

WHY FUNDING RELIEF IS NEEDED NOW!

During 2009, U.S. Representatives and Senators have proposed various forms of funding relief for single and multiemployer pension plans. These relief measures are designed to ease the short-term burden that pension contribution obligations will place on employers, while ensuring that pension benefit promises are funded in an actuarially responsible manner. For many businesses, these relief provisions are necessary to prevent them from entering bankruptcy. For other employers, the proposed relief will free up the cash that will allow them to expand their operations and contribute to the recovery of our economy.

While there is general acknowledgement that multiemployer funding relief is necessary, not everyone understands the urgency for Congress to enact this relief. In WRERA, Congress provided temporary relief that expired for a number of plans on September 30, 2009. In the absence of substantive relief, pension plans with plan years that begin on October 1 will need to certify if they are in critical or endangered status by the end of December, and will need to notify all participants and employers of their funded “zone” status during January of 2010.

A critical or endangered status notification has a significant impact on both participants and the employers who sponsor a multiemployer pension plan. The issuance of a critical status or so-called “red zone” status notice establishes the date after which benefit reductions permitted in the PPA may be applied. Participants who retire after that date may have certain “adjustable benefits” reduced (subsidized early retirement, subsidized survivor benefits and certain disability benefits in particular). Furthermore, critical status plans are also required to notify contributing employers of the need to begin paying surcharges to the plan to reduce the plan’s underfunding. Although the impact of the investment market contraction on many plans cannot be overstated, it is clear that the structure created by the PPA to address underfunding has insufficient flexibility to respond to the kind of rapid asset losses experienced in 2008/09 and will result in unintended consequences.

In some cases, particularly for several large employers in the trucking and mining industries, the absence of multiemployer funding relief will almost certainly result in bankruptcy and the loss of tens of thousands of jobs. The expiration of the temporary relief contained in WRERA of 2008 will force plans to adopt funding improvement or rehabilitation plans pursuant to those inflexible rules which will invariably result in significant contribution increases in industries which are struggling to remain solvent at current rates. It is clear that any delay to the passage of pension funding relief increases the likelihood of their insolvency.

Pension plan participants will also benefit from the passage of multiemployer funding relief in 2009. These participants receive information on the funded position of their pension plans on an annual basis. This information is technical in nature, and despite the best intentions of all parties, many participants struggle to understand the material. If the adoption of funding relief is delayed much longer, many participants will receive funding information on their plans and the effect corrective actions may have on their future benefits security, upon which they may act to their detriment.

For these reasons, it is vital to the participants and the employers who sponsor multiemployer pension plans, that Congress act expeditiously to enact funding relief.