




U.S. CHAMBER OF COMMERCE
Employment Policy Division

THE MULTIEMPLOYER PENSION PLAN CRISIS:

BUSINESSES AND JOBS AT RISK





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EXECUTIVE SUMMARY

Employers that are contributing to multiemployer pension plans entered into these agreements with the goal of providing competitive benefits and a secure retirement to their workers. However, many of these plans are now in jeopardy, with insufficient resources to pay promised benefits. This is a threat both to retirees and employers.

At the end of 2017, the U.S. Chamber of Commerce issued a report detailing the many factors that have led to the current multiemployer pension plan crisis.¹ With the Joint Select Committee on Solvency of Multiemployer Pension Plans now considering solutions, the Chamber is issuing this new report to inform the Committee, and others, of the issues facing contributing employers and the potential consequences likely to befall these businesses should the plans they are funding become insolvent.

In many ways, this crisis has put the multiemployer system into uncharted waters. Although 72 multiemployer plans have gone insolvent to date, the sheer number and size of plans headed toward this fate during the next decade present the system with challenges of a size and scope never seen before.

But the threat to businesses has already begun to hit home. The potential fate of the multiemployer system has already begun to impact how they operate. As the financial conditions of multiemployer plans have deteriorated, required contributions have increased—often doubling or tripling within a space of only a couple of years. Despite these increased contributions, active workers are seeing a decrease in the accrual of benefits, which reduces the ability of a business to retain talent. Some employers who may wish to exit the multiemployer system are trapped, because withdrawal liability exceeds the value of their business. In addition, the potential for withdrawal liability is beginning to impact the ability of some employers to get and maintain credit.

Plan insolvency will obviously exacerbate the problems faced by contributing employers. If a plan goes insolvent but does not terminate, businesses could be required to pay contributions in perpetuity—meaning a permanent strain on their finances. However, if an insolvent plan does terminate, the financial situation for employers becomes even more drastic. Contributing employers could be assessed with immediate withdrawal liability; could be part of a mass termination; and/or could be subjected to minimum funding rules which would require even higher contributions and possible excise taxes. Any one of these scenarios could drive an employer into bankruptcy.

In addition to the threat of an individual plan becoming insolvent, there is a significant concern that such an outcome will cause other plans to fail—what is known as the “Contagion Effect.” The financial solvency of a number of multiemployer plans is dependent upon only one or two contributing employers, and these businesses also contribute to several other plans. If one plan failure causes a major contributing employer to be unable to make continued contributions to other plans, those plans could fail as well. Again, this is uncharted territory; however, it is reasonable to foresee that if a contributing employer becomes financially distressed by one plan failure, it would have a detrimental effect on the other plans to which that employer contributes.

It is important for those charged with finding a solution for the multiemployer funding crisis to understand the very real threats facing employers as well as retirees and taxpayers. The U.S. Chamber presents this report to help all interested parties understand the serious risks that the multiemployer pension crisis present to businesses, jobs, and retirement security.

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INTRODUCTION

The multiemployer pension plan system is in crisis and its potential collapse will have a catastrophic effect on participants and beneficiaries of multiemployer pension plans, contributing employers to such plans, and the U.S. economy in general. Retirees face the prospect of severely reduced benefits; current workers face the prospect of accruing little or no benefit for the contributions being made on their behalf; and many contributing employers face liabilities that far exceed the net worth of their companies. Making matters worse, the Pension Benefit Guarantee Corporation (PBGC), the federal corporation that insures private multiemployer plans, is itself projected to go insolvent by 2025.

According to the PBGC, approximately 130 multiemployer pension plans—including two of the largest plans—are in Critical and Declining Status, which means that they are projected to become insolvent within 15 years.² While it is true that the vast majority of multiemployer pension plans are Green Zone plans—meaning they are not in distress status—it is equally true that the contributing employers to those plans are often the same contributing employers to the 130 Critical and Declining plans. If only a handful of those 130 plans become insolvent within the next 3–5 years—a very likely scenario—the contributing employers will face severe consequences, including the ultimate price of bankruptcy.

In enacting the Multiemployer Pension Reform Act of 2014 (MPRA), Congress focused on providing tools to plan trustees to avoid insolvency. Left unanswered was the question of what happens when there are large-scale plan insolvencies. Multiemployer plans, participants, and contributing employers are in uncharted waters when it comes to the issues confronting them today. The funding problems that currently exist are unprecedented in the more than 70 years that these plans have been in existence. While most of the focus, and rightly so, has been on the catastrophic effect pension plan insolvencies will have on plan participants and the communities in which they live, the employers that employ these participants (and in many cases, that employ many more people than just the plan participants) are at extreme risk of being put out of business. Whether they are required to contribute at exorbitantly high contribution rates in perpetuity to stave off withdrawal liability or plan termination, or whether they are forced to withdrawal by trustees and/or the PBGC, or whether they become required to make up a minimum funding deficiency, American business are in a precarious position.

CRITICAL ISSUES CURRENTLY FACING EMPLOYERS

Even before a plan reaches insolvency, there are critical issues that can plague contributing employers—many of which are adversely affecting the ability of employers to grow their businesses, expand their workforces, or pass on businesses to family.

Potential Withdrawal Liability Negatively Impacts Business Decisions. Withdrawal liability is not “booked” until there is a termination, or partial termination, of the plan. However, the Financial Accounting Standards Board (FASB) requires contributing employers to disclose certain information about the multiemployer pension plans in which they participate.³ As the depth of the multiemployer pension crisis is increasing, employers are finding that ordinary business activities are being affected by the fear of the potential for withdrawal liability. Even though the employers have not been assessed a withdrawal liability, some banks and lenders are

questioning these employers creditworthiness, leading to less optimal lending rates or even denial of credit.

In other situations, certain employers have lost the opportunity to expand their business operations through mergers because other companies do not want to be associated with the potential for future withdrawal liability. Small family businesses are deciding to shut their doors, rather than pass the business down to heirs for fear of leaving them to pay a future withdrawal liability. All of these events results in lost business opportunities and fewer jobs.

Employers Are Facing Unexpected Partial Withdrawal Liability. To ensure employers that gradually reduce their contributions to a multiemployer plan do not escape withdrawal liability, ERISA has rules under which a partial cessation of the employer's obligation to contribute could trigger liability. A partial withdrawal occurs when there is:

- A decline of 70% or more in the employer's contribution base units; or
- A partial cessation of the employer's obligation to contribute.

Due to the declining number of union workers, there are businesses that have a dwindling union workforce. If the number of those employees declines by 70% or more or if an employer ceases to contribute for those employees at a facility that continues to operate, the employer can be assessed a partial withdrawal liability. The amount of liability for a partial withdrawal is based on the liability for a complete withdrawal liability, calculated under a formula in the law.⁴ Because of the amount of some plans' unfunded liabilities, the partial withdrawal liability can be high enough to impact the ability of an employer to efficiently run a business and can put a small employer out of business completely.

High Contribution Rates Thwart Employee Retention. Owing to increased liabilities, employer are faced with increasing contributions. There are some employers paying \$15.00 or more per hour to plans for every hour an employee works. Because of the unfunded liabilities associated with bankrupted contributing employers, employees understand that they are never going to receive a benefit that is commensurate with the contribution rate the employer is paying. This provides a disincentive for the employee to stay with the employer. Employee retention problems threaten an employer's competitiveness. Furthermore, if enough employees leave, and the employer cannot replace them, it can lead to a partial or complete withdrawal.

CRITICAL ISSUES FACING EMPLOYERS DURING A PLAN INSOLVENCY

Most of the discussion involving the consequences of multiemployer pension plan insolvency has focused on what will happen to retirees when some of the larger multiemployer plans become insolvent and can no longer pay promised benefits.⁵ While there is no doubt that widespread multiemployer pension plan insolvencies will have disastrous consequences for retirees and will negatively affect the communities in which they live, insolvencies also pose severe risks to the continued viability of contributing employers. Skyrocketing pension costs have already made it difficult for employers in some industries to compete. An onslaught of pension plan insolvencies would likely lead to employers filing bankruptcy and/or dissolving. Many of these companies employ union and nonunion workforces. When these employers shut down because of multiemployer pension plan costs, all employees' jobs are threatened—not just those employees who participate in multiemployer pension plans.

The Credit of Employers, Particularly Small Employers, Could Be Impacted by the Insolvency of a Systemically Important Plan. There are current consequences, short of bankruptcy, that contributing employers could face. Of primary concern are the consequences of the insolvency of a systemically important plan. For purposes of approving a benefit suspension, MPRA established a new category of multiemployer plans—systemically important—that was formally defined as those plans the PBGC determines as having a present value of projected financial assistance payments exceeding \$1 billion if benefit suspensions were not implemented.⁶

Less formally, a systemically important plan is viewed as a plan that poses a system-wide risk if allowed to become insolvent. Since passage of MPRA, no systemically important plan has gone insolvent. Yet several plans—including Central States—are in Critical and Declining status, meaning that they are projected to become insolvent within 15 years. The financial markets and other lenders may be willing to accept withdrawal liability risk from relatively small multiemployer plans that are currently insolvent, but it is highly unlikely they will accept such risk from an insolvent systemically important plan like Central States.

Nine out of 10 contributing employers to Central States are small businesses with fewer than 50 employees. It is highly probable that the overwhelming majority of these businesses have lines of credit or other capital debt predicated on maintaining asset/liability ratios that would be violated following a Central States insolvency.

Ongoing Contributions to an Insolvent Pension Plan Can Impose Insurmountable Financial Burdens on Contributing Employers. A misconception exists on the part of some that when a multiemployer plan becomes insolvent, the PBGC takes over administration of the plan or that the plan is terminated. While the PBGC does take over insolvent single employer plans, it does not take over the administration of multiemployer plans. When a multiemployer plan becomes insolvent, the plan continues to operate and be administered by the plan's trustees.

If the plan is not terminated,⁷ it continues collecting employer contributions and paying pension benefits at a reduced level. After insolvency, employers will continue to have an obligation to contribute to the plan at the collectively bargained rate, consistent with the rehabilitation plan. Active employees of contributing employers will continue to earn pension credit. The PBGC provides financial assistance to the multiemployer plan in the form of a loan. The plan's trustees are required to sign a promissory note and a security agreement giving the PBGC a security interest in all plan assets, which generally includes all employer contributions.

The continuation of employer contributions allows the employer to avoid paying withdrawal liability. Additionally, the contributions are usually being made consistent with the terms of the plan's rehabilitation plan. This is important because so long as the plan's trustees continue to comply with the rehabilitation plan, the minimum funding requirements of ERISA and the Internal Revenue Code (Code) do not apply.⁸ Avoiding minimum funding and withdrawal liability is critical for most employers if they have any hope of staying in business.

Nevertheless, the contribution rates that many employers are paying into multiemployer plans are exorbitantly high because the contribution rates for the last several years have been imposed by the plan's trustees via rehabilitation plans. Rehabilitation plans are designed to have the plan emerge from critical status or forestall possible insolvency and therefore require significantly higher contributions than what had previously been required. Most current contribution rates for plans facing impending insolvency have not been established through traditional collective bargaining between the union and the employer. While most employers

would rather absorb the higher contribution rates than incur withdrawal liability in the near term, the long-term effect of the high rates is that they make the employer less competitive. For example, higher pension costs are ultimately passed on to customers, who may look elsewhere to do business.

Another problem for employers that contribute to insolvent plans is that the exorbitantly high contribution rates make it harder to retain employees. Employees know what the contribution rates are, and they know they are not receiving any additional benefit accruals because of those rates. In fact, the exorbitant pension contribution rates cause wage stagnation, or even reduction, because the employer cannot afford to pay both pension and wage increases. While active employees already are concerned about future benefit accruals, once a plan is insolvent, the maximum benefit the worker can receive is the PBGC guaranteed benefit. Employers are essentially paying contributions into a “black hole.” Employees understand that they are never going to receive a benefit that is commensurate with the contribution rate the employer is paying. Consequently, there is no incentive for the employee to stay with the employer.

While continuing to pay contributions in an insolvent plan may save an employer from short-term economic disaster, it is doubtful that employers can endure such high pension contribution rates over the long term. It is likely that plan insolvency will lead to employers going out of business, filing for bankruptcy, or both. It is just a matter of time.

Employers May Not Be Able to Avoid Withdrawal Liability. While continuing to contribute to an insolvent plan will generally allow an employer to avoid the imposition of withdrawal liability, there are scenarios where withdrawal liability can be imposed despite the employer’s intention to remain a contributing employer to the plan. The issue is problematic for employers because they have no control over the withdrawal.

To avoid bankruptcy and continue to retain and pay their employees, employers may try to negotiate lower contribution rates after the PBGC has begun to provide financial assistance. This would allow the employer to potentially reduce its pension costs and/or pay a portion of what otherwise would be paid into a “black hole” into another benefit plan for its employees or directly to the employee in the form of wages.⁹

Since employers are generally paying contributions pursuant to a rehabilitation plan even post-insolvency (complying with the terms of a rehabilitation plan likely prevents the employer from being subject to the minimum funding requirements), employers would have to get the plan’s trustees to agree to accept the lower rate. This would require the trustees to amend the rehabilitation plan in most cases. If the trustees reject the lower contribution rate, the employer must either continue contributing at the higher rehabilitation plan rate or risk the plan’s trustees rejecting the employer’s continued participation in the plan. If the trustees reject the employer’s continued participation, the employer will incur withdrawal liability. Given the choice between a forced withdrawal and the assessment of withdrawal liability, most employers will choose to continue to pay the higher contribution rate.

Even if the plan’s trustees are inclined to accept a lower contribution rate, it is possible that the PBGC would object to a decrease in the contribution rate. Although the PBGC does not get involved or weigh in on labor-management negotiations, the PBGC is a secured party in all assets of an insolvent plan. Because employer contributions are part of the plan’s assets, the PBGC could take the position that a reduction in the contribution rate constitutes a diminution in

the collateral in which it is secured. Additionally, the PBGC has the authority under the insolvency provisions of ERISA to provide financial assistance under conditions the PBGC determines are “equitable and are appropriate to prevent unreasonable loss to” the [PBGC] with respect to the Plan.”¹⁰ Although the PBGC has not yet opined on a post-insolvency employer contribution rate decrease, the statutory language arguably gives the PBGC the authority to do so. If the PBGC advises plan trustees that PBGC-provided financial assistance will be withheld if the trustees accept a lower contribution rate, it is an absolute certainty that the trustees will reject the lower rate.

If an employer cannot negotiate a lower contribution rate but agrees to continue paying at whatever exorbitant rate is in effect, the employer can still find itself subject to a withdrawal liability assessment. As discussed earlier, an employer that is contributing to an insolvent multiemployer plan is generally paying a fairly high contribution rate. The employees on whom the employer is contributing are not earning any benefit or at least will not accrue more than the PBGC guarantee. Employees who know that their employers are paying \$15.00 or more per hour into a pension plan for which the employee perceives they are not receiving any benefit is likely to leave that employer. It will be hard for the employer to attract new employees to replace the departing employee for the same reasons. If all the employees working under the collective bargaining agreement leave, the employer will have essentially ceased operations under the plan, and withdrawal liability, or at least a partial withdrawal liability, could be assessed.¹¹

A Mass Withdrawal Substantially Increases Expected Withdrawal Liability and Can Push an Employer Into Bankruptcy. The previous examples in this report describe scenarios where an employer wants to stay in the plan but still incurs an unwanted or unplanned withdrawal. Some employers may do a cost-benefit analysis and determine that exiting an insolvent plan and paying their current withdrawal liability is less risky than remaining in the plan and continuing to pay exorbitant contribution rates in perpetuity. However, employers that leave an insolvent plan are exposed to a greater risk of unintentionally being part of a mass withdrawal. In general, withdrawal liability payments are limited to 20 years; however, this cap does not apply to mass withdrawal liability. And employers with mass withdrawal liability are often required to pay withdrawal liability over a period that is longer than 20 years.¹²

A mass withdrawal occurs upon withdrawal of every employer from the plan, the cessation of the obligation of all employers to contribute to the plan,¹³ or the withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw from the plan.¹⁴ Employers that withdraw during a period of three consecutive years within which substantially all employers that have an obligation to contribute to the plan are presumed to have withdrawn due to an agreement or arrangement.¹⁵ Therefore, an employer that intentionally withdraws from a plan and intends to pay its calculated withdrawal liability could become part of a mass withdrawal if substantially all of the other employers that contribute to the plan withdraw within the three-year period before or after the employer withdraws. The employer that intends to withdraw has no control over what other employers do. The fact that the plan is insolvent and participants are not receiving any benefit beyond the PBGC guaranteed amount makes it more likely that a mass withdrawal may occur than if a planned withdrawal is made from a financially healthy plan.

The danger of being part of a mass withdrawal is that it can require an employer to pay much more in withdrawal liability than it would under a standard withdrawal. In a mass withdrawal, employers are subject to reallocation liability. Reallocation liability means that the

plan's full cost of all unfunded vested benefits is allocated among all withdrawing employers. In a mass withdrawal, the withdrawal liability is calculated using PBGC interest rates that are often lower than the rates used by the plan in a standard withdrawal, which results in a higher liability.¹⁶

Reallocation liability can significantly increase the amount of the plan's unfunded liability that is allocated to an employer. In addition, the 20-year cap applicable in a standard withdrawal does not apply to mass withdrawal liability. This could result in some employers having to pay withdrawal liability for a period longer than 20 years. In situations where an employer's annual payments are not high enough to amortize the full liability, the employer theoretically has to pay forever.

An employer that makes a business decision to withdraw from a plan and pay its withdrawal liability could end up in bankruptcy if a mass withdrawal occurs within the three-year period after the employer withdraws. For employers that make up a large percentage of a plan's contribution base, the risk of a mass withdrawal occurring is greater because once smaller employers find out that the largest employer is leaving, the smaller employers might be incentivized to leave too so that they are not the "last man standing."¹⁷

Plan Termination Could Result in the Reinstatement of Minimum Funding Rules and Excise Taxes. Multiemployer plans are generally subject to minimum funding standards.¹⁸ If the employers do not make the contribution necessary to balance the funding standard account, the plan has a minimum funding deficiency, and contributing employers can be assessed excise taxes on top of having to make up the deficiency. The initial tax is 5% of the funding deficiency.¹⁹ If the funding deficiency is not cured within the taxable period, the excise tax is 100% of the funding deficiency.²⁰

The Pension Protection Act of 2006 (PPA) changed the general funding rules for financially troubled multiemployer plans. Plans that are certified as being in critical status are allowed to have minimum funding deficiencies without the employers having to make up the deficiency within the taxable year or paying excise taxes if certain conditions are satisfied.²¹ One such condition is that trustees of plans in critical status are required to adopt a rehabilitation plan. A rehabilitation plan is one that consists of a list of options, or range of options, for the trustees to propose to the bargaining parties, formulated to provide, based on anticipated experience and reasonable actuarial assumptions, for the plan to cease to be in critical status by the end of the rehabilitation period (generally 10 years). The rehabilitation plan may include reductions in plan expenditures, reductions in future benefit accruals, or increases in contributions, or any combination of such actions. The rehabilitation plan must be updated annually and the plan must show that it is making scheduled progress toward emerging from critical status. If the trustees determine that, based on reasonable actuarial assumptions, the plan cannot reasonably be expected to emerge from critical status by the end of the rehabilitation period, the plan must include reasonable measures to emerge from critical status at a later time or to forestall possible insolvency.²²

Thus far, plans that have become insolvent have not terminated, and because employers continue to contribute to the plan in accordance with the rehabilitation plan, the minimum funding rules do not appear to automatically apply just because a plan becomes insolvent. There are situations, nonetheless, where it appears that a contributing employer to an insolvent plan could be required to make up a plan's minimum funding deficiency and/or be assessed an excise

tax. Although this has not happened yet, the risk of it happening increases as the insolvency date of the PBGC gets closer. An insolvent PBGC leaves insolvent plans with no other funding source other than contributing employers. When the PBGC can no longer pay the guaranteed benefit, employers could be required to fund the benefits that PBGC previously paid.

One scenario that poses a risk to employers as plans and the PBGC go insolvent is the requirement that a plan's rehabilitation plan must satisfy certain Code provisions. If a multiemployer plan fails to make scheduled progress under the rehabilitation plan for three consecutive plan years or fails to meet the requirements applicable to plans in critical status by the end of the rehabilitation period, for excise tax purposes, the plan is treated as having a funding deficiency equal to (1) the amount of the contributions necessary to leave critical status or make scheduled progress or (2) the plan's actual funding deficiency if any.²³

It is possible that the IRS could take a more aggressive approach in assessing excise taxes when the PBGC can no longer provide a backstop for insolvent plans. This is troubling because employers have no control over whether the rehabilitation plan satisfies the requirements of the Internal Revenue Code. Nor do they have any control over the actuarial certification. This means that an employer that continues to make contributions in accordance with its rehabilitation plan post-insolvency can still be required to make up a funding deficiency and pay an assessed excise tax. Because the funding deficiencies of most insolvent plans are large, this requirement would effectively put the employer out of business.

Another complication for employers is the broad authority that the PBGC wields over an insolvent plan. As noted previously, PBGC has the authority under the insolvency provisions of ERISA to provide financial assistance under conditions that the PBGC determines are "equitable and are appropriate to prevent unreasonable loss to" the [PBGC] with respect to the plan.²⁴ Accordingly, if the PBGC determines that the continued operation of the plan somehow poses a financial risk to it, the PBGC could impose as a condition of providing financial assistance that the plan be terminated. There are three ways a multiemployer plan can be terminated: (1) by mass withdrawal, (2) by converting the plan to an individual account plan, (3) or by amending the plan to provide that participants will not receive credit for any purpose under the plan for service with any employer after the date specified in the amendment. While ERISA provides that minimum funding does not apply to a plan that terminates by mass withdrawal, there is no such provision relating to termination by plan amendment. While the PBGC has opined that insolvent plans will continue to operate, there appears to be at least a statutory mechanism through which a plan can be terminated without consent of the employer or even the trustees. If such a scenario were to arise, many employers would be forced out of business.

THE CONTAGION EFFECT

Many employers contribute to more than one multiemployer plan. That is because they have regional or national operations, or because they employ people who work in multiple industries or trades. There is a valid concern that the failure of a multiemployer plan, particularly a large plan, could cause other plans to go insolvent. For example, if any of the scenarios described in this paper were to come to fruition, and employers were assessed withdrawal liability, a minimum funding deficiency and/or an excise tax, it could cause the employer to go out of business. If such an employer contributes to one or more other plans, then it would likely be unable to continue contributing to the other plans. If the employer is the major contributing

employer to these plans, all the plans to which the employer contributes would be in jeopardy. To date, no extremely large plan has gone insolvent, but there are several that are projected to go insolvent within the next 5 to 10 years.

Moreover, many Critical and Declining Status plans are dependent on a very small number of employers to provide a disproportionate share of the contributions being made to the plans. For instance, in the UMW 1974 Pension Plan, there are currently 10 contributing employers with approximately 97% of the contributions derived from two controlled groups of signatory companies. For the New York State Teamsters Conference Pension and Retirement Fund, there are 156 contributing employers with approximately 83% of the contributions derived from two companies. For the Local 707 Teamster Pension Fund, there are 8 remaining contributing entities with 84% of the contributions coming from 2 companies. For the Tri-State Pension Plan, there are 9 contributing employers with one controlled group entity accounting for 95% of the contributions.

Taken together, these factors pose a dual risk. If a large, systemically important plan were to become insolvent, it has the potential to adversely impact the contributing employers and their participation in other plans. Conversely, if one of the large employers were to exit one of the plans mentioned here, it would significantly and negatively impact the plan, the remaining contributing employers, and ultimately the beneficiaries.

CONCLUSION

The multiemployer pension plan crisis puts businesses and jobs at significant risk. Under current rules, employers cannot leave these plans without paying large sums or claiming bankruptcy. At the same time, ongoing contributions to plans that are not able to provide promised benefits is an untenable financial situation for many employers, and plan terminations threaten to bankrupt many contributing employers. All these situations negatively impact the ability to provide jobs, make capital investments, and increase salaries. Congress must find a solution to avoid the most devastating effects of this multiemployer pension crisis.

¹ U.S. Chamber of Commerce, *The Multiemployer Pension Plan Crisis: The History, Legislation, and What's Next?* December 19, 2017. <https://www.uschamber.com/report/the-multiemployer-pension-plan-crisis-the-history-legislation-and-whats-next>.

² Pension Benefit Guaranty Corporation *FY 2017 Projections Report*. <https://www.pbgc.gov/sites/default/files/fy-2017-projections-report.pdf>.

³ FASB requires the following disclosures:

1. The amount of employer contributions made to each significant plan and to all plans in the aggregate.
2. An indication of whether the employer's contributions represent more than five percent of total contributions to the plan.
3. An indication of which plans, if any, are subject to a funding improvement plan.
4. The expiration date(s) of collective bargaining agreement(s) and any minimum funding arrangements.
5. The most recent certified funded status of the plan, as determined by the plan's so-called "zone status," which is required by the Pension Protection Act of 2006.
6. A description of the nature and effect of any changes affecting comparability for each period in which a statement of income is presented.

Financial Accounting Standards Board Accounting Standards Update No. 2011-09 (the Update), https://www.fasb.org/jsp/FASB/FASBContent_C/ProjectUpdatePage&cid=1176156724606.

⁴ ERISA § 4205, 4206, and 4208.

⁵ According to a study by the Society of Actuaries, there are approximately 1.4 million participants currently covered by multiemployer plans that are in danger of becoming insolvent in the very near future; 719,000 of whom are retirees currently receiving annual benefits totaling more than \$7.4 billion. *Multiemployer Pension Funding a Big Challenge for PBGC, Wider Economy*, www.planadvisor.com/multiemployer-pension-funding-big-challenge-pbgc-wider-economy, John Manganaro.

⁶ IRC § 432.

⁷ A discussion of plan termination upon insolvency is discussed later in the paper.

⁸ Although the general funding rules do not apply to plans that have adopted and comply with the terms of a rehabilitation plan, there are differing interpretations of how insolvency affects the ability to comply with a rehabilitation plan.

⁹ Negotiating lower contribution rates is not always possible because doing so would likely require the approval of entities other than the employer and the union.

¹⁰ ERISA § 4261(b)(1).

¹¹ ERISA § 4203(a)(2).

¹² ERISA § 4219.

¹³ ERISA § 4041A(a)(1)(2).

¹⁴ 29 C.F.R. § 4001.2.

¹⁵ The presumption can be rebutted by the employer.

¹⁶ ERISA § 4219.

¹⁷ Every employer in a multiemployer pension plan is responsible for all pension liabilities of every other employer in the plan. Thus, employers that withdraw from the plan without paying their withdrawal liability leave their liabilities behind for those still left in the plan—thus, this is referred to as the "last man standing."

¹⁸ ERISA and the Code's minimum funding rules require multiemployer plans to maintain a funding standard account. The funding standard account gets debited for charges related to benefit accruals, investment losses and other negative plan experience. Credits are given for employer contributions, investment gains, and other positive plan experience. The minimum required contribution to a multiemployer plan is the amount needed, if any, to balance the accumulated credits and accumulated debits to the funding standard account. If the debits exceed the credits, there is a negative balance, and

contributing employers must pay the amount necessary to balance the account. ERISA §§ 302 and 304; IRC §§ 412 and 431.

¹⁹ IRC §4971(a)(2).

²⁰ IRC §4971(b)(2). A multiemployer plan can apply for a minimum funding waiver from the IRS. However, the IRS cannot waive the minimum funding standard for more than 5 of any 15 consecutive plan years. There are also procedures for employers to apply for a waiver of the 100% excise tax, but the IRS will not appear to waive the 5% excise tax. ERISA § 302(c).

²¹ ERISA § 302(a)(3). A plan is in critical status if it (1) is less than 65% funded and will either have a minimum funding deficiency in five years or be insolvent in 7 years; or (2) will have a funding deficiency in four years; or (3) will be insolvent in five years; or (4) liabilities for inactive participants is greater than the liability for active participants, contributions are less than the plan's normal cost, and there is an expected funding deficiency in five years. ERISA §305(b)(2).

²² IRC §432.

²³ Plans may apply for a waiver if the failure is due to reasonable cause and not willful neglect.

²⁴ ERISA §4261(b).



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