

**MULTIEMPLOYER PENSION PLAN FUNDING RELIEF LEGISLATION  
SIGNED BY PRESIDENT OBAMA ON JUNE 25, 2010**

The financial market crash of 2008 placed unprecedented funding pressure on multiemployer defined benefit pension plans and the thousands of employers that provide responsible retirement benefits to their employees by participating in them. Since that time, the National Coordinating Committee for Multiemployer Plans (NCCMP) and its Coalition partners have worked tirelessly to develop a plan, and have lobbied Congress for legislative funding relief.

We are pleased to announce that on June 25, 2010, President Obama signed the *Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010* (The Act) into law. The Act will temporarily reduce the required contributions to multiemployer pension plans by allowing sponsors to recognize losses suffered in 2008 and 2009 over longer periods. The net effect of this change will enable plans to defer a portion of the contribution increases and/or reduce the extent of any benefit reductions that would have otherwise been required immediately to meet the plans' funding improvement or rehabilitation plan funding targets.

The Act contains several provisions that will provide funding relief to multiemployer pension plans. Plans are required to pass a solvency test in order to access any of these relief provisions, and plans that elect any of the provisions are subject to a restriction on benefit increases.

**Primary Provisions of the Act**

30-Year Amortization<sup>1</sup> of 2008 Investment Losses – Under current law, multiemployer plans are required to amortize investment losses over 15 years. The Act provides plans with the option of amortizing the investment losses incurred in either or both of the first two plan years ending after August 31, 2008 over a longer period of time. The longer amortization period is determined as follows:

- a) Begin with the year the loss is recognized in the actuarial value of assets, and
- b) End with the last plan year in the 30-year period beginning with the year the loss occurred

10-Year Smoothing of 2008 Investment Losses – Under current law, multiemployer plans are allowed to recognize (or “smooth”) investment losses in their actuarial value of assets over a period of up to 5 years. The Act provides plans with the option of expanding this period to 10 years for the investment losses incurred in either or both of the first two plan years ending after August 31, 2008.

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<sup>1</sup> Point of Clarification: Since the end of the amortization period refers to the year in which the loss occurred, which actually precedes the beginning of the amortization period, the Act actually provides for a maximum of a 29-year amortization period. For simplicity, we will continue to refer to this provision as the 30-year amortization provision.

Temporary Expansion of Asset Smoothing Corridor to 130% – Under current law, the actuarial value of a multiemployer plan’s assets cannot exceed 120% of the market value of the assets. The Act provides plans with the option of raising this maximum to 130% of the market value of assets for either or both of the first two plan years beginning after August 31, 2008.

Solvency Test – In order to be eligible for the relief provisions, the actuary of the plan must certify that the plan is projected to have sufficient assets to pay all expected benefit payments and other expenditures over 30 years.

Benefit Restrictions – Plans that elect any of the relief provisions are prohibited from adopting any benefit improvements within 2 years of a plan year to which the relief provisions apply. An exception to this rule applies if sufficient additional contributions are allocated to pay for the increase, and the plan’s funded percentage and credit balance are not expected to decrease during the subsequent 2 plan years.

### **NCCMP Commentary**

The Act will provide meaningful funding relief to the vast majority of plans and therefore, to the thousands of companies that sponsor multiemployer pension plans. Similar to many previous pieces of pension legislation, the Act contains several areas which could be open to multiple interpretations. In each instance, through our discussions with lawmakers and their staffs, as well as the overall context of the language in the bill, we have endeavored to make the intent of the provisions clear. We will continue to work with both Congressional staff and the regulatory agencies to ensure that the Act is administered properly. The affected provisions are as follows:

Definition of Investment Losses – The Act states that ‘investment losses’ are determined on ‘the basis of the difference between the actual and expected returns’. Although both the legislative history of The Act and the context of the language within it make it clear this definition refers to market value losses, the definition itself is ambiguous. If this provision is misinterpreted to refer to actuarial losses, it would greatly reduce the value of the provision to the plans.

Benefit Restriction Period – Under The Act, plans that elect the relief provisions are generally prohibited from adopting benefit improvements within 2 years of a year to which the relief applies. This phrase was intended to refer to the years in which a plan elects the relief, which would typically result in a 3-year benefit restriction period (the year of the election and the two subsequent years). However, for a plan that elects the 30-year amortization relief, this phrase could be misinterpreted as restricting benefit improvements for the entire 30-year period, and the two plan years immediately following this period.

Retroactivity – Although the Act provides relief that affects the 2010 zone status certifications, the majority of plans have already finalized and published these certifications, and some have already adopted funding improvement or rehabilitation plans. While the fact that The Act specifically exempts 2009 zone certifications from being retroactively revised indicates that 2010 certifications may be revised, the provisions do not explicitly state that plans that have already certified their 2010 zone status, or adopted funding improvement or rehabilitation plans, have the option of re-certifying and revising these documents.

Plans Using Spread Gains Methods – The amortization relief of the Act allows plans to expand the amortization period for their experience losses to the extent that these losses are attributable to the 2008 market crash. However, some plans use actuarial funding methods known as “spread gain” methods, which do not separately identify or amortize experience losses. Since The Act is intended to apply to all plans, not just plans using particular actuarial methods, it will be necessary for some plans to receive permission to change their funding methods in order to access the relief. Since The Act does not explicitly provide this permission, it will be necessary for the regulatory agencies to allow plans to make the necessary changes to access the relief.

## **Conclusion**

It is clear that the devastating effects of the 2008 financial crisis will require plans to take action to meet their funding targets required under the PPA. These actions are likely to take the form of increased contributions and/or, (to the extent permitted) modifications of the plans of benefits, all of which must occur within the context of an enormously difficult business environment. This situation places enormous competitive burdens on employers who have chosen to do the right thing and provide retirement income security to their employees. The Act will reduce the required contribution increases and/or the extent of any required benefit modifications over the short-term by expanding the period of time over which plan sponsors are allowed to fund the liabilities.

Although the passage of this legislation is a substantial victory for multiemployer plans, substantial work remains to be done. In addition to continuing the fight to ensure that the regulatory agencies properly interpret and administer all of the provisions of the Act so that they provide the intended relief to all multiemployer plans, the NCCMP will continue to lead the effort to press for enactment of the remaining relief measures contained in both the Pomeroy/Tiberi and Casey reform bills.