American Benefits Council Multiemployer Pension Plan Briefing

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Program Overview

- **Today's briefing will discuss:**
  - **The recent exposure drafts issued by the Financial Accounting Standards Board (FASB) that would change the way employers disclose information about their participation in multiemployer plans.**
  - **The multiemployer funding relief contained in The *Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010* and the prospects for additional funding relief.**
  - **The potential impact of the PPA sunset provisions.**

Multiemployer Pension Plan Overview

- **Multiemployer pension plans are collectively bargained, jointly (union/management) administered defined benefit pension plans funded by more than one unrelated contributing employer.**
- **Plan contributions negotiated through the collective bargaining process and are fixed for the term of the collective bargaining agreement (absent a funding deficiency).**
- **A key feature of multiemployer pension plans is that when an employer withdraws from the plan, it is liable for its share of the plan's unfunded benefits. If an employer fails to pay its liability, the liability is shifted to the <u>remaining contributing employers</u>.**

Multiemployer Pension Plan Overview (continued)

- There are approximately 1,500 multiemployer pension plans covering about 10.4 million participants.
  - While multiemployer plans only constitute about 5% of all PBGC covered defined benefit plans, they represent over 24% of the participants covered by the PBGC.
- The ratio of active participants to retirees in multiemployer pension plans has changed dramatically over the last 30 years.
  - In 1980, about 75% of plan participants were active employees.
  - By 2007, retirees and terminated vested participants represented more than 50% of plan participants and this downward trend continues.

Multiemployer Pension Plan Overview (continued)

- **Multiemployer plan investments did not fare well during the last decade. According to Segal's surveys of multiemployer plans:**
  - **The average rate of return in 2008 was about -19%.**
  - **The percentage of multiemployer plans in endangered (yellow zone) or critical (red zone) status rose from 20% in 2008 to 62% in 2009.**
  - **In 2001, 67% of multiemployer plans had vested benefits that were fully funded .**
  - **By 2009, only 9% of plans had vested benefits that were fully funded.**
- **Assuming relatively strong investment results, it will take a long time for plans to recover from the "lost decade."**

Proposed Changes to Multiemployer Accounting Disclosures

- **FASB recently issued two Exposure Drafts affecting employers that participate in multiemployer plans.**
  - ***Contingencies (Topic 450) – Disclosure of Certain Loss Contingencies.***
    - **issued on July 20, 2010.**
    - **deals with the standard for disclosing potential withdrawal liability.**
  - ***Compensation – Retirement Benefits – Multiemployer Plans (Subtopic 715-80) – Disclosure About an Employer's Participation in Multiemployer Plans.***
    - **issued on September 1, 2010.**
    - **alters the disclosure requirements for employers participating in multiemployer plans.**
- **The proposed FASB changes would significantly affect all employers that contribute to multiemployer plans.**
  - **Would affect more than accounting requirements**
  - **Would impact:**
    - **credit ratings**
    - **financings**
    - **credit facilities**
    - **stock prices**

Proposed FASB Disclosure About Participation in Multiemployer Plans

- **How would the Exposure Draft on participation in multiemployer plans change current accounting requirements?**
  - **The Exposure Draft would require more footnote disclosure about an employer's obligations to multiemployer plans and the effects of its participation (including potential withdrawal liability).**
  - **Similar to changes proposed in April by International Financial Reporting Standards (IFRS).**

- **Why did FASB issue the Exposure Draft on participation in multiemployer plans?**
  - **Stakeholders have expressed concern about perceived lack of transparency with respect to potential multiemployer plan liability.**
  - **Ratings agencies have attempted to quantify multiemployer exposure.**

Proposed FASB Disclosure About Participation in Multiemployer Plans

- **Who would be affected by FASB proposal?**
  - **Nongovernmental entities that participate in:**
    - **Multiemployer pension plans.**
    - **Multiemployer plans that provide other postretirement benefits (e.g., retiree health).**
  - **The proposed changes do not apply to multiple-employer plans.**

- **Under the FASB proposal, when would the changes go into effect?**
  - **Public companies – fiscal years ending after 12/15/2010 (calendar year 2010).**
  - **Non-public companies – fiscal years ending after 12/15/2011 (calendar year 2011).**

What Are The Main Provisions of the Proposed FASB Disclosure Requirements?

- New disclosure requirements require information about:
  - The multiemployer plans in which an employer participates.
  - The employer's participation in these multiemployer plans.
  - The effect of plan participation on the employer's cash flows.

- Disclosure requirements separately apply with respect to both underfunded and overfunded plans.

- Disclosure would not require changes to financial statements – just the footnotes.

- Required disclosure varies based on materiality thresholds.
  - Individually material plan – must report each plan separately.
  - Individually immaterial plans (but which are material when aggregated) – report on aggregated basis.

What Are The Main Provisions of the Proposed FASB Disclosure Requirements?

- Requires qualitative and quantitative information.
- Reporting is separate for plans or groups of plans with significantly different risk or contractual commitments.
  - For example, PPA zone (green, yellow or red).
  - Basis of disaggregation must be disclosed.
  - Employers are required to strike a balance between obscuring important information and overburdening with excessive detail.
    - Goal – assist financial statement users in understanding risks of multiemployer plan participation.

Required Plan Disclosures

- Number of plans in which employer participates.
- Name of each plan that is individually material.
- Specific plan information (to the extent obtainable), including a description of:
  - The employer's exposure to significant risks and uncertainties arising from plan participation (must include statement that employer can be liable for other participating employer's obligations).
  - How benefit levels are determined.
  - Whether employer is represented on Board of Trustees.
  - Consequences of ceasing contributions.
  - Yellow or red zones plans
    - Any funding improvement or rehabilitation plan, including effects on employer.
    - Any remedies being considered, if known.

Required Plan Disclosures (cont.)

- Any changes affecting comparability (from reporting period to reporting period), including:
  - Any business combination or divestiture.
  - Amount of employer contributions for each period.
- Total plan assets and accumulated benefit obligation.
  - Based on most recent financial statements.
  - Include comparable amounts from prior periods.

Required Disclosures Regarding Plan Participation

- Employer’s contributions as a percentage of total plan contributions.
  - Current year or most recent date available.
  - Prior periods for comparability.
- Description of contractual arrangements, including:
  - Term of current arrangement.
  - For future contract years, agreed-upon basis for determining contributions.
  - Any minimum contribution requirement.
- Percentage of employees covered by the plan.
- Qualitative information regarding employer’s participation.
  - Percentage of plan's active employees represented by employer.
  - Same percentage for terminated vested employees and retirees.
  - Examples seem to indicate disclosure is required with respect to plan’s overall ratio of active to inactive participants.

Required Disclosures Regarding Cash Flow

- Amount of current contributions.
- Expected contributions for next reporting period.
- Known contribution trends, including:
  - Effect of surplus or deficit on future contributions
    - E.g., funding improvement or rehabilitation plan requires 6% increase in annual contribution rate.
- Withdrawal liability
  - Most recent estimate.
  - If withdrawal liability estimate is not available, information on employer's relative participation in the plan (e.g., percentage of total contributions or plan participants).
  - Details of any deficit or surplus allocation to employers on plan termination.

Impact of Required Disclosures

- **Disclosures require significant amounts of information about plan.**
  - **Plan would have to provide additional information to employers or employers would have to rely on Annual report (5500), plan financials and actuarial reports.**
- **Exposure Draft contains disclosure examples (including sample narrative).**
- **Employers participating in multiemployer plans in yellow or red zone plans will need to disclose/discuss potential affect of plan underfunding on the employer.**

Proposed FASB Loss Contingency Multiemployer Disclosure Requirements

- **Current standards require disclosure if liability is probable or reasonably possible.**
  - **E.g., employer has taken steps to withdraw from plan and withdrawal liability assessment is likely.**
- **Under Contingencies Exposure Draft, disclosure is required if:**
  - **There is a reasonable possibility (i.e., more than a remote possibility) that the employer will incur liability.**
    - **Disclosure of unasserted claim not required unless:**
      - **Assertion of claim is probable, and**
      - **There is a reasonable possibility of an unfavorable outcome.**
  - **If a claim has been asserted that would would have a severe impact on employer, then disclosure is required if there is a remote possibility of actual liability.**
- **Exposure Draft of multiemployer plan disclosure indicates contingency rule would apply if it is probable or reasonably possible that:**
  - **Employer will withdraw from plan and incur withdrawal liability.**
  - **Employer's contributions to plan will be increased during term of contract to make up shortfall in funds necessary to maintain benefits.**

New FASB Multiemployer Disclosure Requirements – Issues to Consider

- **Data issues**
  - Timing - most recent data may be a year old.
    - 5500 reporting.
    - Actuarial valuation.
  - Extent to which data may be confusing or misleading due to changes that have occurred since date of latest available plan information.
  - Too much information (TMI)?
  - Comparability of different multiemployer plans.
- **Effect on employers**
  - Additional expense.
  - Could impact:
    - financing/capital.
    - credit ratings.
    - stock price/valuation.

New FASB Multiemployer Disclosure Requirements – Comment Period

- **Comment period for proposed contingencies change closed on September 20, 2010**
  - **As of 9/27, FASB had received 19 comments.**
- **Comment period for proposed participation in multiemployer plans ends on November 1, 2010**
  - **Can e-mail comments to director@fasb.org**
    - **Include File Reference No. 1860-100**
  - **Can mail comments to:**

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Comments on Proposed FASB Multiemployer Disclosure Requirements

FASB has asked for comments on 7 specific questions:

1. **Will these proposed disclosures result in more useful and transparent reporting of employer's multiemployer obligations?**
2. **Is disclosing the estimated amount of withdrawal liability useful even when it is not reasonable possible?**
3. **What implementation costs will an employer face?**
4. **Are there any operational issues with the timing of the effective date?**
5. **Do you agree with the one year deferral for nonpublic entities?**
6. **Should any provisions of this update be different for nonpublic entities and why?**
7. **Are existing XBRL elements sufficient to meet SEC requirements?**

Changes to Multiemployer Funding Rules

- **The Pension Protection Act of 2006 ("PPA") changed the multiemployer funding rules.**
- **PPA reforms were designed to impose discipline on trustees and bargaining parties to improve funding and to require "forward thinking."**
- **When PPA was enacted, no one anticipated the 2008 market meltdown.**
  - **As a result of meltdown in capital markets, multiemployer plans experienced unprecedented investment losses.**
    - **Plans that were green became yellow or red.**
    - **Plans experienced significant deterioration in their funded status.**

Changes to Multiemployer Funding Rules

- From a funding perspective, the impact of the investment losses is magnified by the plan's investment assumption.
  - For funding purposes, the plan actuary assumes that the plan will earn a certain amount each year (e.g., 8%).
  - If plan with 8% interest assumption lost 30% in 2008, its actuarial loss was 38% (the 30% actual loss + the 8% the actuary assumed that the plan would earn).
- It will take many years of superior returns to recover from the 2008 market losses.
  - As of September 27th , the S&P 500 was up 2.43% for 2010.
  - If a plan lost 30% in 2008 and had an assumed return of 8%, it would take at least 7 years of 15% returns to make up the 2008 investment losses, and this assumes that the plan does not have an operating deficit (i.e., contributions + investment income ≥ benefit payments + administrative expenses).
- Funding problems will not be fixed without a combination of benefit cuts and contribution increases.

Legislative Proposals To Address Multiemployer Funding Issues

- **A coalition contributing employers, employer associations, multiemployer plans and unions proposed a number of changes to the funding rules to address the 2008 market meltdown.**
- **The coalition's proposals can be broken down into four categories:**
  - **Give plans more time to recover from the 2008 investment losses.**
  - **Include provisions designed to promote longer term structural changes for plans that face long-term funding issues.**
  - **Provide special help for troubled plans.**
  - **Provide employer relief/assistance with respect to increased contribution burdens.**

Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010

- **Enacted June 25, 2010**
- **Allows investment losses for 2008 and 2009 to be separately amortized over 30 years.**
  - **Applies to first two plan years ending after 8/31/2008.**
  - **Amortizes difference between actual and expected returns.**
- **Allows specific asset smoothing for 2008 and 2009 investment losses:**
  - **Allows plans to smooth investment losses over 10 years (instead of 5); and/or,**
- **Temporary Expansion of Asset Smoothing Corridor**
  - **For the first two plan years beginning after August 31, 2008, the upper limit of the asset smoothing corridor is increased from 120% to 130%.**
- **In order to utilize the funding relief, the plan actuary must certify that the plan is expected to have sufficient assets to pay benefits and expenses over the extended amortization period.**
- **Plans utilizing the funding relief cannot make benefit improvements during the two plan years following the plan year in which the relief provision were applied, unless:**
  - **required as a condition of plan qualification, or**
  - **paid for out of additional contributions (provided that the plan's funded percentage and projected credit balances are not expected to be adversely affected).**

Pending Bills

- **House – H.R. 3936, *The Preserve Benefits and Jobs Act of 2009*, sponsored by Reps. Pomeroy and Tiberi**
- **Senate – S. 3157, *Create Jobs & Save Benefits Act of 2010*, sponsored by Sen. Casey**
  - **Not as comprehensive as House Bill**
  - **3 Significant areas:**
    - **Expanded partition**
    - **Increase in PBGC guaranteed benefit**
    - **Plan mergers and alliances**

Other Legislative Attempts

- ***American Jobs and Closing Tax Loopholes Act of 2010* (H.R. 4213).**
  - **Contained number of additional multiemployer funding provisions:**
    - **Would have permitted a multiemployer plan in "endangered status" to elect to extend the rehabilitation period by up to a total of five years.**
    - **Permitted multiemployer plans with amortization extensions to treat the return on plan assets for plan years containing any of the period from June 30, 2008, to October 31, 2008, as the interest rate used for charges and credits to the plan's funding standard account.**
    - **Allow the trustees of critical or endangered status plans to elect as the default schedule the contribution schedule that had been approved by the bargaining parties and that covered at least 75% of active plan participants.**
- **H.R. 4213 was stripped of all provisions except for unemployment insurance extension and became law on July 22, 2010.**

Potential for Further Legislative Relief

- **Very unlikely that multiemployer plans will get more legislative relief this year.**
  - **Budgetary concerns, limited legislative calendar, and politics play a role.**
- **2011 may provide a better opportunity**
  - **Elections will greatly influence agenda**
  - **Non-legislative developments (involving employers and labor) will impact agenda.**

Sunset of PPA Multiemployer Funding Rules

- PPA funding rules sunset at the end of 2014
  - Sunset will not affect plans in yellow or red zone prior to 1/1/2015.
  - PPA directed the DOL, IRS and PBGC to conduct a study of the PPA multiemployer funding rules and report to Congress by December 31, 2011.
  - Must include any recommendations for further legislation.
- Sunset of PPA funding rules likely to cause Congress to re-visit multiemployer funding rules.
  - Could trigger broader review of multiemployer plans

Questions?

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