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Multiemployer Pension Changes

The Multiemployer Pension Reform Act of 2014 (MEPRA) was signed into law in December 2014 as part of a larger government funding bill. While some changes to the multiemployer pension system were anticipated due to the sunset of certain pension provisions under the 2006 Pension Protection Act and the deteriorated financial condition of the Pension Benefit Guaranty Corporation (PBGC), the extent of the changes in MEPRA caught many by surprise.

PBGC

The PBGC is the governmental agency that insures the private pension system in the event a plan becomes insolvent. Plans or plan sponsors pay annual premiums to the PBGC. In exchange, the PBGC takes over insolvent plans and pays benefits up to guaranteed levels. Each year, the PBGC projects its long-term financial condition by projecting premiums taken in less expected benefits to be paid out. During 2014, the PBGC projected that it would become bankrupt within 10 years unless significant changes were made to the multiemployer system to reduce its exposure. While many multiemployer pension plans are on reasonably sound financial footing, some large funds are not sustainable under the status quo and would bankrupt the PBGC in the event of insolvency. The PBGC was the driving force behind the enactment of MEPRA.

MEPRA

MEPRA is generally effective for plan years beginning on or after January 1, 2015. While the law contains many provisions, the key provisions are:

- An increase in the annual premium paid by plans to the PBGC, from $13 to $26 per participant starting in 2015. The $26 premium increases in future years with cost of living adjustments.
- The ability for deeply troubled plans to reduce benefits already earned, including retiree payments in some circumstances.

The possible reduction of benefits impacts plans that are in serious financial trouble – those in the "red" zone that are projected to become insolvent (i.e., no assets to pay benefits) within 15 to 20 years, after consideration of all reasonable measures to avoid insolvency. Such reasonable measures may include current and past contribution levels, benefit levels, early retirement and other plan subsidies, competitive and economic factors facing contributing employers, and employee attraction and retention.

In the event that benefit reductions are deemed necessary, Trustees have flexibility in the manner in which this is done – for example, the level of reductions for active employees versus retirees. However, benefits cannot be reduced for retirees age 80 or older or for

disabled retirees, and can be only partially reduced for retirees age 75-79. In addition, benefits cannot be reduced below the level estimated to avoid insolvency nor below 110% of the PBGC guaranteed maximum benefit level (as much as $14,157 per year for a participant with 30 years of service, payable as a life annuity at the Plan's Normal Retirement Age).

Trustees must apply to the U.S. Treasury Department for approval in order to reduce benefits. For plans with 10,000 or more participants, membership must vote to approve the reductions. However, if membership does not approve the reductions, the Treasury department can override the vote if the specific plan is projected to cost the PBGC more than $1 billion in financial assistance.

Outlook for Plans

Even though MEPRA is now in effect, there are a host of implementation issues that will need to be addressed through regulations. In the meantime, it is important to consider the following:

- The ability to reduce benefits will not affect the vast majority of plans. Benefit reductions only can occur in those plans that are on a path to bankruptcy and for which no other reasonable solutions are viable. It is interesting to note that bankrupt plans are forced into benefit reductions by the government that are more severe than this new law allows.
- Under the Pension Protection Act of 2006, an annual actuarial certification of the plan's current and projected financial condition has been, and continues to be, required. Most plans are currently in the "green" or safe zone. Plans that may be problematic are certified to be in the "yellow/endangered" zone, or in the "red/critical" zone – if this occurs, normally there will be opportunity for Trustees to shore up the Plan's financial condition before deteriorating further and calling for more drastic measures.
- In order to reduce benefits, Trustees need governmental and in some cases, plan participant approval. Benefits can be reduced only after all other reasonable measures have been exhausted.

At Ekon, we are available to work with plan Trustees to understand the implications of MEPRA on individual pension plans, and will provide more information on the practical effects of the law as regulatory guidance is provided.