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BENEFIT NEWS BRIEFS

Congressional Hearing on Multiemployer Pension Plans

The House of Representatives Subcommittee on Health, Employment, Labor, and Pensions held a hearing on June 12, 2013 on *"Strengthening the Multiemployer Pension System: What Reforms Should Policymakers Consider?"*

The archived webcast should be available at the following website: *http://edworkforcehouse.granicus.com/MediaPlayer.php?view_id=2&clip_id=167.* The opening statement of Subcommittee Chairman David Roe and the written testimony of the four witnesses is available online at the House "hearings" page: *http://edworkforce.house.gov/calendar/eventsingle.aspx?EventID=336686*.

The four witnesses were:

- Mr. Randy DeFrehn
- Mr. Eric Dean
- Dr. Teresa Ghilarducci
- Ms. Michele Murphy

Their written testimony is summarized below. Each speaker's testimony is "linked" to their name. See *Client Bulletin 2013-15* and *Research Memo 2013-22* for articles on recent reports by the PBGC and GAO on multiemployer pension plans.

Chairman Roe

The Chairman opened and highlighted two graphs. The first showed the deficit the Pension Benefit Guaranty Corporation expects its multiemployer insurance program will accumulate in less than 10 years – a deficit that is projected to climb from $5.2 billion to more than $26 billion. The second graph (undated) showed nearly five million individuals participate in a multiemployer pension plan that, because of its funding condition, is in either yellow, orange, or red zone status.

Both graphs highlight the serious problems facing multiemployer plans in a rapidly changing unstable economic environment.

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Mr. Randy DeFrehn

Mr. DeFrehn is the Executive Director of the National Coordinating Committee for Multiemployer Plans (the "NCCMP"). The NCCMP is a non-partisan, non-profit advocacy corporation created in 1974 under Section 501(c)(4) of the Internal Revenue Code, and is the only such organization created for the exclusive purpose of representing the interests of multiemployer plans, their participants and sponsoring organizations.

Mr. DeFrehn's testimony noted that the NCCMP had created a group known as the "Retirement Security Review Commission" (or "Commission") comprised of representatives from over 40 labor and management groups from the industries across the multiemployer community which rely on multiemployer plans to provide retirement security to their workers. The Commission deliberated over a period of approximately eighteen months evaluating their collective experience with current laws and regulations in the course of developing a comprehensive set of recommendations for reforms to strengthen the system.

According to Mr. DeFrehn, the recommendations fall into three broad categories: preservation, remediation and innovation, and are described in a report titled *"Solutions not Bailouts – A Comprehensive Plan from Business and Labor to Safeguard Multiemployer Retirement Security, Protect Taxpayers and Spur Economic Development." ("Commission Report" or "Report")*

We present highlights of his testimony on the subjects of preservation, remediation and innovation below.

Preservation

The Commission Report recommends a number of technical amendments be made to the *Pension Protection Act (PPA)* that are designed to address a number of issues which have surfaced during the first years of its implementation. Two of these are:

- permitting elective "critical status" (red zone) certification by plans which are determined by the plan actuary to be headed for such status within the next five years; and

- removing any contribution increases that are the direct result of the adoption of approved funding improvement or rehabilitation plans from the determination of what is to be taken into consideration when calculating an employer's withdrawal liability.

Remediation

Mr. DeFrehn noted that the law currently requires plans that are heading for insolvency to maintain accrued benefits and pay benefits at current levels until the plan's assets are spent to the point of insolvency. At that time, the plan fiduciaries are *required to reduce benefits to the statutory guarantee levels* under the PBGC multiemployer guaranty fund. Mr. DeFrehn commented that trustees currently have no authority to intervene at an earlier point even if the plan could remain solvent while preserving benefit levels above the statutory guaranty levels.

The Commission Report recommends that the plan fiduciaries' authority be modified to allow intervention by the trustees while the plan may still be preserved rather than waiting until the plan's assets are depleted and benefits must be cut to statutory guarantee levels. The exercise of such powers by the trustees would be allowed, provided that after the adoption of such measures, the plan is expected to remain solvent and the intervention is subject to the following limitations:

- benefits may be reduced only to the extent necessary to achieve continued solvency;

- benefits may not be reduced below 110% of the stated statutory guaranty levels under the current PBGC multiemployer guaranty program;

- plan fiduciaries are required to design any plan changes in an equitable manner;

- the PBGC certifies that plan fiduciaries have exercised due diligence in making such determinations and in designing the plan; and

- when the plan recovers sufficiently to permit benefit improvements, those whose benefits were reduced must participate in any such improvements through the restoration of such benefit reductions on an equal dollar value to those provided to active participants.

According to Mr. DeFrehn, only those plans which currently pay benefits that are marginally above the PBGC guaranty and that might only qualify for the relief if such benefit reductions were necessary to meet the ongoing solvency requirement might be expected to apply these reductions across the board to allow the plan to survive.

Innovation

The Commission Report describes two specific types of innovative plan designs that are considered to be illustrative of the kinds of flexibility required for the future:

- a *variable defined benefit plan* which has recently been adopted by several groups and appears to be permissible under the current Code definition of a defined benefit plan.

- a so-called *"target benefit" plan* which contains a benefit formula that appears similar to a defined benefit plan.

  The design elements of a "target benefit" include:

  - limiting an employer's liability to its negotiated contribution;
  - requiring higher funding requirements than current defined benefit plans;
  - imposing self-adjusting benefit features when those higher funding requirements fail to be met;

- addressing longevity risk by paying benefits only in an annuity form from a pooled account; and
- enhancing benefits payable by reducing fees and providing greater asset diversification through professional management of plan assets.

According to Mr. DeFrehn, creation of a *"target benefit" plan* would require a change to the existing code as it is neither defined benefit nor defined contribution as currently defined.

Mr. Eric Dean

Mr. Dean is the General Secretary of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers Union. Mr. Dean is a fourth generation ironworker and listed an impressive rise through the ranks to his present position. Mr. Dean's testimony was brief and supportive of the Commission Report. He attached a Fact Sheet outlining the key points of the Commission Report to his written testimony as a time-saving measure.

Dr. Teresa Ghilarducci

Dr. Ghilarducci is the Bernard and Irene L. Schwartz Professor of Economics Policy Analysis, and Chair of the Economics Department at The New School for Social Research, in New York City. She is the author of several books on retirement policy including the only academic book on multiemployer pension plans. Dr. Ghilarducci is a trustee of two retiree health plans for the nearly 900,000 retirees of the United Auto Workers and Steelworkers unions of three American auto companies and Goodyear Tire and was also a former corporate director of YRCW, a key employer-sponsor of many multiemployer plans including the Central States Pension Fund for the Teamsters.

Dr. Ghilarducci agreed with the recent reports by the PBGC, General Accounting Office (GAO), and the findings and analysis of the Commission Report which concludes multiemployer plans have economic benefit and that they should and can be preserved and strengthened if action is taken quickly.

Dr. Ghilarducci's testimony addressed the *Economic Case for Strengthening Multiemployer Plans*, *Ways to Strengthen the Plans* and *Specific Ideas to Protect Retirees* and was consistent with the Commission report. Dr. Ghilarducci's testimony also added additional "economic perspective" to the hearing.

Ms. Michele Murphy

Ms. Murphy is the Executive Vice President of Human Resources and Corporate Communications for SUPERVALU Inc. ("SUPERVALU") and is responsible for SUPERVALU's pension plans, serving as trustee for one of the 20 multiemployer pension plans in which SUPERVALU participates.

Ms. Murphy's insights were interesting in light of the size of SUPERVALU, a Fortune 500 company (about #150) and one of the largest grocery wholesalers and retailers in the U.S., with approximately $17 billion in annual sales. According to Ms. Murphy, SUPERVALU operates 572 supermarkets, 177 pharmacies and 41 distribution centers, located in 34 states which also service almost 3,000 independent grocers, franchisees and licensees. SUPERVALU has approximately 35,000 employees with about 15,000 employees covered by one of the 52 collective bargaining agreements ("CBAs") SUPERVALU is party to, making SUPERVALU one of the larger unionized employers in the United States.

Ms. Murphy's testimony included an overview of multiemployer pension plans and a discussion of the chilling effects of withdrawal liability. Her testimony highlighted the problems with the current system and its dependence on the "last-man standing" rule. To wit, when a withdrawing employer fails to fully pay its withdrawal liability (which is common for employers that become bankrupt or simply go out of business) the responsibility for the unfunded liabilities of the bankrupt employer is shifted to the remaining contributing employers in the Plan. This liability shifting scenario is referred to as the "last-man standing" rule.

Ms. Murphy's testimony included comment on the PBGC, SUPERVALU's participation in multiemployer defined benefit plans and the concepts in the Commission Report.

Ms. Murphy testified that from SUPERVALU's point of view, salvaging troubled plans is the most important area for Congress to address. The most important change she advocated would be to allow a plan's trustees to implement a program that would suspend benefits, even to retirees, if doing so is necessary to prevent the plan from becoming insolvent and to preserve the plan for its participants. She noted certain safeguards would need to be enacted to make sure these reductions were done in the most equitable manner possible.

<u>Looking Ahead</u>

The next step is to turn the Retirement Security Review Commission proposals into legislation. According to the June 4, 2013 issue of BNA's *Pension and Benefits Reporter*, Randy DeFrehn was quoted as saying that draft language reflecting the pension commission proposals should be ready to send to legislative attorneys on Capitol Hill in June. From there, the proposal would be introduced as a Bill into Congress. While some had hoped for Congressional action before the end of this summer's recess, it may not be until summer 2014 before a Bill is introduced, according to the BNA article. We will continue to follow developments in this matter and issue updates accordingly.

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