Multi-Employer Pension Plans

Christopher E. Condeluci, Esq., Venable LLP
DC vs. DB

- Defined Contribution Plans (DC plans)
  - Here, the employee makes salary reduction contributions
  - The employer may make matching contributions
  - The amount of your retirement savings hinges on your contributions and investment returns

- Defined Benefit Plans (DB plans)
  - Here, the employer essentially promises a specified amount of money you will receive as a pension benefit when you retire
  - In most cases, employees do not make contributions
  - Instead, the employer promises to pay the benefit and takes on the risk of making sure they have the $$ to pay when you retire
Multi-Employer Plans

■ DB Plans
  – Multi-employer plans are by definition DB plans as created under the law
  – This means multi-employer plans promise a specified pension amount for life

■ DC Plans
  – Multi-employer plans are generally not DC plans, although there are some joint labor-management trusteeed multiple employer plans
Multi-Employer DB Plans vs. Single-Employer DB Plans

- **Single-Employer DB Plans**
  - Under a single-employer DB plan, *only one* employer contributes toward your pension benefits
  - ERISA and the Code have specific rules governing how single-employer DB plans must be funded

- **Multi-Employer DB Plans**
  - More than one employer contributes to the plan
  - Collectively-bargained between labor and management
  - The plan is jointly managed by labor and management trustees
  - Different funding rules under ERISA and the Code than the single-employer DB rules
Why Multi-Employer DB Plans?

- Multi-employer DB plans were designed to serve as retirement vehicles for:
  - Small employers
  - Employers with mobile workforces

- In each case, the employment patterns prevented employees from accruing adequate retirement benefits under a single-employer DB plan
  - In other words, multi-employer DB plans were established so that workers’ pensions could be portable as they moved from job-to-job within the same industry
Laws Governing Multi-Employer DB Plans

- **Labor Management Relations Act of 1947 (Taft-Hartley)**
  - Established structure of multi-employer DB plans

- **Employee Retirement Income Security Act (ERISA)**
  - Established minimum funding requirements and imposed anti-cutback rules (i.e., you can’t reduce a promised pension benefit)

- **Multi-Employer Pension Plan Amendments Act of 1980 (MPPAA)**
  - Created the concept of withdrawal liability

- **Pension Protection Act of 2006 (PPA)**
  - Created “zones” based on the level of funding of a plan
    - Red zone if the plan was significantly under-funded – Not good
    - Yellow zone if the plan was under-funded – Early warning
    - Green zone if the plan is well-funded – Plan is in relatively good shape
Withdrawal Liability & “Last-Man Standing” Rule

- **Withdrawal Liability**
  - If an employer’s workforce accrues pension benefits, the employer must pay for any un-funded amounts before exiting the multi-employer DB plan

- **“Last-Man Standing” Rule**
  - If an employer exits, but the un-funded amounts were not paid for, the remaining liabilities are spread among all of the other employers participating in the multi-employer DB plan

- As a result of these two rules combined, employers who have remained in the system are contributing toward the pension benefits of employees who never worked for them
The PBGC

- The PBGC plays a secondary role in terms of guaranteeing multi-employer DB benefits
  - Unlike troubled single-employer DB plans – where the PBGC receives the assets and assumes the pension liabilities in the case of a plan termination – the PBGC only steps in if the multiemployer plan runs out of money

- If this occurs, the pension payments must be reduced to the extent that they exceed the PBGC guaranteed amount
  - Currently $12,870 for a retiree with 30 years of service at normal retirement age)

- But, the PBGC report indicates BIG problems
  - A reasonable argument can be made that if only one deeply troubled multi-employer DB plan goes insolvent, the PBGC guaranty will be reduced to something far less than the PBGC guaranty (because the PBGC itself will likely go insolvent)
Solutions Not Bailouts
Recommendations of the NCCMP
Retirement Security Review Commission

Presented To:
American Benefits Council
June 25, 2013

By:
Randy G. DeFrehn
Executive Director
NCCMP

Christopher E. Condeluci
Of Counsel
Venable LLP

Michael Kiely
Managing Director
Federal Government Affairs
United Parcel Service
NCCMP

“Retirement Security Review Commission”
BACKGROUND

• Why Examine the Multiemployer System Now?
  – Funding rules sunset in 2014
  – Unprecedented challenges
    • Asset volatility
    • Recession
    • Renewed concerns over withdrawal liability
  – Last fundamental change to system was in 1980
Background

• Commission Overview
  – Met for over a year
  – Included Over 40 Organizations
  • International unions
  • Employer trade groups
  • Individual large companies
  • Multiemployer plans

• Participating Industries
  • Construction, trucking, retail food, entertainment, machinists, mining, bakery & confectionary, service
Background

- **Process —**
  - First Monthly Meetings, Evolved to 2 days per month Plus Conference calls among work groups
  - Sought Expert Advice:
    - Economists
    - Policy Researchers
    - Investment Professionals
    - Actuaries
    - Representatives of Non-US plans
BACKGROUND

- **Core Principles**
  - Proposals must protect retirement income security for participants
  - Proposals must reduce or eliminate the financial risk to the sponsoring employers
Background

- **Commission Recommendations Are Additional Tools for Plans**
  - **Strictly Voluntary:**
    - Plans are not required to adopt any new provisions
  - Trustees of many plans need more flexibility to address challenges
BACKGROUND

- **Commission Focus Fell into Three Categories**
  - **Preservation:**
    - Provisions to strengthen the current system
  - **Remediation:**
    - Measures that target deeply troubled plans
  - **Innovation:**
    - Proposal for alternative plan design structure
Preservation
Provisions to Strengthen the Current System

- Allow Certain Yellow Zone Plans to Elect to Be in Red Zone
- Extend certain red zone features to All Yellow Zone Plans
- Ability to adjust benefits would remain limited to red zone plans
- Establish Permanent Funding Relief Provisions Fashioned After Provisions Enacted Post-PPA
Provisions to Strengthen the Current System

- Exclude additional contributions required by Funding Improvement or Rehab plans from being subject to withdrawal liability
- Encourage Mergers and “Alliances”
- Allow plans to harmonize normal retirement age with Social Security
Remediation
Provisions For Deeply Troubled Plans

A minority of plans (6 - 10% or 90 to 150 plans) face inevitable insolvency

Current Rules:

• There is no early intervention option
  – Assets must be depleted
  – Benefits must be cut to PBGC maximum guarantee level

• $12,870 per year for full career (30 Year) employee who retires at age 65
  – Ability of PBGC to support even this benefit level is in doubt
PBGC Long-Term Outlook

• Due to the deterioration in a few large multiemployer plans, the projections show a 91 percent chance that it will be insolvent by FY 2032*.

• GAO Estimates that if the PBGC fund is depleted by failure of a large fund benefits would be reduced to 10% or less of the Guaranty amount**.

* FY 2012 PBGC EXPOSURE REPORT

**Source: Private Pensions — Timely Action Needed to Address Impending Multiemployer Plan Insolvencies, General Accountability Office, March 2013
Provisions For Deeply Troubled Plans

- **Commission Recommends that if:**
  a) A plan has taken all reasonable measures to improve funding
  b) Insolvency is still inevitable
  c) It is possible to avoid insolvency and preserve benefits above the PBGC maximum guarantee level

- Then the rules which require benefit reductions at insolvency should be accelerated and made more flexible to preserve plans and benefits at a higher level.
Provisions For Deeply Troubled Plans

- **Key Considerations**
  - Preserving benefits above PBGC guarantee is preferable to insolvency
  - Early Intervention will allow some plans to survive for future generations
  - Troubled plans may choose to use this tool based on their individual circumstances and philosophy
Provisions For Deeply Troubled Plans

• **Criteria for accessing Benefit Suspension Tool:**
  
  – **Insolvency projected within:**
    
    • 15 years
    
    • 20 years if inactive to active ratio exceeds 2:1
  
  – **Plan has taken all reasonable measures to avoid insolvency**

  – **After application of suspensions,**
    
    plan is projected to be solvent
Provisions For Deeply Troubled Plans

• Suspension Limitations
  – Benefits must be preserved at no less than 110% of PBGC guarantee
  – Must be no greater than is necessary to avoid insolvency
  – Any future benefit increases must be accompanied by a comparable restoration of suspended benefits
Provisions For Deeply Troubled Plans

- **Participant Protections**
  - PBGC approval is required
  - Application must describe:
    - Measures taken to improve funding
    - Summary of proposed suspensions
    - Process and elements of Due Diligence determination
  - Determination of Trustees shall be given deference assuming due diligence has been exercised
Provisions For Deeply Troubled Plans

- Considerations in assessing due diligence tests:
  - Contribution levels (past and current)
  - Level of benefit accrual (including prior reductions in rate of accrual)
  - Impact on solvency of the subsidies and ancillary benefits available to active participants
  - Compensation level of active participants relative to the industry
  - Competitive factors facing sponsoring employers
  - Impact of benefit levels on retaining active participants and bargaining groups
Alternative Plan Design Structure

• **Current Available Options Do Not Meet Needs of All Groups**
  - **Defined Benefit Plan** — Employers find market risk unacceptable
  - **Defined Contribution Plan**
    • **All risk rests with participant**
    • **Highly inefficient vehicle for retirement security**

• **Parties should have ability and be encouraged to develop new flexible models**
Alternative Plan Design Structure

- Commission Considerations
  - Alternatives should attract and retain employers
  - Promote creative plan designs

- Innovation is encouraged — Flexible alternatives include, but are not limited to:
  - Variable DB plans (Cheiron/UFCW Design)
  - Target Benefit Plans (similar to Canadian Plans)
Variable Defined Benefit Plan

- Generally fits current DB definition
- Is currently in use
- Comprised of two component parts
  - Floor Benefit
  - Variable Benefit
- Operates under Current Law
Variable Defined Benefit Plan

- **Floor Benefit** is determined using a low assumed rate of return (e.g. 5%)

- **Variable Benefit** is derived from earnings in excess of Floor Benefit
  - *Can be increased in good years or reduced in years of poor investment performance but benefit cannot go below Floor Benefit Value*
  
  - *Participants are assigned “Shares”*
  
    - **Number of Shares** are definitely determinable
    - **Value of Shares** is variable
Variable Defined Benefit Plan

- Employers remain subject to withdrawal liability as under current rules.
- Likelihood of incurring withdrawal liability greatly reduced through conservative management of investments.
- Can be further reduced by purchase of annuities on retirement.
- Covered by PBGC Multiemployer Guaranty Fund.
Target Benefit Plan

• Operates like but technically is not a defined benefit plan

• Neither DB nor DC plans under current code definitions

• Designed as a better alternative to moving to current DC design
Target Benefit Plan

- addresses Shortcomings of defined Contribution plans
  - No Individual Accounts — Assets are pooled
  - Benefits are paid as lifetime annuities
  - Longevity risks are Pooled
  - Ability to Negotiate Fees comparable to current DB fees
  - Asset diversification to enhance returns
Target Benefit Plan

• **Eliminates withdrawal liability**
• **Funding standards more conservative than current system**
• **Trustees have increased ability to adjust benefits in event of funding distress**
• **Options depend upon plans’ current Funding level**
• **Appropriate protections for vulnerable populations**
Target Benefit Plan

- **Future Service Only**
- **Plan minimum contributions determined by plan actuary**
- **Would permit diverse investments to allow participation in market gains**
- **Builds in participant protections by requiring funding at 120% of expected costs**
Target Benefit Plan

• **If a plan fails to meet the long term funding requirements, Trustees are to take corrective actions based on hierarchy of adjustment options**

• **Self Correcting feature distinguishes this design from DB plan**

• **Since PBGC Guaranty Fund only insures DB plans, the Target Plan would not be covered**
**Target Benefit Plan**

- **As a last measure, in the event of a catastrophic event the core (non-ancillary) benefits of pensioners can be reduced**

- **Protections against reductions for vulnerable populations Permitted - as in deeply troubled plans - including PBGC oversight**
Key Concepts

• **Goal of flexible plans is to focus on benefit security**
  – Will both preserve and strengthen worker retirement security by:
    • **Willingness of current employers to remain in the system and for new ones to enter**
    • **Prudent and conservative management by the trustees**
Next Steps

- **Develop sophisticated Messaging Program**
- **Educate Congressional Committee Members and Staff and Regulators**
- **Work with Staff and Leg Counsel on bill language and introduction**
- **Coordinate DC and Grass Roots Lobbying**
- **Anticipated Congressional Action:**

**Summer 2014**
QUESTIONS???
Mike Kiely
UPS

Benefits Briefing:
Multiemployer Pension Plans
Multiemployer Pension Plans: Employer Perspective

- MEPP were designed to provide retirement security for employees while minimizing financial risk and easing administrative responsibilities for employers.
- Changing demographics and increased market volatility have actually increased risks for employees and employers.
Multiemployer Pension Plans: Employer Perspective

• 2006 Pension Protection Act passed into law
  ➢ Stoplight system adopted
  ➢ Funding rules tightened
  ➢ Red Zone plans allowed to cut vested benefits
  ➢ Employers received protections from excise taxes

• 2008 and 2010 Congress passed laws to temporarily ease funding rules

• Funding rules sunset in 2014
Multiemployer Pension Plans: Political Realities

- Even with all the legislative changes enacted into law, problems still exist for many plans
  - PBGC’s multiemployer trust fund is not a viable safety net if plans continue to fail
  - Bailouts for the least funded plans are not an option
  - Premium increases do not solve the financial problems
Multiemployer Pension Plans: Political Perspective

- Divided government and the unique nature of MEPPs demand that we work together on solutions.
- All interested parties must work together and compromise.
- Rule #1 – We are all in this together.
- Rule #2 – Congress will not have the political courage to make the necessary changes in advocacy efforts are fragmented.
Multiemployer Pension Plans: Political Perspective

• Four Committees of Jurisdiction
  ➢ Education & Workforce – House
  ➢ Health, Education, Pension and Labor - Senate
  ➢ Ways & Means – House
  ➢ Finance - Senate

• Multiple Federal Administrative Agencies
  ➢ Department of Labor
  ➢ Treasury / IRS
  ➢ PBCG
  ➢ White House
Multiemployer Pension Plans: Summary

- Significant legislative changes will be difficult to enact
- All interested parties will have to rally around a central theme for reform
- Politicians need to understand the consequences for failing to act
- Questions???