Summary of the Multiemployer Pension Reform Amendment to Consolidated and Further Continuing Appropriations Act, 2015 (the “Cromnibus”)
Implications for HR Professionals

On December 16, 2014, President Barack Obama signed H.R. 83, the Consolidated and Further Continuing Appropriations Act of 2015, which became Public Law No. 113-235. An amendment included in the new law and offered by Representatives John Kline (R-Minn.) and George Miller (D-Calif.), permanently modified existing rules governing multiemployer defined benefit (DB) pension plans, and created relief procedures for DB plans that are insolvent, allowing them to reduce benefits (current or future obligations) to plan participants. Regulatory action will now take place that will provide employers with further guidance. In the meantime, below is a general explanation of the pension provisions in this new law.

Public Law No. 113-235 permanently extends funding rules enacted in the Pension Protection Act (PPA), and amends both the Employee Retirement Income Security Act (ERISA) of 1974 and the Internal Revenue Code. The law allows plans projected to be in critical status in the succeeding five plan years to elect to be in critical status in the current year, essentially enabling a plan to be modified. Additionally, it expands disclosure of multiemployer plan information, as well as eliminates the penalty facing employers who increase contributions to underfunded plans. These changes will give employers greater flexibility in an attempt to remain solvent.

Multiemployer Plan Mergers and Partitions

Under the new law, the Pension Benefit Guaranty Corporation (PBGC) is given the authority to partition (segment off troubled plans) or facilitate the merger of two or more multiemployer plans when they meet specific conditions. The PBGC must determine a merger is in the interests of the participants and beneficiaries of at least one of the plans and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of the other plan(s). Plan sponsors will have the ability to apply to the PBGC to partition the plan if:

- The plan is in critical and declining status;
- The plan sponsor has taken all reasonable measures to avoid insolvency, including the maximum benefit adjustments;
- The PBGC reasonably expects that the partition will reduce its expected long-term loss with respect to the plan and the partition is necessary for the plan to remain solvent; and
- The PBGC certifies that its ability to meet existing financial assistance obligations to other plans will not be impaired by such partition and the cost arising from such partition is paid exclusively from the fund for basic benefits guaranteed for multiemployer plans.

Remediation Measures for Deeply Troubled Plans

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While the goal of the PPA was to ensure that multiemployer plans remain solvent by requiring greater contributions and surcharges on employers, many plans were underfunded and at risk for insolvency. Now, Public Law No. 113-235 has created a new plan status, known as “critical and declining status.” Under the new law, multiemployer trustees would be able to suspend benefits for plans that are in “critical and declining status” when they follow strict guidelines in doing so. Plans may be deemed “critical and declining” if the plan is:

- Projected to become insolvent in the next 15 years; or
- Projected to become insolvent in the next 20 years and meets one of the following additional tests:
  - The ratio of inactive to active participants exceeds 2 to 1; or
  - The plan is less than 80 percent funded.

**Priority Order for Suspensions in Certain Circumstances**

When a plan contains participants whose benefits are directly attributable to any employer that has withdrawn from the plan, paid its full amount of withdrawal liability and agreed to assume liabilities equal to benefit reductions, then a priority order for suspensions is implemented. The order of priority is:

1. Participants with employers that withdrew without paying required withdrawal liability.
2. Remaining plan participants that do not fall into the category below.
3. Participants with benefits attributable to an employer who had withdrawn from the plan, paid its full amount of withdrawal liability and agreed to assume liabilities equal to benefit reductions.

The legislation includes other technical amendments regarding implementation and oversight of the benefit suspensions, including judicial review and notice requirements to affected participants.

**Benefit Suspensions**

Plans in “critical and declining status” may apply to the Department of Treasury (DOT) to voluntarily suspend benefits. It is important to note that the DOT, the Department of Labor (DOL) and the PBGC will be working closely together and with plan sponsors who seek to amend their plans.

Additionally, in the case of a plan with 10,000 or more participants, no later than 60 days prior to the plan sponsor submitting an application to suspend benefits, the plan sponsor must designate a participant of the plan to act as a retiree representative. The retiree representative will advocate for the interests of the retired and deferred vested participants and beneficiaries of the plan throughout the suspension approval process.

Benefit suspensions are subject to the following limitations:
• A participant’s or beneficiary’s monthly benefit cannot be reduced below 110 percent of the PBGC guarantee;

• Suspensions will be phased out for participants and beneficiaries age 75 and older at the date of the benefit suspension. Participants and beneficiaries age 80 and older at the date of suspension are exempt from benefit suspensions;

• Disability pensions are exempt from benefit suspensions; and

• Benefit suspensions shall be reasonably implemented to avoid plan insolvency.

Trustees may take a variety of factors into account to ensure the benefit suspensions are equitable, including age, number of years to retirement and participants’ benefit history. To suspend benefits, the plan sponsor of a critical and declining status plan must seek approval from the DOT. The application must be approved or denied within 225 days or the application is deemed approved.

Should the application be approved by the DOT, and in consultation with the DOL and the PBGC, the trustees’ decision to suspend benefits will then be subject to a vote of all participants within 30 days. The vote will be administered by the DOT in consultation with the DOL and the PBGC. Suspensions will not take effect until after the vote. The proposal for benefit suspension is rejected only if a majority of all participants’ and beneficiaries’ ballots are returned and marked in opposition.

If the participants do not support the trustees’ proposed benefit suspensions, the DOT, in consultation with the DOL and the PBGC, is required within 14 days to make a determination of whether the plan is systemically important, defined as resulting in $1 billion or more in projected PBGC liabilities if suspensions are not implemented. If a plan is determined to be systemically important and suspensions were not approved by the participants, the DOT, in consultation with the DOL and the PBGC, has the discretion to either accept the terms of the trustees’ proposal or modify the benefit suspensions in a manner projected to avoid insolvency.

The Office of Plan Sponsor and Participant Advocate, PBGC, may provide recommendations to the DOT within 30 days of the determination that the plan is systemically important and the DOT, in consultation with the DOL and the PBGC, shall implement a revised plan for benefit suspensions no more than 90 days after the vote.

**PBGC Premium Increases for Multiemployer Plans**

Public Law No. 113-235 also levies a per capita premium increase on all defined benefit multiemployer pensions plans. The premium is now indexed to inflation and increased 100 percent (from the current $13 per capita to $26 per capita), beginning in calendar year 2015.

The PBGC will report to Congress no later than June 1, 2016, whether the premium levels enacted are sufficient to meet its basic benefit guarantee obligations for the 10- and 20-year
periods beginning in 2015. If the report concludes that premium levels are insufficient, the PBGC must propose a schedule of revised premiums sufficient to meet such obligations.

**Conclusion**
While the legislative language provides considerable direction on how multiemployer pension plan reform may affect the employers with such plans in place, the DOT, the DOL and the PBGC will be providing additional guidance throughout the regulatory process.