

**New Pension Bill Offers Some Relief in Light of Market Turmoil;
Technical Corrections Enacted**

December 29, 2008

On December 23, 2008, President Bush signed the Worker, Retiree, and Employer Recovery Act of 2008 (the Act). In response to the recent market volatility, the Act provides some relief for companies that contribute to single-employer and multiemployer defined benefit plans, as well as for certain individual taxpayers. It also makes technical corrections to several provisions found in the Pension Protection Act of 2006 (PPA). In order to provide highlights of the Act, we are issuing this high-level summary now, and will provide a more detailed summary next week.

Provisions Responding to the Economic Crisis

One-Year Waiver of Required Minimum Distribution Rules for Defined Contribution Plans and Individual Retirement Accounts

For 2009, the Act suspends the penalties imposed on those aged 70 ½ and older who do not take required minimum distributions (RMDs) from their retirement accounts. The next application of the RMD rules will be for the 2010 year. Neither the Act nor Treasury regulations provide any relief for 2008 RMDs.

Phase-In of Pension Funding Targets

For plan years beginning on or after January 1, 2008, the Act eliminates a requirement that employers immediately fully fund their single-employer defined benefit plans if they fail to meet certain benchmarks. Prior to the Act, the PPA required employers to bring their single-employer pension plans up to 100 percent funding over a period of years. For 2008, the target funding percentage is 92 percent, for 2009 it is 94 percent, and for 2010 it is 96 percent (and 100 percent thereafter).

Under pre-Act law, if an employer did not reach any of these targets for a given year, it must immediately bring the relevant plan up to 100 percent funding. The Act eliminates the immediate step-up to 100 percent, but leaves the next step in the funding targets applicable and does nothing to slow the ratcheting up of the required funding percentages in future years.

Temporary Relief from Freezing of Benefit Accruals for Underfunded Plans

For single-employer defined benefit plans, the Act also temporarily suspends certain limits on benefit accruals for participants in underfunded plans. Under the PPA, if a plan is less than 60 percent funded for a plan year beginning on or after January 1, 2008, future benefit accruals were required to cease. Under the Act, for the first plan year that begins between October 1, 2008 and September 30, 2009, a plan may use its funded percentage from the preceding plan year to determine whether future accruals must be frozen. Thus, a freeze is avoided if the plan was at least 60 percent funded during the preceding plan year.

Relief for Multiemployer Plans

In addition, the Act includes a number of provisions to assist the funding of multiemployer pension plans in response to the downturn in the markets. Among the changes, the Act allows trustees of multiemployer plans to elect to (1) freeze their plans' funding status for one year and/or (2) extend their funding improvement and rehabilitation periods for three years.

Technical Corrections and Other Changes Related to the PPA

The Act also includes several other changes to provisions of the PPA. Following is a brief discussion of a couple of those revisions.

Nonspouse Beneficiary Rollovers Made Mandatory

The PPA permits rollovers of benefits of nonspouse beneficiaries from qualified plans, but there was some uncertainty as to whether plans must allow nonspouse beneficiaries to roll over their benefits. The Act clarifies that all plans must allow these direct rollovers for nonspouse beneficiaries to inherited IRAs for plan years beginning on or after January 1, 2010.

Asset Smoothing

In order to lessen the impact of the recent declines in asset values, the Act allows pension plans to "smooth out" these unexpected asset losses over 24 months. Under the PPA, the value of plan assets may be determined by "averaging" the fair market values over a period of 24 months or less, making adjustments for contributions and distributions. Such adjustments cannot result in plan assets' being valued at less than 90 percent or more than 110 percent of the value of the assets at that time. Under the Act, smoothing, which takes expected earnings into account in addition to the adjustments for contributions and distributions, can be applied retroactively from January 1, 2008.

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