



# **Multiemployer Pension Plan Funding and Withdrawal Liability**

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# New Multiemployer Funding Rules

- Multiemployer plans and single-employer plans have different funding rules
- Multiemployer plans basically follow ERISA funding rules with adjustments
  - Faster funding for changes in benefits or actuarial assumptions (15 year amortization rather than 30)
  - Temporary benefits (e.g. non-recurring COLA) funded faster
  - New rules for financially troubled plans  
ERISA § 305 and IRC § 432



# Financially Troubled Multiemployer Plans

- Endangered status (Yellow Zone)
- Seriously endangered status (Orange Zone)
- Critical status (Red Zone)
- Recent Segal survey shows
  - 9% of multiemployer plans in Red Zone
  - 25% in Yellow or Orange Zones
  - 2/3 of plans not troubled (often called Green Zone)



# Yellow and Orange Zones

- **Endangered status (Yellow Zone)**
  - Less than 80% funded for accrued benefits OR
  - Projected funding deficiency in next 7 years
- **Seriously endangered (Orange Zone)**
  - Both less than 80% funded AND projected deficiency within 7 years

# Red Zone

- Critical status (Red Zone)
  - Less than 80% funded AND projected deficiency within 5 years OR
  - Less than 65% funded AND contributions for next 7 years are less than benefit payments and expenses OR
  - Projected funding deficiency within 4 years
  - Assets plus contributions for next 5 years are less than benefit payments and expenses
  - Normal cost (i.e., cost of new benefits) plus interest on the plan's unfunded liability greater than contributions for the year AND funding deficiency within 5 years AND vested benefits for inactives exceed vested benefits of actives



# Certification and Notice Timeline

- Actuary must certify status to trustees within 90 days after beginning of plan year
- Trustees must notify participants, beneficiaries, bargaining parties, PBGC and IRS within 30 days
- Within 330 days after beginning of plan year, trustees must develop
  - “funding improvement plan” (for endangered or seriously endangered plans)
  - “rehabilitation plan” (for critical status plans)
- Bargaining parties must adopt within 30 days or default goes into effect



# Funding Improvement Plan (Yellow and Orange Zones)

- Plan must improve funding within “funding improvement period”
  - 10 years for endangered plans (Yellow)
  - 15 years for seriously endangered (Orange)
- Improvement targets
  - Endangered - reduce underfunding by 1/3
  - Seriously endangered - reduce underfunding by 1/5



# Funding Improvement Alternatives

- Trustees must propose at least two alternative schedules to meet target:
  - Contribution increases necessary to reach target without benefit reductions
  - Reductions in future benefit accruals necessary if no contribution increase
- Trustees may propose other alternative schedules



# Rehabilitation Plan (Red Zone Plans)

- Trustees must adopt rehabilitation plan by 330th day of plan year
- Plan must improve funding within 10 year “rehabilitation period”
- Default rehabilitation plan must provide maximum reduction of future accruals and adjustable benefits
  - Future accruals must be at least 1% of contributions or existing accrual rate
  - Bargaining parties may negotiate lower accruals, higher contributions

# Adjustable Benefits

- Benefit increases within 60 days
- Early retirement subsidies
- Post-retirement death benefits
- Benefit options other than qualified joint and survivor benefit for spouse
- Disability benefits
- 60 month guarantee

# Rehabilitation Plan

- Trustees must provide 30 days notice before effective date of rehab plan
- Once notice sent:
  - No lump sums
  - No annuities purchased from insurer
  - No reduction in contribution rates
  - No exclusion of new hires
  - No increased benefits unless increased contributions

# Surcharges and Penalties

- Surcharges on unexpired collective bargaining agreements
  - 5% surcharge on contributions in year 1
  - 10% surcharge in subsequent years
- Excise taxes for employers
  - 100% of employer delinquencies
  - If no progress on funding improvement for 3 consecutive years, greater of
    - 5% of amount necessary to leave Critical Status or
    - Plan's accumulated funding deficiency



# Information Provided to Employers

- Annual funding notice
  - Funded percentage of plan
  - Whether plan is Critical or Endangered
  - Summary of financial improvement or rehabilitation plan
  - Plan's funding policy
  - Plan's asset allocation
  - Benefit increases (or reductions)
  - Where to obtain additional information



# Annual Summary Report to Employers and Union

- Contribution and benefit schedules
- Number of employers, employers withdrawing
- Names of employers contributing more than 5%
- Number of participants for whom no contributions made
- Whether plan is Critical or Endangered
- Where to obtain funding improvement or rehabilitation plan
- Information about mergers, transfers
- Amortization extensions or shortfall funding
- Right to obtain annual report, SPDs, SMMs



# Information Employer May Request

- Actuarial report
- Investment advisor's report
- Amortization extension granted by IRS
- Withdrawal liability information
- Notice of future benefit reductions



# Complete and Partial Withdrawals

- Complete withdrawal
- Partial withdrawal
  - Bargaining out or double-breasted operation
    - Now applies if “entity owned or controlled by the employer” continues work without contributing
  - Facility take-out
  - 70% decline



# Special Industry Rules

- Construction
- Entertainment
- Trucking
- Retail food
- Mining
- Great Lakes maritime

# Free Look Rule

- Employers contributing for less than 7 years have no withdrawal liability
- Now available to construction industry plans
- Trustees must adopt



# Withdrawal Liability Allocation Methods

- Three statutory methods:
  - Presumptive (20 pool) method
    - Must be used by construction plans
  - Rolling 5-year method
  - Direct attribution method
- Trustees may establish fresh start once plan is fully funded (not required)

# Withdrawal Liability Payments

- Payment equals highest contribution rate in last 10 years multiplied by average contributions base units in highest 3 consecutive years
- 20 year cap on payments
- Increased contributions under rehabilitation plan or financial improvement plan could increase annual payments

# Disputing Withdrawal Liability

- Employer must arbitrate
- Employer must pay while arbitrating
  - New exception for “avoid or evade” claim made more than 5 years after transaction (2 years for small employer)
    - Employer must notify plan trustees within 90 days
    - Employer must post bond or escrow if no decision within 12 months

# Sale of Business

- Sale of stock not a withdrawal
- Sale of assets not withdrawal if parties comply with ERISA §4204
- Special rule for liquidation of small employers (now assets below \$25 million)



# ***QUESTIONS????***

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