

Bill to Ease Multiemployer Pension Funding Is Introduced in Congress

Funding relief legislation for multiemployer pension plans was introduced in the U.S. House of Representatives on October 27. H.R. 3936, the Preserve Benefits and Jobs Act (PB&J Act),¹ sponsored by Representatives Earl Pomeroy (D-ND) and Patrick Tiberi (R-OH), includes extensive relief for single employer plans as well. This is a notable starting point, but Congress is still a long way from passing legislation to make it easier for trustees, employers and unions to deal with the impact of the 2008 market losses on pension plan funding. The proposed PB&J Act incorporates most of the proposals put forth by the Multiemployer Coalition, a broad group of employers, employer associations, unions and multiemployer funds that represents the full spectrum of multiemployer stakeholders and is spearheaded by the National Coordinating Committee for Multiemployer Plans (NCCMP).

Like the coalition's proposal, the bill would make two general types of changes: adjustments to the multiemployer funding and zone rules to help strong plans recover, and improvements to the multiemployer plan safety net to provide more benefit security for participants in plans that otherwise may be facing insolvency. This *Bulletin* gives an overview of the major elements.

FOR PLANS THAT ARE SOLVENT BUT CHALLENGED

- **Adjustments to Funding Rules** Beginning with either the 2009 or 2010 plan year,² multiemployer plans could choose between two options for spreading out the period for financing existing costs. They could either restart the amortization of

all charges and credits in the funding standard account over a new 30-year period or separately amortize the net investment losses incurred in 2008 or 2009³ over 30 years. These options would only be available to plans that are projected to be solvent throughout the extended amortization period. Benefit increases would be restricted for the two plan years following the year the relief is first effective.

Other funding relief in the bill includes: for the two plan years beginning after August 31, 2008, allowing plans to use an actuarial value of assets that smoothes new investment losses over 10 years; separately, for those plan years, allowing the actuarial value of assets to be as much as 130 percent of fair market value, and lengthening the term of an "automatic" amortization extension to up to 10 years.

- **Adjustments to Zone Rules** The funding rule changes described above would not affect the zone rules until the plan year that begins on or after September 1, 2009, so that zone-related activities undertaken during 2009 would not be disrupted. In addition, the bill would give plans in the yellow or red zone the right to add up to five years to their correction period (two years, for plans that opted for a three-year extension in 2009), and make an assortment of technical clarifications and simplifications in the yellow zone rules.

STRENGTHENING THE SAFETY NET

- **Plan Mergers, Alliances and Partitions** The bill would make it easier for multiemployer plans to merge by clarifying the applicable fiduciary standards and creating a new type of merger, called an "alliance," which would enable small or relatively weak plans to be merged with stronger

¹ The text may be found on THOMAS, at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.3936>;

² More precisely, the relief would be available for either of the first two plan years beginning after August 31, 2008.

³ Here the choice would apply, more precisely, to losses in either or both of the first two plan years ending after August 31, 2008.

plans without diluting the stronger plan's funding or adding to its withdrawal liability. It would also direct the Pension Benefit Guaranty Corporation (PBGC) to facilitate multiemployer plan mergers, including by contributing cash if necessary to enable a merger to go through, if that is likely to yield savings for the multiemployer guarantee program in the long term.

For plans that have been left severely burdened with liabilities for retired and inactive participants due to employer bankruptcies or defaults on withdrawal liability, the proposed PB&J Act would open the door to a PBGC partition to relieve the plans of those "orphaned" benefits, if that would enable the plan itself to survive.

- **Multiemployer Benefit Guarantees** Finally, the PB&J Act would increase the level of benefits guaranteed by PBGC when a multiemployer plan becomes insolvent. At present, the guarantee formula for multiemployer plans allows PBGC to guarantee up to \$429 per year for each year of the participant's credited service under the plan, for a maximum annual benefit of \$12,870 for a person who had worked under the plan for 30 years. The bill would change the guarantee formula so that the annual maximum benefit would be \$669 for each year of credited service, or \$20,070 annually for a 30-year participant.

The higher guarantee would apply to plans that first become insolvent and apply for PBGC financial assistance after the increase becomes law.

NEXT STEPS

The House Ways & Means Committee is expected to consider the PB&J Act along with H.R. 2989, the §401(k) Fair Disclosure and Pension Security Act, which was approved by the House Education and Labor Committee this past summer. Parts or all of the PB&J Act could be added to H.R. 2989, and it is possible that a bill providing pension funding relief could be voted on in the House by mid-November. Seasoned Washington observers are predicting final action no earlier than the end of December, if the pension measure can be attached to year-end, must-pass, legislation.

Congressional staff are warning that any pension relief that gets enacted in 2009 is likely to be modest and temporary, targeted at problems created by the 2008 market crash. If so, the PB&J proposal may be more of a menu from which Congress will select provisions to

include in final legislation than a preview of the ultimate law.

The Segal Company will alert the multiemployer plan community to substantive developments.



Segal Company experts can be retained to help multiemployer boards of trustees take into account possible changes in funding rules. This could include modeling the effects of the proposals in the PB&J Act on their plan, so they can decide whether to take a position on the bill and/or be prepared to take advantage of the new options if the law passes.



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