

# PPA Series Webcast: Multiemployer Plans



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# HOW TO PRINT THIS PRESENTATION

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- Go to the File Toolbar on the upper left-hand side of your screen
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- NOTE: When the Print Window comes up, you must select **PRINT ALL**. If you do not, your printer will only print the current slide.

# The Pension Protection Act of 2006 (“PPA”)

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- Important changes to the funding rules for multiemployer defined benefit plans,
- More stringent withdrawal liability rules
- Increased reporting and disclosure requirements

# Multiemployer Pension Reforms

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- The PPA will substantially increase interaction between plan trustees and bargaining parties
- The PPA expands the rights of employers to information about a plan's funded status
- Most rules are effective for plan years beginning after December 31, 2007

# PPA Key Concepts

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- Minimum funding targets more difficult to meet (15-year amortization instead of 30)
- Automatic surcharge for employers when a plan's funding reaches a "critical" low point
- Certain previously protected benefits may be reduced in certain instances
- Increased disclosure requirements
- New withdrawal liability provisions

# Extensions of the Amortization Periods

- Multiemployer plans with a funding deficiency within a 10-year period may extend the amortization period for funding liabilities for up to five years
- To qualify for the extended amortization period, the plan's Board of Trustees must adopt
  - A program to correct the plan's funding status;
  - Certify that the five-year extension will correct the funding problem; and
  - Provide notice of the extension to all affected parties
- The extended amortization period uses the plan interest rate (discount rate has been abolished)

# New Funding Rules – Recognizing the Plan's Funding Status

- Plan actuary has **90** days from the start of the plan year to certify the status of the plan
  - Endangered Status
  - Seriously Endangered Status
  - Critical Status
- Status is based on
  - Funded percentage,
  - Years before plan has a funding deficiency; and
  - Years before plan becomes unable to pay benefits

# Endangered Status Defined

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- A plan is in Endangered Status if it is not in Critical Status and meets one of two tests
  - Less than 80% funded (using plan assumptions);  
**or**
  - The actuary projects an accumulated funding deficiency in the current plan year or the next six years

# Seriously Endangered Status Defined

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- A plan is in Seriously Endangered Status if it meets **both** Endangered Status tests
  - Less than 80% funded; **and**
  - The actuary projects accumulated funding deficiency in the current plan year or the next six years

# Critical Status Defined

- A plan is in Critical Status if **any** one of the four following tests is met:
  - Less than 65% funded and the fair market value of assets plus contributions is insufficient to meet benefit obligations for the current year and next six years
  - Projected funding deficiency in the current plan year or will in the next three plans years (4 years, if the plan is 65% funded)

# Critical Status Defined

- Normal cost plus interests exceeds contributions, the present value of benefits for inactive participants exceeds the present value of benefits for active participants and a funding deficiency is projected within five years
- Plan assets plus five years of contributions are less than five years of benefit payments (plus administrative expenses)

# Notice Requirement

- If a plan is in Endangered, Seriously Endangered or Critical Status, the Trustees must notify the following within **30** days of actuary certification:
  - The Pension Benefit Guaranty Corporations (“PBGC”)
  - Department of Labor (“DOL”)
  - Employee organizations
  - Contributing employers
  - Participants
  - Beneficiaries
- DOL to provide a model notice

# Correcting the Plan's Funding Status

- Once the plan is certified as Endangered, Seriously Endangered or Critical, Trustees must create and adopt a plan to improve the funding status of the plan by setting benchmark levels during the applicable period
  - Funding Improvement Plan (“FIP”) for Endangered and Seriously Endangered plans
  - Rehabilitation Plan for Critical plans

# Adoption Period Restrictions

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- While a Rehabilitation Plan or FIP is being adopted, Trustees may not accept a bargaining agreement that provides for:
  - A reduction in contributions
  - Suspension of contributions
  - Exclusion of younger or newly hired employees
  - Increase in benefits
  - A plan in critical status cannot pay lump sums
- Adoption Period runs from the date of certification and ends on the day before the first day of the FIP or Rehabilitation Plan

# Communication with Bargaining Parties

- Trustees must:
  - Communicate to bargaining parties within **30** days of the adoption of an FIP or Rehabilitation Plan
  - Provide schedules of benefit reductions, contribution increases, or both which will enable the plan to meet target levels
  - Establish a Default Schedule which decreases future benefit accruals to the amount necessary to meet target funding levels
- If bargaining parties fail to agree, Trustees must implement Default Schedule within **180** days

# Funding Improvement Plans - When

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- Trustees must adopt a FIP for plans in Endangered and Seriously Endangered Status within **330** days after the start of the plan year ( November 26, 2008 for calendar year plan)
- Trustees must communicate the FIP to the bargaining parties within **30** days of adoption

# Funding Improvement Plans - What

- The FIP covers a 10-year (15, if plan is Seriously Endangered) period which begins after the earlier of:
  - The second anniversary of the adoption of the FIP;  
**or**
  - The expiration of collective bargaining agreements in effect when the actuarial certification was due and that covers 75% of the plan's active participants at the time
- Depending on the bargaining cycle, the FIP period may commence before the FIP has been adopted

# FIP For Endangered Plans

- The FIP must
  - Avoid funding deficiencies for all years during the Funding Improvement Period, and
  - Increase funding percentages by 1/3 of the difference between the current funding percentage and 100% over the next 10 years
- Example: a plan 73% funded must increase to 82% in the 10-year period (1/3 of 27% = a 9% increase)

# FIP For Endangered Plans

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- Funding Improvement Period ends
  - When the plan is no longer in Endangered or Critical Status; or
  - Has deteriorated from Endangered to Critical Status
- Failure to adopt an FIP is a reporting violation subjecting the Board of Trustees to a fine of \$1,100 per day

# FIP for Seriously Endangered Plans

- Seriously Endangered plans must
  - Avoid a funding deficiency for any year during the Funding Improvement Period; and
  - Increase funding percentages by 20% of the difference between the current funding percentage and 100% over the next 15 years
- Example: a plan 60% funded must increase to 68% over a 15-year period (20% of 40% = an 8% increase)

# FIP Options

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- Trustees must adopt a Default Schedule which
  - Decreases future accruals to the maximum permitted; **and**
  - Increases contribution rates only to the extent necessary to meet the funding target
  - Default is triggered if the collective bargaining parties are unable to agree on a FIP within 180 days of the expiration of the collective bargaining agreement
- Trustees may present alternative schedules including increasing contribution rates to the extent necessary to meet funding targets without decreasing future accruals

# Rehabilitation Plans - When

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- Trustees must adopt a Rehabilitation Plan for plans in Critical Status within **330** days after the start of the plan year ( November 26, 2008 for calendar year plan)
- Trustees must communicate the plan to the bargaining parties within **30** days of adoption
- Failure to adopt a plan is a reporting violation subject to a fine of \$1,100 per day

# Rehabilitation Plans - What

- The Rehabilitation Plan covers a 10-year period which begins after the earlier of
  - The second anniversary of the adoption of the rehabilitation plan; **or**
  - The expiration of collective bargaining agreements in effect when the actuarial certification was due and that covers 75% of the plan's active participants at the time
- Depending on the bargaining cycle, the Rehabilitation plan period may commence before the FIP has been presented

# Rehabilitation Plan Schedules

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- Trustees must create one or more schedules
- Default Schedule
  - Reduce future benefit accruals (but not below 1% of required contributions)
  - Reduce adjustable benefits

# Rehabilitation Plan Schedules

- Adjustable Benefits are:
  - Subsidized or supplemental benefits
  - Benefit increases effective fewer than 60 months before plan entered Critical Status
  - Post-retirement death benefits
  - Disability benefits not in pay status
- If still needed, contributions may be increased
- Alternative schedule(s) calling for benefit reductions and contribution increases

# Rehabilitation Plan - Surcharge

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- Employers are assessed an automatic 5% employer contribution surcharge
- Surcharge is 10% of contributions in succeeding plan years
- Surcharges begins **30** days after the Employer is notified the plan is in Critical Status and ends once the collective bargaining parties agree to an acceptable Schedule

# Intervention

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- If within **60** days of the due date for adoption of a Rehabilitation Plan *or FIP* the Trustees have not agreed, any Trustee may request expedited dispute resolution for the development and adoption of a Rehabilitation Plan or FIP
- If bargaining parties do not reach agreement within **180** days after the expiration of the bargaining agreement, the Default Schedule is triggered (or earlier if the DOL certifies the parties are at an impasse)

# FIP and Rehabilitation Plan Periods

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- During the 10 (or 15) year period of the FIP and Rehabilitation Plans, no amendments increasing benefits may be adopted unless specifically paid for with increased contributions

# Excise Taxes

- If employer fails to make contributions required under the Default Schedule, an excise tax is due in an amount equal to the deficiency
- If plan fails to meet target at the end of the Rehabilitation or FIP Plan Period (or Rehabilitation Plan progress not met for 3 consecutive years), plan will have a funding deficiency equal to the greater of
  - The amount needed to make the target; or
  - The amount of any accumulated funding deficiency determined under the regular funding rules
- IRS may waive if failure is due to a reasonable cause

# Obligations During Improvement Periods

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- Plan actuaries must certify the plan's progress towards meeting funding targets each year during the FIP or Rehabilitation Period
- Trustees must provide a report in the annual report Form 5500

# Withdrawal Liability Rules

- PPA adds additional partial withdrawal definition
  - If an employer transfers work to another entity owned or controlled by the employer, a partial withdrawal occurs
  - Effective for work transferred after the date of enactment
- Free-look rule for construction industry plans
  - New employers avoid withdrawal liability if obligation lasts no longer than period to achieve full vesting

# Withdrawal Liability Rules

- Special rule for “evade or avoid” claims
  - Employer does not have to pay withdrawal liability during challenge to Trustee determination of a complete or partial withdrawal based on the “evade or avoid” theory
  - For large employers, transaction must have occurred within 5 years of withdrawal
  - For small employers, transaction must have occurred within 2 years of withdrawal

# Pension Protection Act Disclosure Requirements

- Funds are now required to comply with more rigorous disclosure requirements
  - Annual
    - Form 5500 and annual notices for participants, beneficiaries and bargaining parties
  - Periodic
    - Summary Plan Information
    - Certification of Endangered, Seriously Endangered or Critical status
  - On-demand
    - Withdrawal Notices and annual valuation reports

# Annual Funding Notices

- Annual notice must be provided to the PBGC, each contributing employer, each labor organization, plan participants and beneficiaries
- Notice must be distributed within **120** days of the end of the plan year and include the following:
  - The plan's funded percentage for the plan year
  - The two preceding plan years

# Annual Funding Notices

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- The value of the plan's assets and liabilities for the plan year to which the notice relates and the two preceding plan years
- Whether the plan was in Endangered or Critical Status and, if so, a summary of the plan's FIP or Rehabilitation Plan

# Annual Funding Notices

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- That the plan administrator will provide, on written request, a copy of the plan's annual report to any labor organization representing participants and any employer that has an obligation to contribute to the plan.
- DOL to furnish a model notice

# New Requirements for Annual Form 5500

- PPA requires additional information for Schedule B of Form 5500 including (but not exhaustive):
  - Information about contributing employers
    - Number
    - Employers contributing more than 5% of total contributions
    - Withdrawing employers and the aggregate withdrawal liability

# New Requirements for Annual Form 5500

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- The number of participants on whose behalf no contributions were made for past three years,
- Any amortization extension
- Shortfall funding method
- If plan was in Critical or Endangered Status for the plan year and method to correct funding status

# Summary Plan Information

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- Summary plan information must be provided to each employee organization and each contributing employer within **30** days after the due date of the plan's annual report.
- The summary must include:
  - Contribution schedules and benefit formulas and any modifications
  - Number of employers obligated to contribute to the plan
  - Employers contributing more than 5% of the total contributions

# Summary Plan Information

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- Participants with no contributions made for the past three years
- If plan was Critical or Endangered Status and method to improve its funding status (including actuarial and financial data)
- Withdrawing employers and the aggregate amount of withdrawal liability assessed
- If plan sought or received an amortization extension or used the shortfall funding method for the plan year

# Participant Benefits Statement

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- Fund must provide a statement at least once every 3 years to each currently employed participant who has a vested accrued benefit;  
**or**
- Provide to each participant notice of the availability of a benefit statement and the manner in which the participant can obtain it (at least once a year)

# Certification

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- If a plan is certified as Critical, Endangered or Seriously Endangered Status, the Fund must notify the following within 30 days of the Actuary's certification:
  - PBGC
  - DOL
  - Labor organizations
  - Contributing employers
  - Participants
  - Beneficiaries

# On Demand Disclosures

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- Any plan beneficiary, participant, employee organization or contributing employer may request, and the Fund must provide, the following information within **30** days:
  - Periodic actuarial reports for any plan year that has been in the plan's possession for at least **30** days
  - Copies of any quarterly, semi-annual, or annual financial report

# On Demand Disclosures

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- Report prepared for the plan by any plan investment manager, advisor or plan fiduciary that has been in the plan's possession for at least **30** days
- Any application for an amortization extension filed with the Secretary of the Treasury

# Withdrawal Liability Notices

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- Fund must provide withdrawal liability estimates to any employer with an obligation to contribute to the plan, within **180** days of a written request
- Estimate must include:
  - The estimated withdrawal liability if the employer withdrew from the plan on the last day of the year
  - An explanation of how the estimated liability amount was determined

# Prohibition of Retaliation Against Multiemployer Plan Employers

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- Section 510 of ERISA is amended to prohibit discrimination against contributing employers for exercising legal rights or testifying

# Contact Information

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