY OF PPA ZONE STATUS	
NEW LAW ZONE STATUS	ACTION NEEDED
SAFE	None
SAFE DUE TO SPECIAL RULE	Notice to PBGC, Unions, Employers
ENDANGERED	PPA Notices, Adopt FIP
SERIOUSLY ENDANGERED	PPA Notices, Adopt FIP
PROJECTED CRITICAL 5 YRS	Notice to PBGC, PPA Notices and FIP (if applicable)
CRITICAL	PPA Notices, Adopt RP
CRITICAL AND DECLINING	PPA Notices, Adopt RP, Suspension Eligible

Emergence From Critical Status

- In general, plans remain in Critical status until the actuary certifies <u>ALL</u> of the following:
  - The plan passes the 5 current Critical tests, (except plans with an automatic amortization extension in place can keep the extension for credit balance tests; closes the “revolving door”)
  - The plan is not projected to have an accumulated funding deficiency for the current or next 9 years (without use of the shortfall method, but with amortization extensions)
  - The plan is not projected to become insolvent within 30 years

- Plans that emerge under the new criteria only reenter Critical status if:
  - The plan is projected to have an accumulated funding deficiency for the current or next 9 years (without use of the shortfall method, but with the automatic amortization extension), or
  - The plan is projected to become insolvent within 30 years

Funding Improvement Plan Requirements

- Old law required FIPs to:
  - Improve the Funded % at the beginning of the FIP period to be one-third closer to 100% funded, and
  - Avoid accumulated funding deficiencies in all years
- New law changes this to be:
  - Improve the Funded % <u>at the beginning of the first plan year certified as Endangered</u> to be one-third closer to 100% funded, and
  - Avoid accumulated funding deficiencies in <u>the last plan year</u>
- Allows for target funded % to be known sooner
- FIPs still require improving funding ratios, but can now be designed to enter Critical status due to having an accumulated funding deficiency

Withdrawal Liability Changes

- Reductions in adjustable benefits or suspensions (unless the withdrawal occurs 10 years after the suspension) are disregarded in determining UVB
- Surcharges are disregarded in determining the allocable share and in determining the highest contribution rate (except for the Direct Attribution method)
- Contribution rate increases required by a FIP/RP that go into effect during plan years beginning after December 31, 2014 are also disregarded for the allocation and highest rate
- When the plan emerges from Critical or Endangered status
  - The contribution rate increases are taken into account on the expiration of the CBA in effect when the plan emerges
  - The contribution rate increases continue to be disregarded in determining the highest contribution rate for the years the plan was in such status

Miscellaneous

- Clarifies restriction periods in FIP/RPs for allowing reductions in contributions, suspension of contributions, and exclusion of young or new hired participants
- Clarifies which FIP/RP Schedule applies if bargaining parties fail to agree on a renewal
- Repeals reorganization rules
- Pre-retirement survivor annuities (QPSA benefits) are now guaranteed by the PBGC
- Expands information to be provided upon request under ERISA 101(k)

Multiemployer Mergers

- When requested by the plan, PBGC can take action to promote and facilitate a merger if the transaction:
  - is in the best interest of plan participants and beneficiaries, and
  - it is not reasonably expected to be adverse to the overall interests of any of the plans.

- PBGC may provide financial assistance to facilitate a merger to enable one or more plans involved to avoid or postpone insolvency if:
  - One or more participating plans is in Critical and Declining status,
  - The financial assistance will reduce the PBGC's expected long term loss and necessary for the merged plan to become or remain solvent,
  - The PBGC certifies that its ability to meet existing obligations is not impaired by providing assistance, and
  - Assistance is paid exclusively from multiemployer pool

- PBGC shall provide notice within 14 days after providing assistance to Govt Committees

Multiemployer Partitions – Prior Rules

- The PBGC could have ordered/accepted a partition if
  - There was a substantial reduction in the aggregate contributions under the plan due to a case or proceeding under Title 11 with respect to an employer;
  - The plan is likely to become insolvent;
  - Contributions will have to be increased significantly to meet the minimum contribution requirement and prevent insolvency; and
  - The partition would significantly reduce the likelihood that the plan will become insolvent.

Multiemployer Partitions – New Rules

- Now, a plan is eligible if:
  1. Plan is in Critical and Declining status,
  2. PBGC determines the plan has taken all reasonable measures to avoid insolvency (including maximum benefit suspensions if applicable),
  3. PBGC expects that a partition will reduce the expected long-term loss for the plan and is necessary for the plan to remain solvent,
  4. The PBGC certifies its ability to meet existing obligations is not impaired by a partition, and
  5. Cost of the partition is paid exclusively from multiemployer pool

Multiemployer Partitions – New Rules

- If approved then:
  - Successor plan is created
  - PBGC shall transfer the minimum amount of plan's liabilities necessary for the prior plan to remain solvent
  - Plan sponsor and administrator of the prior plan would also handle the successor plan
  - Employer withdrawals from the prior plan within 10 years of the partition order are assessed withdrawal liability under both plans
  - Prior plan pays PBGC premiums for 10 years
  - Prior plans pays benefits in excess of the monthly benefit that would be paid if the partition had not occurred (after reflecting suspensions) and the PBGC guaranteed benefit
  - Special rules for benefit improvements 10 years after partition

Multiemployer Partitions – New Rules

- PBGC must make a determination within 270 days after the application was filed (or completed)

- Plan must notify participants within 30 days after submitting an application

- PBGC shall provide notice within 14 days after the partition order to Govt Committees

PBGC Premium Increases

- For plan year beginning after December 31, 2014, the premium increases from $12 ($13 for 2015) to $26 per-participant and indexed thereafter
- By June 1, 2016 the PBGC shall submit a report to Congress that includes an analysis of whether the premium increases are sufficient for the PBGC to meet its projected obligations for 10 and 20 year periods. If insufficient, they must propose revised premiums that are sufficient.

Remediation Measures for Deeply Troubled Plans

- Suspension of Benefits: a temporary or permanent reduction of any current or future payment obligation
- Suspensions remain in effect until the earlier of when the plan improves benefits or upon expiration by its own terms
- The plan is not liable for any benefit payments not made as a result of a suspension

- Retiree Representative
  - Plans with 10,000 or more participants
  - Not later than 60 days prior to the plan's application to suspend benefits, plan must select a participant in pay status to act as a retiree representative
  - Retiree representative shall advocate for the inactive participants throughout the approval process
  - The plan shall provide reasonable expenses for the retiree representative (including legal & actuarial)

Remediation Measures for Deeply Troubled Plans

- Conditions for Suspension
  - Actuary certifies that the proposed suspension (& proposed partition, if applicable) is projected to avoid insolvency
  - The plan sponsor determines that the plan is projected to become insolvent unless benefits are suspended and all reasonable measures to avoid insolvency have been taken
  - In making this determination, the plan sponsor may take into account:
    - Level of contribution and/or benefit accrual
    - Prior benefit reductions or suspensions
    - Compensation levels of active participants relative to the industry
    - Economic factors facing contributing employers and how contribution increases may impact attrition and retention
    - The need to retain active participants and bargaining groups

- Limitations on Suspension
  - Monthly benefit cannot be reduced below 110% of the PBGC guarantee on the date of the suspension
  - Suspension is phased out for participants between 75 and 80
  - No suspension for disabled participants
  - Suspensions in the aggregate should not materially exceed the level that is needed to avoid insolvency
  - If suspension is made in combination with a partition, the suspension may not take effect prior to the partition

Remediation Measures for Deeply Troubled Plans

- Limitations on Suspension (continued)
  - Suspensions shall be "equitably distributed" across the population, taking into account one or more of the following:
    - Age, life expectancy, years until retirement, and length of time in pay status
    - Amount of benefit (has allocation requirements), type of benefit (survivor, normal retiree, early retiree), and extent to which participants are receiving a subsidized benefit
    - History of benefit increases and reductions
    - Any discrepancies between active and retiree benefits
    - Extent to which active participants are likely to withdraw support for the plan (accelerating employer withdrawals, which would increase need for additional reductions for other participants)
    - Benefits earned by employers who did not pay their full withdrawal liability

- Benefit Improvements
  - Plan may provide improvements while a suspension is in effect
  - Plan may not increase the liabilities of participants not in pay status, unless there are "equitable improvements" (see requirements) for in pay participants
  - Actuary must certify that after the improvements the plan is projected to avoid insolvency indefinitely
  - Can resume benefits for in pay participants, but must be equitably distributed
  - Benefit increases that are determined by the secretary to be de minimis or required for plan qualification are allowed

Remediation Measures for Deeply Troubled Plans

- Notice Requirements
  - Notice of proposed suspension must be provided at the same time as the suspension application to all participants, employers and unions
  - Notice must contain:
    - Sufficient information to understand the effect of the suspension, including an individualized estimate of the effect
    - Description of the factors considered in designing the suspension
    - Statement that the application is available on Treasury website for comments
    - Information about the participant's rights and remedies
    - Information about the appointment of a retiree representative
    - Contact information for the Dept. of Treasury
  - Model notice will be provided

- Approval Process
  - Submit application to Treasury
  - Approvals are considered by Treasury, the PBGC, and DOL
  - Within 30 days of application, a notice is published in the Federal Register soliciting comments from employers, unions, and participants
  - Application is posted on the Treasury website
  - Applications are deemed approved after 225 days unless otherwise notified that the criteria was not satisfied

Remediation Measures for Deeply Troubled Plans

- Participant Ratification Process
  - Requires a vote of the plan participants
  - Treasury shall administer the vote within 30 days of the approval
  - Suspension shall go into effect following the vote unless a majority of all participants reject the suspension
  - If rejected, the plan may submit a new application
  - Voting ballots must include:
    - Statement that the plan supports the suspension
    - Statement in opposition to the suspension compiled from comments
    - Statement that the plan will otherwise become insolvent and the impact insolvency has on benefits
    - Statement that insolvency of the PBGC would result in further reductions

Remediation Measures for Deeply Troubled Plans

- Systemically Important Plans (SIP)
  - Defined as plans that the PBGC projects the present value of financial assistance payment exceed $1 billion (indexed) if suspensions are not implemented
  - Treasury can override the rejection if the plan is determined to be a SIP
  - Determination must be made within 14 days of the rejection vote
  - Override by Treasury must be made within 90 days after the vote
  - Treasury can permit the suspension as proposed or implement a modified version
  - Within 30 days of deeming a plan SIP, the Participant and Plan Advocates may submit recommendations to Treasury with respect to the suspension or any revisions
- Final Authorization to Suspend: Following a vote or determination that the plan is SIP, Treasury shall issue final authorization to suspend within 7 days

Remediation Measures for Deeply Troubled Plans

- Judicial Review
  - If denied, the plan may challenge
  - If approved, after final authorization to suspend is issued
  - Review done in court, but the court may not grant a temporary injunction unless the court finds a clear and convincing likelihood that the plaintiff will prevail
  - Participants affected by a suspension “shall not have a cause of action”
  - Challenges following the final authorization to suspend or the denial must be made within one year after the earliest date when the plaintiff acquired or should have acquired knowledge of the existence of such cause of action