PUBLICATION

Congress Makes It Possible to Reduce Some Union Pensions

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As a part of the Consolidated and Further Continuing Appropriations Act, 2015, passed by Congress and signed by the President on December 18, 2014, the 161-page "Multiemployer Pension Reform Act of 2014" (Act) gives the trustees of a financially troubled multiemployer pension plan (and in some cases the federal government) the ability to temporarily or permanently reduce plan benefits for active and/or retired participants in order to keep the plan solvent, along with other changes.

A multiemployer pension plan is a plan for employees who are subject to the terms of collective bargaining agreements and to which contributions are made by unrelated employers in accordance with the terms of those agreements. Such a plan must be in "critical" and "declining" status in order to use the provisions of the Act. A plan is in "critical" status if it is less than 65 percent funded or it is projected to decline into critical status within the next five years and an election is made to treat it as currently being in critical status. A plan is in "declining" status if it is projected to become insolvent within 15 years, or 20 years if the ratio of inactive to active participants exceeds 2:1, or if the funded status of the plan is less than 80 percent.

The Approval Process For Benefit Suspensions

A plan which is actuarially certified as being in critical and declining status may temporarily or permanently suspend (i.e., reduce) the current or future benefits of employees, retirees, and/or alternate payees under a domestic relations order. The plan has no resulting liability for the suspended benefit.

Participants, the Treasury Department, contributing employers and each union must be given advance notice of any suspension. Treasury, in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the U.S. Department of Labor (DOL), will publish a notice in the *Federal Register* and on the Treasury website. The notice to participants must also satisfy ERISA's notice requirements regarding reductions in future benefits. Large plans with 10,000 or more participants will have a participant representative appointed.

A suspension application is deemed approved unless Treasury notifies the plan sponsor otherwise within 225 days of filing. Within 30 days after regulatory approval, and before implementation, the suspension must be submitted to plan participants and beneficiaries for a vote. The plan sponsor will provide the ballot, along with a statement in support of the suspension, a summary of comments received opposing the suspension, a statement compiled from comments received and other information. In order to veto the suspension, a majority of all participants and beneficiaries of the plan (not just a majority of those who actually vote) must vote to reject the suspension.

If a previously approved suspension is rejected by a vote, in some circumstances a suspension may still occur. Within 14 days, Treasury, PBGC and DOL will determine if the plan is "systematically important" - i.e., if the projected PBGC liability under the plan will exceed $1 billion (to be indexed). If the plan is systematically important, then a suspension in some necessary form may be approved within 90 days.

Implementation of a Benefit Suspension

No benefit may be reduced to less than 110 percent of the PBGC-guaranteed benefit level. No disability-based pensions or pensions for persons over age 80 may be suspended. Suspensions between age 75 and 80 are phased out. Suspensions must not materially exceed the level needed to avoid plan insolvency.

Suspensions must be "equitably distributed across the participant and beneficiary population." The statute sets forth representative factors to consider in this regard.

If a plan sponsor later wants to provide improved benefits, retiree benefits must be equitably treated relative to improvements for active employees. No improvement may be made unless an actuary certifies that the improvement is not expected to result in plan insolvency, and then only if Treasury, PBGC and DOL approve the change or it is required to maintain the tax-qualified status of the plan.

Other Provisions of the Act

Additional provisions of the Act include:

- The PBGC may promote multiemployer plan mergers, or order partitions of critical and declining status plans. PBGC also may provide financial assistance to help a plan avoid or delay insolvency.
- PBGC premiums are increased to $26 per participant per year (to be adjusted for wage growth after 2015).
- Benefit suspension actions are not subject to the fiduciary responsibility provisions of ERISA, except in the case of an appointed participant representative who is also a plan trustee.

Summary

The Act is a dramatic change from prior law, under which elective, pre-emptive benefit reductions could not occur. Benefit reductions under the Act must result from a detailed process involving many parties - the plan trustees, the IRS, DOL and PBGC, contributing employers, plan participants, beneficiaries and alternate payees. Which plans are affected, which persons in a plan are affected, how much benefits are reduced, and for how long benefits will be reduced, all remain to be seen.

Should you have questions regarding the Act or otherwise wish to discuss any retirement plan issues, please contact your Baker Donelson attorney or a member of our Employee Benefits and Executive Compensation Group.