MULTI-EMPLOYER® VOLUME XIV • ISSUE 4
A SERVICE OF THE NCCMP DECEMBER 14, 2014

TOPIC: **"*SOLUTIONS NOT BAILOUTS*" BECOMES LAW**
The *Consolidated and Further Continuing Appropriations Act*, 2015

EXECUTIVE SUMMARY: **LAST NIGHT THE CONGRESS OF THE UNITED STATES PASSED THE *CONSOLIDATED AND FURTHER CONTINUING APPROPRIATIONS ACT, 2015,* WHICH PROVIDES FUNDING TO KEEP THE GOVERNMENT RUNNING THROUGH SEPTEMBER 30, 2015. THIS BILL INCLUDES SUBSTANTIAL PORTIONS OF THE MULTIEMPLOYER PENSION REFORM PROPOSAL CONTAINED IN *SOLUTIONS NOT BAILOUTS.* THIS ISSUE OF *MULTI-EMPLOYER,* INCLUDES A GENERAL SUMMARY THAT HIGHLIGHTS THE PROVISIONS OF THE LEGISLATION AND A COMPARISON TO THE PROPOSED REFORM MEASURES.**

THIS LANDMARK LEGISLATION PROVIDES AN ARRAY OF TOOLS DEVELOPED BY THE BROAD-BASED *RETIREMENT SECURITY REVIEW COMMISSION,* CONVENED BY THE NCCMP IN 2011, WHICH INCLUDED DOZENS OF LABOR, MANAGEMENT, PLAN AND ADVOCACY REPRESENTATIVES FROM ACROSS THE MULTIEMPLOYER COMMUNITY. THE LEGISLATION CONTAINS NEEDED TECHNICAL CORRECTIONS TO THE PPA, WILL PROVIDE THE GREATEST POSSIBLE BENEFITS FOR CURRENT AND FUTURE GENERATIONS OF PARTICIPANTS, PRESERVE THE SOLVENCY OF DOZENS OF PLANS OTHERWISE DESTINED FOR INSOLVENCY AND SETS THE STAGE FOR THE NEXT STEPS IN THE EVOLUTION OF OUR PLANS SO THEY CAN PROVIDE SECURE RETIREMENT INCOME TO PLAN PARTICIPANTS FOR GENERATIONS TO COME.

PURPOSE: **INFORMATIONAL**

CATEGORY: **LEGISLATIVE**

ISSUER: **U. S. CONGRESS**

TARGET AUDIENCE: **TRUSTEES AND PROFESSIONAL ADVISORS TO MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS**

FORWARD COMMENTS TO: ***Multi-Elert@nccmp.org***

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FOR ADDITIONAL BACKGROUND SEE: **H.R. 83 - The Consolidated and Further Continuing Appropriations Act, 2015**

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MARKING THE CULMINATION OF YEARS OF EFFORT BY THE MULTIEMPLOYER COMMUNITY TO ENACT LEGISLATION TO PRESERVE A VOLUNTARY SYSTEM OF RETIREMENT SECURITY FOR WORKING MEN AND WOMEN.

In August of 2011, the NCCMP convened a broad group of stakeholders from across the multiemployer plan universe. Known as the "Retirement Security Review Commission" (Commission), they met over a period of approximately 18 months to assess the strengths and weaknesses of the current system, and to formulate recommendations to address the problems that confront multiemployer defined benefit pension plans.

Their deliberations resulted in a series of recommendations that were published in a report titled *"Solutions Not Bailouts – A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Growth."* This document has been referenced by Congressman John Kline, Chairman of the U.S. House of Representatives Committee on Education and the Workforce, as having provided a foundation for this landmark legislation.

Among the most significant findings of the Commission was that, although the majority of the multiemployer defined benefit pension system is recovering from the catastrophic economic contractions suffered over the past decade, a small, but significant minority of plans are at risk of becoming insolvent in the near future, despite having exhausted all options available under current law. The Pension Benefit Guaranty Corporation (PBGC) has estimated that these plans cover as many as 1.5 million participants. Compounding the situation, the PBGC itself is projected to become insolvent within the next ten years. The Commission devoted considerable time and resources to examining this problem and to devising a proposal to prevent the demise of plans whose circumstances make early intervention to avoid insolvency and protect a greater portion of their benefit than was possible under existing law a viable option.

The law passed yesterday goes a long way towards achieving this and other objectives embodied in these recommendations. With the notable exception of the exclusion of new plan design provisions and a few of the technical corrections, the Commission's recommendations were validated as providing valuable new tools for plan trustees and bargaining parties through their inclusion in the Act. The provisions in the law will allow many of those plans to remain solvent, preserve the benefits of current and future retirees in plans facing insolvency, provide additional funding for the PBGC and encourage contributing employers to remain in the system.

This legislation codifies a number of technical corrections that will help plans that have regained their financial footing to remain healthy; places a tourniquet on the otherwise uncontrollable hemorrhaging of the plans most desperately in need of assistance; and provides tools to plan fiduciaries and settlors to **voluntary** address the particular needs of their own plans to avoid devastating benefit reductions that accompany plan insolvency and intervention by the PBGC.

While the work begun by the Commission is not yet complete, the multiemployer community owes a debt of gratitude to the courageous and diligent work of many individuals who have been instrumental in passing this landmark legislation.

First and foremost, we extend our deep appreciation to Chairman John Kline and Ranking Member George Miller of the House Committee on Education and the Workforce. Their bold leadership on this issue has been nothing short of extraordinary. We also thank Chairman Phil Roe and recently retired Ranking Member Robert Andrews of the Subcommittee on Health, Employment, Labor and Pensions, who held several critical hearings on multiemployer plan reform and whose bipartisan cooperation served as a foundation for this successful effort. Last but certainly not least, we are grateful for the many long hours and tireless work of the able and dedicated members of the Committee staff on both sides of the aisle. This legislation was only possible because these people remained firm in their conviction that these reforms are essential to the retirement security of the millions of working men and women who depend on multiemployer plans across the nation.

We also owe our thanks to the hundreds of labor and business leaders, trustees, plan professionals, lobbyists and media consultants and most importantly, **YOU**, our members and colleagues. You have spent countless hours educating legislators and Congressional staff members and have provided invaluable financial support, both of which were critical to the success of this initiative. The campaign to secure passage of multiemployer pension reform was a team effort in every way, and would not have been possible without the efforts and contributions of stakeholders from across the multiemployer community.

It is necessary that everyone recognizes and acknowledges that, while this legislation has enjoyed broad support, support for certain provisions has been far from unanimous. Some have simply misunderstood its provisions; others (fewer) have mischaracterized its features, causing unnecessary fear among trustees, participants and others that broad discretion has been given to arbitrarily reduce benefits. Nothing could be further from the truth. Understanding that different groups have different needs, the proposals were drafted so that the use of its tools requires voluntary actions on the part of both labor and management on individual boards of trustees to become effective. Now that the proposals have become law we are committed to repairing the schism within the community caused by this lack of understanding, or difference of opinion, through an intensive educational campaign to improve the understanding of those who face possibly difficult decisions that this legislation holds the potential to improve the retirement security of affected participants.

While this legislation represents a landmark achievement, the job is not complete. Like you, we are committed to continuing to work on this issue until we successfully pass companion legislation in the next Congress. That legislation will authorize the new and innovative plan designs that will give multiemployer plan trustees the flexibility they need to remove the remaining obstacles that prevent plans and contributing employers from taking the next step in the evolutionary process. These innovations are necessary so that plans in some industries can continue to provide the modest and dependable retirement income that allows plan participants to retire with dignity after having spent a lifetime of service in their chosen fields.

We strive to ensure that the information contained in this and every issue of Multi-Elert is correct to the extent information is available. Nevertheless, the NCCMP does not offer legal advice. Plan fiduciaries should rely on their own attorneys and other professional advisors for advice on the meaning and application of any Federal laws or regulations to their plans.

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If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact the NCCMP, by phone at (202) 737-5315 or by e-mail at nccmp@nccmp.org.

Summary of Provisions of the *Multiemployer Pension Reform Act of 2014*
Incorporated by Amendment into the

"Consolidated and Further Continuing Appropriations Act, 2015"

ALL TOOLS ARE OPTIONAL

Proposals from Solutions Not Bailouts that become law under the Act include:

Technical Corrections and Enhancements to PPA and Prior Laws

1. Allows plans that are reasonably projected to enter critical status in any of the next five plan years to elect to enter critical status in the current year. [§102, pp 3-10] Effective for Plan Years beginning after December 31, 2014.

2. Resolves the critical status revolving door issue which applies differing standards for the treatment of amortization extensions to plans entering and exiting critical status, causing plans that emerge to immediately reenter in the next testing cycle. [§103, pp 10-17] Effective for Plan Years beginning after December 31, 2014.

3. Provides that a yellow zone plan that has a Funding Improvement Plan that requires no action to emerge from endangered status is not considered to be endangered. [§104, pp 17-21] Effective for Plan Years beginning after December 31, 2014.

4. Amends the target yellow zone funded percentage so that it is determined based on the plan's funded percentage at the time of certification, removing the current uncertainty of having to base it on the percentage projected to the start of the funding improvement period. [§105, pp 21-22] Effective for Plan Years beginning after December 31, 2014.

5. Extends the critical status ("red zone") rules regarding benefit improvements, contribution decreases, and waiver of excise taxes on funding deficiencies to the endangered status ("yellow zone") plans. [§106, pp 22-26] Effective for Plan Years beginning after December 31, 2014.

6. Amends the Pension Protection Act to state that funding improvement and rehabilitation plans can specify what schedule takes effect in the event the bargaining parties fail to agree on a renewal schedule. [§107, pp 26-36] Effective for Plan Years beginning after December 31, 2014.

7. Amends the reorganization rules to specify that the red zone rules take priority over the reorganization rules in the event of a conflict. [§108, pp 36-44] Effective for Plan Years beginning after December 31, 2014.

8. Provides that any contribution increases attributable to compliance with a Funding Improvement or Rehabilitation Plan shall be disregarded for withdrawal liability allocation purposes. [§109, pp 44-52] Effective for Plan Years beginning after December 31, 2014.

9. Modifies the PBGC multiemployer guaranty provisions to provide coverage for the survivors of non-retired participants who die after the plan becomes a ward of the PBGC. [§110, pp 52-53] Effective with respect to benefits becoming payable on or after January 1, 1985, but shall not apply where surviving spouse has died.

10. NEW §111 Required Disclosure of Multiemployer Plan Information. Expands disclosures already required by ERISA 101(k). [pp 53-57] Effective for Plan Years beginning after December 31, 2014.

Mergers and Alliances

Facilitated Mergers – Expands Authority for facilitated Plan Mergers by requiring sponsor request to PBGC Participant & Plan Sponsor Advocate. Provides for mergers of plans when heading for insolvency if PBGC determines merger will prevent insolvency of the plan and will not harm financial status of PBGC. Facilitated mergers must be reported to Congress. [§121, pp 57-59]

NEW Partition of Eligible Multiemployer Plans, Expansion of PBGC Partition Authority

The previous, narrow definition of partition has been expanded. To qualify for partition, plan must (1) be in "critical and declining status", (2) must have taken (or is taking concurrently with the partition application) "all reasonable measures to avoid insolvency, including the maximum benefit suspensions under 305(e)(9), if applicable"; (3) the PBGC reasonably expects that the partition will reduce the PBGC's expected long-term loss with respect to the plan and a partition of the plan is necessary for the plan to remain solvent; (4) the PBGC certifies to Congress that its ability to meet existing financial obligations to other plans will not be impaired by the partition and (5) the cost of the partition is paid exclusively from the PBGC multiemployer program. Eliminates the current requirement that the reason for a substantial reduction in contributions to the plan has resulted or will result from an employer Bankruptcy under Chapter 11. [§122, pp 59-64] Effective PY beginning after December 31, 2014.

NEW Premium Increases for Multiemployer Plans

The Act increases the premiums for the PBGC multiemployer guaranty fund from $13 to $26/participant for the Plan Year beginning after December 31, 2014, subsequently indexed. It also requires PBGC to report to Congress by June 1, 2016 regarding the adequacy of revised premiums projected for 10 & 20 years. [§131, pp 64-66]

Remediation Measures for Critical and Declining (Deeply Troubled) Plans

§201 Conditions, Limitations, Distribution and Notice Requirements, and Approval Process for Benefit Suspensions under Multiemployer Plans in Critical and Declining Status. [pp 67-138]. The Act creates a new category of plans that are headed for insolvency as being in "critical and declining status" (described as "Deeply Troubled" plans in Solutions not Bailouts). Information regarding this status must be added to the Annual Funding Notice as well as the projected date of insolvency. Consistent with the recommendations contained in "Solutions Not Bailouts," trustees of plans that are in "critical and declining status" (*e.g*. plans certified as becoming insolvent within the next 15 years - 20 years if their ratio of retirees and inactive to active participants exceeds 2:1) that have taken all reasonable measures to avoid insolvency may voluntarily elect to preserve plan solvency through suspension of benefits, including benefits in pay status, if and only if after doing so the plan will avoid insolvency and:

1. Benefits may be reduced only to the extent necessary to avoid insolvency; and

2. Benefits may be reduced to no less that 110% of the PBGC guaranty level.

Furthermore:

- Disability pensioners and pensioners who have attained age 80 are exempted from any such suspensions with protections phased in between ages 75 and 80.

NEW The Act provides that for a limited, narrowly defined class of plans that involves an employer which has paid its full withdrawal liability and, prior to enactment of the Act, entered into a collective bargaining agreement under which it assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan, the order of benefit reductions is as follows:

1. Benefits earned with employers no longer contributing to the plan that failed to pay their full withdrawal liability;

2. Except as provided below, all other benefits subject to suspension; and

3. Benefits payable to participants for whom their employer has paid full withdrawal liability and in a CBA entered into before the passage of this act, assumed liability for providing benefits to participants and beneficiaries of the plan under a separate, single-employer plan sponsored by the employer, in an amount equal to any amount of benefits for such participants and beneficiaries reduced as a result of the financial status of the plan to hold such employees harmless for future benefit reductions.

Related Provisions

- NEW A "Retiree Representative" must be appointed from persons in pay status for plans with 10,000+ participants that anticipate using benefit suspension tools. The plan will provide reasonable legal and actuarial support to retiree representative. The Retiree Representative is not a fiduciary.

- The Act includes a list of factors to be considered regarding suspensions. Suspension may not take effect prior to partition if a plan is also applying for partition.

- Modified Government Approval Process: Notice of the application for suspension of benefits must be provided to the Secretary of the Treasury and participants. Treasury is directed to prepare a model notice for this purpose. The application must be made to Treasury (rather than PBGC which had been proposed in SNB) for approval of proposed suspensions. Treasury, in consultation with PBGC and the Department of Labor will review and either approve or deny the application. Treasury will publish a Notice in the Federal Register soliciting comments on any such application. Approval or denial of the application must occur within 225 days. Unless the plans is notified of the denial of the application it is deemed approved.

- NEW A Participant vote is required within 30 days of approval. A vote of over 50% of all participants is required to overturn a board of trustees' plan to suspend benefits. The vote is to be administered by the agencies. The plan sponsor (board of trustees) shall provide the ballot. If Participants vote to reject the proposed benefit suspension, but the agencies determine it is a "systemically important" plan (defined as a plan that presents possible claims to the PBGC in excess of $1billion), the agencies may permit implementation of the suspensions despite the adverse vote.

- NEW Limited Court Challenges A plan sponsor may challenge a denial of their suspension of benefits application in court; however, no participant cause of action is permitted under this section. A one year statute of limitations applies for trustees to challenge a decision by Treasury to deny their ability to suspend benefits.

SIGNIFICANT PROVISIONS PROPOSED IN SOLUTIONS NOT BAILOUTS THAT WERE *NOT* INCLUDED IN THE LEGISLATION:

1. From Technical Corrections Provisions:

   - A proposal that, consistent with the narrowly constructed relief provisions of PRA and WRERA, would have provided that the amortization extension and asset smoothing provisions automatically trigger whenever plans encounter a dramatic decline in the financial markets. [NOT INCLUDED]

- A proposal to specify that ad-hoc 13th checks are not part of participants' accrued benefits, even if the trustees adopt them for several consecutive years. [NOT INCLUDED]

- A proposal to eliminate the potential excise tax exposure attributable to amortization extensions that the IRS granted under Section 412(e) prior to the passage of PPA. [NOT INCLUDED]

- A proposal to facilitate use of Section 414(k) by plans seeking to allow participants to convert defined contribution accounts into annuities payable from a defined benefit plan in a manner that is equitable for all participants and employers. [NOT INCLUDED]

- Ability of plans to harmonize Normal Retirement Age with Social Security [NOT INCLUDED]

2. Mergers and Alliances – Provisions for creation of "Alliances" [NOT INCLUDED]

3. Innovation: New Structures to Foster Innovative Plan Designs [NOT INCLUDED]