Updates
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Multiemployer Pension Underfunding: How to Protect Your Company

As a result of a declining union workforce, bankruptcies of employers contributing to multiemployer pension plans (MEPPs), and tax rules that prevented MEPPs from developing sufficient reserves, many MEPPs have become significantly underfunded. In fact, several large MEPPs are facing insolvency within the next ten years.

The failure of several key MEPPs could trigger the collapse of the Pension Benefit Guaranty Corporation (PBGC) multiemployer insurance program and have a system wide impact on all MEPPs. If you participate in, or are considering participating in, a MEPP, you should be aware of the risks, carefully track the funding status of each MEPP in which your company participates, monitor your company's withdrawal liability exposure, and develop a long-term strategy regarding ongoing participation in the MEPP.

MEPP Underfunding

Approximately 1,400 MEPPs cover about 10 million participants in many diverse industries, such as building and construction, manufacturing and transportation. According to actuarial studies conducted in 2017, the aggregate underfunding for MEPPs is approximately $36.4 billion. In addition to the MEPPs that have already failed, 114 MEPPs are projected to fail in the next 20 years. If the PBGC multiemployer pension system fails (discussed below), as many as 1.3 million participants could lose their entire pension benefit. Important MEPPs facing significant underfunding include the following:

- The Central States, Southeast and Southwest Pension Fund (Central States) is underfunded by approximately $17.2 billion and is projected to fail in 2024;
- The Bakery and Confectionery Union and Industry International Pension Fund (B&C) is underfunded by approximately $3.2 billion and is projected to fail in 2030; and
- The United Mine Workers of America Pension Plan (Mine Workers) is underfunded by approximately $2.4 billion and is projected to fail in the next decade.

Employers participating in significantly underfunded MEPPs are required by law to make additional contributions to address plan underfunding, but these contributions are commonly used to pay current benefits. With underfunded MEPPs using principal to pay current benefits, the only chance for these MEPPs to survive is to experience unrealistically high investment returns. This problem is exacerbated by the fact that the rate of active workers participating in these plans is decreasing significantly each year. When these MEPPs terminate due to insolvency, participating employers will be on the hook to cover the underfunding through withdrawal liability assessments.

PBGC Insolvency

The PBGC multiemployer insurance program, which is designed to insure MEPP participants against fund insolvency, is also facing the prospect of insolvency due to the existing underfunding in MEPPs. Given the current payments that the PBGC is making to insolvent MEPP participants, the PBGC's actuaries project that the PBGC multiemployer insurance program will likely become insolvent by 2025. The PBGC multiemployer insurance program is currently projected to be underfunded by $58.6 billion as of 2026. Without the PBGC multiemployer insurance program, more than a million MEPP participants could lose their entire pension benefit.

Impact on Contributing Employers and Other MEPPs

When underfunded MEPPs collapse, participating employers will be required to make withdrawal liability payments. For many medium to smaller employers, the withdrawal liability assessment will exceed the enterprise value of the company. Failure of these employers due to withdrawal liability assessments could threaten other MEPPs that are not currently facing insolvency (many employers participate in more than one MEPP). The failure of these contributing employers will reduce the contribution base of other MEPPs, which will put more pressure on investment returns to cover the cost of benefits and administrative expenses.

Legislative Solutions

Over the last year, various loan programs were presented to members of the U.S. Congress. The idea is that underfunded MEPPs would borrow from the federal government the amount needed to stabilize the MEPPs. Over time, investment earnings would grow and the MEPP would repay the loan. Instead of adopting a loan program, Congress created the Joint Select Committee on Solvency of Multiemployer Pension Plans (the Committee). The Committee will hold a series of public hearings during 2018 and vote on a proposed legislative solution by November 30, 2018. If a majority of both the Republicans and the Democrats on the Committee vote to approve the proposed legislation, the legislation will be sent to Congress for expedited consideration. Many observers believe that Congress needs to act now and that, for MEPPs like Central States, it will be too late (or too expensive) if Congress waits another year.

How Should Your Company Protect Itself?

We encourage all employers who participate in MEPPs to develop a long-term strategy regarding their ongoing MEPP participation. For many healthy and well-funded MEPPs, that strategy will be to stay the course. However, with respect to MEPPs that are on a path to insolvency, development of a short-term strategy to address participation is critical.

If your company participates in a MEPP, we believe that it should take the following actions:

- Request a withdrawal liability estimate each year. MEPPs are required to provide a withdrawal liability estimate on an annual basis if the contributing employer makes a written request.
- Request and review funding reports and determine whether the MEPP's funding status is likely to improve or worsen with time.
- Determine (to the extent possible) whether any significant contributing employers to the MEPP are likely to withdraw in the near term or participate in a MEPP that is likely to fail in the near term, such as the Central States, B&C or Mine Workers plans.
- Compile your company's contribution history to each MEPP for the past 10 years, including both contribution rates (usually expressed in a dollars-per-hour figure) and total contribution units (usually expressed as the number of hours for which the company made contributions to the MEPP). Your company may be protected by a provision of the Employee Retirement Income Security Act that limits your withdrawal liability obligation to "20 annual payments." This can significantly reduce a withdrawal liability assessment.
- Determine whether the MEPP in which your company participates is subject to a funding improvement or rehabilitation plan. If so, determine what portion of each contribution dollar is used to provide benefits for your employees and what portion is used to pay for plan underfunding. You may be very surprised by the result.
- Conduct an annual assessment of your ongoing participation in the MEPP.

While each company's strategy will vary, it is critical that companies address this issue proactively and not wait until the MEPPs in which they participate begin to experience serious funding issues. If a MEPP terminates in a mass withdrawal, participating employers could be assessed liability in addition to withdrawal liability (reallocation and redetermination liability) and lose the protection of the 20-year payment limitation. Developing a long-term plan will protect your company from being caught off guard by these sorts of developments.

Learn More at MEPP Seminar/Webinar March 28, 2018

Perkins Coie will be hosting a seminar on March 28, 2018, to discuss the issues raised in this update and to help companies develop strategies with respect to their ongoing participation in MEPPs.

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