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UNDER CROMNIBUS, MULTIEMPLOYER PENSION PLANS CAN CUT BENEFITS AND OTHER KEY RECENT PENSION LAW CHANGES

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The 2015 federal Consolidated and Further Continuing Omnibus Appropriations Act (H.R. 83, known in Washington as “Cromnibus”¹), as passed by the Senate on December 13, 2014 and signed by President Obama on December 16, 2014, contains the Multiemployer Pension Reform Act of 2014 (“MPRA”). MPRA includes important changes affecting multiemployer defined benefit pension plans. Multiemployer or “Taft-Hartley” pension plans are jointly trustee by union and employer representatives and are maintained pursuant to collective bargaining agreements between multiple employers and a union. MPRA incorporates into law legislative proposals intended to reform multiemployer plans. As is widely-known, many multiemployer pension plans find themselves in precarious financial situations these days. Many provisions aimed at improving the underfunding of such plans were added to ERISA by the Pension Protection Act of 2006 (“PPA”), such as rehabilitation and funding improvement plans, heightened disclosure of financial condition, certain permissible reductions in benefits and imposition of employer surcharges, etc. However, these remedial provisions were scheduled to sunset on December 31, 2014. MPRA contains several provisions aimed at helping multiemployer pension plans to remain solvent – it is anticipated without them, the Pension Benefit Guaranty Corporation (PBGC), which insures private-sector pension plans, would become insolvent in ten years.

The principal provisions of MPRA are:

- With Treasury Department approval and notice to participants, beneficiaries, unions and participating employers, “critical and declining” status multiemployer pension plan trustees have the discretion to reduce or “suspend” pension benefits subject to certain conditions if that will stave off insolvency, without fiduciary liability, a rollback of the 40-year-old ERISA anti-cutback rule for private sector plans
 - Full benefit protection is available for plan participants age 80 or more or who are disabled, with a sliding scale of protection for those age 75-80
 - Trustees can cut the benefits at different levels for retirees, active workers and survivor beneficiaries subject to equitable considerations
 - The trustees’ decision to cut benefits can be reversed by the Treasury Department, but only if the decision to cut or the size of the cut is “clearly erroneous”
 - MPRA benefit suspensions must be ratified by workers and retirees, but where a plan is “systematically important” to the PBGC (meaning a projected liability of over \$1 billion), the Treasury secretary can override a negative vote.
- The PPA’s multiemployer pension plan funding provisions are made permanent

- PBGC is granted the authority to help facilitate certain plan mergers
- Critical and declining status plans may apply to the PBGC for a “partition” to improve the financial status of the original plan; previously, partition was available only with respect to benefits attributable to bankrupt employers that could be transferred to a new plan
- PBGC premiums for multiemployer plans are to double to \$26 in 2015 from \$13 in 2014 (with future increases indexed to wage inflation)
- PPA employer surcharges and certain increases under rehabilitation or funding improvement plans do not count in the calculation of withdrawal liability

The MRPA provisions are generally effective for plan years beginning on or after January 1, 2015.

On the single-employer pension plan side, Cromnibus made a major change in pension law affecting the PBGC:

- In response to recent PBGC’s actions which have expanded the scope of ERISA §4062(e), Cromnibus redefines the term “cessation of operations” under ERISA §4062(e) pursuant to which the PBGC has sought to impose “downsizing” liability for plan underfunding with commensurate increased current employer contributions and/or mandatory posting of security in the event of certain business transactions that result in layoffs, such as a plant shutdown; the change under Cromnibus decreases the number of instances when a negative financial impact will result from routine types of corporate activities that are not equivalent to facility shutdowns like re-tooling of, or repairs to, a facility causing its temporary closure.

As MPRA and Cromnibus are newly enacted, it is highly possible that the IRS, Treasury Department, and U.S. Department of Labor will have much more to say on these issues, and the scope and breadth of the agencies’ interpretation of the new statute through regulations and other published guidance is unknown at this time.

We will keep you advised of future developments regarding these pension law changes.

¹“Cromnibus” refers to the fact that this compromise bill combines the normal “omnibus” bill that funds the federal government with a continuing resolution or “CR,” which funds the government when no budget deal is in place.