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MULTIEMPLOYER PENSION REFORM

AGC Labor and Employment Law Council's
31st Annual
CONSTRUCTION LABOR LAW SYMPOSIUM
and Pre-Symposium Federal Contractor Labor Laws Workshop

Presenters

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Overview of AGC Activities

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- was an active member of the National Coordinating Committee of Multiemployer Plans' (NCCMP) Retirement Security Review Commission (RSRC)
- established a Multiemployer Pensions Technical Advisory Committee
- raised and contributed funds to support promotion of Solutions Not Bailouts
- is engaged in various lobbying activities
  - testified in Congress 3/5/13 and 4/29/15
- is working closely with Building Trades
- is working closely with Other Contractor Associations
  - Submitted joint comments to IRS and PBGC 4/6/15

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Multiemployer Pension Reform Act: Background

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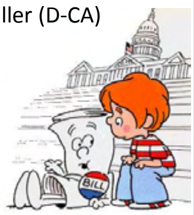
"Solutions Not Bailouts"

- **Retirement Security Review Commission**
  - NCCMP formed the Retirement Security Review Commission in 2011
  - Commission consisted of 40+ experts and stakeholders; met regularly for 18 months
  - *Solutions Not Bailouts* report published in Feb. 2013 with Commission's proposals
- **Solutions Not Bailouts Proposals**
  - "Preservation: strengthen the current system"
    - Extend rules under the Pension Protection Act of 2006 (PPA)
    - Modify certain rules and make technical corrections
  - "Remediation: measures to assist deeply troubled plans"
    - Allow plans approaching insolvency to cut benefits (including those in pay status)
    - Allow PBGC to facilitate plan mergers and alliances
  - "Innovation: new structures to foster innovative plan designs"
    - Variable defined benefit plan (already permitted under current law)
    - Target benefit plan (similar to Canadian hybrid design)

Passage of Pension Reform

- **2013 and 2014: paving the way**
  - NCCMP sought passage of *Solutions Not Bailout* proposals throughout 2013 and 2014
  - Worked primarily with House Education and Workforce Committee
- **2014 lame duck Congressional session: passage into law**
  - Multiemployer Pension Reform Act of 2014
  - Included as an amendment to 2015 omnibus spending bill
    - Consolidated and Further Continuing Appropriations Act, 2015 ("Cromnibus")
    - Sponsored by Members John Kline (R-MN) and George Miller (D-CA)
  - Introduced 12/10/2014
  - Passed House 12/11/2014
  - Passed Senate 12/13/2014
  - Signed into law by President Obama on 12/16/2014



Multiemployer Pension Reform Act: Overview

1. **PPA modifications and repeal of sunset**
   - Repeal sunset (previously scheduled for 12/31/2014 for certain provisions)
   - Various technical corrections and modifications to PPA
   - Expansion of disclosure requirements under section 101(k) of ERISA
2. **Benefit suspensions**
   - Define "critical and declining" status for plans (approaching insolvency within next 15-20 years)
   - Give plan trustees the option of suspending benefits if doing so will avoid insolvency
3. **Mergers and partitions**
   - Expand PBGC authority to facilitate mergers and partitions for "critical and declining" plans
4. **Increase PBGC premiums**
   - Increase flat rate premiums to $26 for 2015 (would have been $13)
5. **Withdrawal liability changes**
   - Disregard rehabilitation plan contribution rate increases
   - Special rules for disregarding partitions and benefit suspensions

Multiemployer Pension Reform Act: PPA Modifications

PPA Modifications: Overview

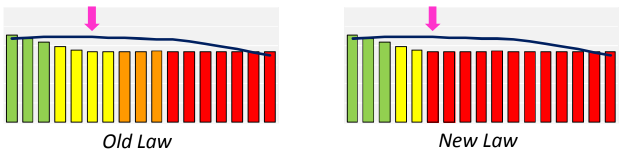
1. Eliminate PPA sunset
2. Election to be in critical status
3. Close rehabilitation plan “revolving door”
4. Endangered status is not applicable if no additional action is required
5. Revise funding improvement plan targets
6. Revise rules during funding improvement plan adoption period
7. Imposition of schedule after impasse in bargaining
8. Repeal of reorganization rules
9. Disregard certain adjustments for withdrawal liability
10. PBGC guarantees for pre-retirement survivor annuities
11. Expanded disclosures

Rules are effective for plan years beginning after 12/31/2014

PPA Modifications

1. **Eliminate PPA sunset**
   - PPA provisions for multiemployer plans are made permanent
     - Applies to section 431(d) amortization extensions
     - Also applies to critical and endangered status rules
   - Certain provisions were scheduled to sunset at 12/31/14

2. **Election to be in critical status (OPTIONAL)**
   - Available to plans projected to be in critical status in any of next 5 years
   - Trustees may elect to be in critical status for current year
   - If elected, trustees must notify Secretary of Treasury



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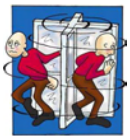
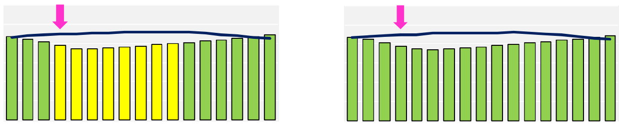
PPA Modifications (Cont.)



3. Close the "revolving door"
- Applies to critical status plans with amortization extensions
- For both emergence from critical status and subsequent reentry into critical status, focus on 10-year projection of funding standard account with amortization extensions

4. Endangered status does not apply if no additional action is required
- If plan would otherwise be in endangered status, and its funding improvement plan (FIP) would require no corrective action, plan is considered to be in "green zone"
  - Specifically, actuary must project "green zone" status at the end of 10 years
- Applies only if plan was also in green zone for immediately preceding plan year
- If rule applies, trustees must send notice to bargaining parties and PBGC



Old Law *New Law*

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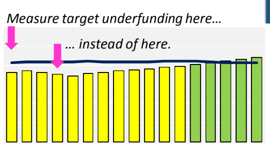
PPA Modifications (Cont.)



5. Revise funding improvement plan (FIP) targets
- Target #1: Reduce underfunding by 33% over 10 years
  - New rules measure underfunding at *beginning of first endangered status year*
  - Original rules set underfunding at *beginning of the funding improvement period*, which is usually 2 to 3 years later
  - New rules may raise or lower the target funded percentage, depending on asset smoothing and investment experience from the initial endangered status date to the start of the funding improvement period
  - Note: different targets may apply for seriously endangered plans (20% reduction in underfunding and/or 15 year-funding improvement period)
- Target #2: No funding projected deficiency *at the end of the 10-year funding improvement period*
  - Original requirement was to avoid deficiencies over entire 10-year period
  - New rules will usually (but not always) result in the same funding standard account target as the old rules

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PPA Modifications (Cont.)

6. **Revise rules during funding improvement plan adoption period**
   – Conform to existing rules for rehabilitation plan adoption period
   – Trustees cannot accept a CBA reducing contributions or excluding new employees
   – Trustees cannot improve benefits, unless required by law
7. **Imposition of schedule after impasse in bargaining**
   – Trustees may impose a contribution schedule if bargaining parties fail to adopt a schedule (“default schedule”)
   – Schedule is implemented 180 days after the expiration of the applicable CBA
   – Under original law, default schedule generally included maximum benefit reductions and could be imposed only after impasse at first CBA renewal
   – Under new law, trustees have more flexibility:
     - Initial schedule: Trustees may designate the schedule to be applied
     - Subsequent schedule: Trustees will update the contribution schedule that applied under the expired CBA

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PPA Modifications (Cont.)

8. **Repeal of reorganization rules**
   – Repeal rules regarding reorganization status
   – Replace remaining references to reorganization status with critical status
9. **Guarantee pre-retirement survivor annuities**
   – Extend PBGC guarantees to cover pre-retirement survivor annuities
   – Applies to surviving spouses only
   – Applies retroactively to 1985

Rules are effective for plan years beginning after 12/31/2014

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PPA Modifications (Cont.)

10. Expanded disclosures (section 101(k) of ERISA)

– Documents must be provided to participants, unions, and employers upon request.

Already included in ERISA 101(k)	Added to ERISA 101(k) by MPRA
Documents to be furnished on request: • Periodic actuarial reports (including any sensitivity testing) in plan's possession for at least 30 days • Periodic investment reports in plan's possession for at least 30 days • Application for amortization extension, as well as response by IRS ***Limitations on disclosures:*** • One request may be made per 12-month period. • Administrator may make a reasonable charge for copying, mailing, etc. • Information identifying individual participants, fiduciaries, or employers is protected. • Information proprietary to the plan, employers, or service providers is also protected.	***Documents to be furnished on request:*** • Current plan documents (including any amendments) • Latest summary plan description • Current trust agreement (including any amendments) or other document under which the plan was established or operates • Participation agreements for current or last 5 years (for employers only) • Current or prior Forms 5500 • Current or prior annual funding notices • Current or prior audited financial statements ***Limitations on disclosures:*** • Plan need not provide certain documents in its possession for 6 years or more. • Documents provided under this section satisfy disclosure requirements under other sections.

Rules are effective for plan years beginning after 12/31/2014

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Multiemployer Pension Reform Act: Benefit Suspensions

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PPA Certification Statuses

Critical *In general, a projected funding deficiency in the next 4 or 5 years (other factors may apply)*	**Critical and Declining (NEW)** *In critical status, and projected to go insolvent within the 20 years (15 years in some cases)*
Endangered *Under 80% funded <u>or</u> a projected funding deficiency in the next 7 years*	**Seriously Endangered** *Under 80% funded <u>and</u> a projected funding deficiency in the next 7 years*

"Green Zone"
(none of the above)

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

New special rules, effective after 12/31/2014:

- A plan newly in endangered status that would require no corrective action under a funding improvement plan is considered in the "green zone"
- A plan projected to enter critical status in the next 5 plan years may elect to be in critical status immediately

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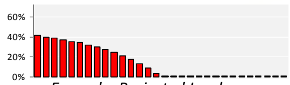
Critical and Declining Status



Example: Projected Insolvency

- **"Critical and declining" status**
  - Plan is in critical status *<u>and</u>* projected to be insolvent during the next 20 years
    - Insolvency must be projected during next 15 years if the plan is at least 80% funded *<u>and</u>* the ratio of inactive to active participants is less than 2 to 1 (unlikely)
- **General**
  - Trustees of plans in "critical and declining status" may elect to suspend benefits
  - Suspensions must be necessary – and sufficient – to avoid plan insolvency
  - Plan must certify each year that suspensions remain necessary to avoid insolvency
- **Benefit suspensions defined**
  - Temporary or permanent reduction of any current or future payment
  - May apply to participants and beneficiaries already in payment status
  - Suspensions shall remain in effect:
    - Until the date trustees end them via a benefit improvements, or
    - Until the suspensions expire on their own terms
  - Plan retains no liability for benefits not paid while suspension is in effect

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

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Benefit Suspensions: Conditions

- **Suspensions must be necessary and sufficient to avoid insolvency**
- **Trustees must determine annually, in writing:**
  - That suspensions remain necessary to avoid insolvency, and
  - That all reasonable measures to avoid insolvency continue to be taken:
  - Factors to consider:
    - Contribution levels: current and past
    - Benefit levels: accrual rates, adjustable benefit reductions, subsidies, etc.
    - Competitive factors: for both employees and employers
    - Impact on retention: for both employees and employers
    - Measures taken to retain or attract employers
- **Retiree representative (for plans with at least 10,000 participants)**
  - Must advocate for retirees and inactive participants through the suspension process
  - Designated by trustees

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

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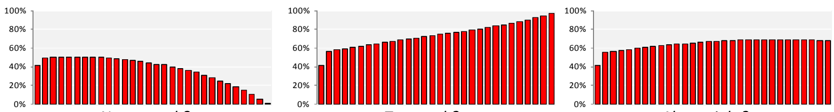
Benefit Suspensions: Limitations

- <u>Maximum reduction:</u> benefits may not be reduced to below 110% of PBGC guarantees.
  - PBGC guarantee: Up to $35.75/month per year of service
- <u>Protected classes:</u> certain participants are protected from suspensions:
  - Complete protection for disabled retirees (per plan's definition of disability)
  - Complete protection for retirees and beneficiaries age 80 or over
  - Partial protection (phase-in) for retirees and beneficiaries age 75 to 79
  - *Statuses and ages are as of effective date of suspension*
- Suspensions must be sufficient to reasonably achieve the level to avoid insolvency, but must not materially exceed it. *(What does that mean?)*



Not enough? *Too much?* *About right?*

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

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Benefit Suspensions: Limitations (cont.)

- Combination with partition: If suspension is combined with a partition (discussed later), suspensions must not take effect until after partition is effective
- Equitable distribution: Suspensions must be equitably distributed across the population, taking into account:
  - Age and life expectancy
  - Length of time in pay status
  - Amount of benefit
  - Type of benefit (survivor, normal or early retirement)
  - Benefit subsidy, if any
  - Post-retirement benefit increases, if any
  - History of benefit increases and reductions
  - Years to retirement (for active employees)
  - Discrepancies between active and retiree benefits
  - Possible impact on retention of active employees and employer withdrawals
  - Extent to which benefits are attributable to service with an employer that withdrew and failed to pay its full withdrawal liability ("orphan" benefits)

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

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Benefit Suspensions: Benefit Improvements

- Trustees may elect to improve benefits while suspensions are in effect
- Benefit improvements include:
  - Resumption of suspended benefits
  - Increase in accrued benefits
  - Increase in the future accrual rate
  - Increase the rate benefits become vested
- Benefit improvements are subject to restrictions:
  - Certification: Actuary must certify that plan is projected to avoid insolvency indefinitely, taking into account the benefit improvements
  - Favor in-pay status: Benefit improvements to participants already in pay status must have value equal or greater to improvements for participants not yet in pay status
  - Equitable distribution: Benefit improvements for participants currently in pay status must be equitably distributed based on the factors used in suspending benefits
  - Exceptions: Limitations do not apply to benefit improvements that are de minimis (as determined by Treasury, PBGC ,and DOL), or are required by law

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

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Benefit Suspensions: Notices and Certifications

- Required notices to participants, beneficiaries, unions and employers before suspensions take effect
  - Treasury (with PBGC and DOL) will publish guidance, including model notice
  - Notice shall satisfy requirements under section 204(h) of ERISA
- Annual actuarial certification must specify critical and declining status
- Annual Funding Notice must disclose projected insolvency date

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

Benefit Suspensions: Application for Approval

- **Trustees must submit application for approval**
  - Must satisfy suspension requirements (conditions, limitations, improvements, and notice)
  - Treasury will review application, in consultation with PBGC and DOL
- **Solicitation of comments**
  - Treasury (with PBGC and DOL) shall publish application in the Federal Register and solicit comments from interested parties
- **Review and approval**
  - Treasury shall approve or deny application within 225 days after its submission
    - Deemed approval if no decision by Treasury within 225 days
  - Treasury will provide notice of rejection, if applicable
    - Notice will include specific reasons for rejection, including requirements not satisfied
  - Treasury will generally accept trustees’ determinations, unless it concludes the determinations were clearly erroneous
  - Trustees (but not participants) can appeal denial of suspension by Treasury

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

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Benefit Suspensions: Participant Vote

- **Suspensions must be ratified by participant vote**
  - Suspensions go into effect unless rejected by the vote
    - Rejection requires majority vote of *all* participants and beneficiaries
  - If suspensions are rejected by participant vote, trustees may submit a new application
- **Treasury may override participant vote if:**
  - Participant vote rejects benefit suspension, and
  - Treasury (with PBGC and DOL) determines plan to be "systemically important"
    - Must make determination within 14 days after vote rejecting suspension
  - "Systemically important" defined:
    - PBGC projects the present value of financial assistance payments to the plan will exceed $1 billion if suspensions are not implemented
    - $1 billion figure applies for 2015; indexed with inflation for future years

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

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Benefit Suspensions: Process Overview

Phase	Action [latest timing]
Certification	• Actuary certifies critical and declining status [90 days into plan year] • Trustees send annual funding notice (including insolvency language) [120 days into plan year] • Trustees send critical status notice [30 days after actuarial certification]
Adoption (Optional)	• Trustees begin to evaluate possible benefit suspensions • Trustees designate a retiree representative [at least 60 days *before* application to Treasury] • Trustees adopt a plan for benefit suspensions • Trustees send notice of suspensions to participants, unions, and employers [before application] • Trustees submit application for approval of suspensions to Treasury
Review and Approval	• Treasury reviews application, in consultation with PBGC and DOL • Treasury publishes application, solicits comments [30 days after receipt of application] • Treasury approves or denies application [225 days after submission of application] • Trustees may revise and re-submit the application if first rejected by Treasury
Participant Vote	• Trustees administer participant vote on suspensions [30 days of Treasury approval]
Systemically Important Plans	• Treasury determine if plan is "systemically important" [14 days after vote] • Trustees may revise application [30 days after determination] • Treasury may override the participant vote if plan is significantly important [90 days after vote]
Implementation	• Trustees implement suspensions [7 days after vote, or ASAP after Treasury override]

Rules are effective immediately. Treasury (with PBGC and DOL) will publish guidance by 6/14/2015.

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Multiemployer Pension Reform Act: Mergers and Partitions

Facilitated Mergers

- **New authority for PBGC**
  - PBGC may provide "financial assistance" to facilitate certain plan mergers
- **Conditions**
  - At least one plan involved in the proposed merger is in "critical and declining" status
  - PBGC expects that financial assistance will reduce its expected long-term loss
  - PBGC expects that such financial assistance is necessary to facilitate the merger
  - PBGC certifies that providing financial assistance will not impair its ability to meet other obligations (with respect to multiemployer program only)
- **PBGC must notify Congress**
  - Within 14 days after financial assistance is provided
  - House Education and Workforce Committee; Senate Finance and HELP Committees

Rules are effective for plan years beginning after 12/31/2014

Partitions

- **Trustees may apply to the PBGC for a partition**
  - Note: new partition rules replaces old rules
- **Conditions for partition**
  - Plan is in "critical and declining" status
  - PBGC determines the trustees have taken all reasonable measures to avoid insolvency,
    - Including "the maximum benefit suspensions…, if applicable"
  - PBGC expects the partition will reduce its expected long-term loss
  - PBGC expects the partition is necessary for the plan to remain solvent
  - PBGC certifies to Congress that partition will not impair its ability to provide financial assistance – including those projected to go insolvent in next 10 years
  - Cost to PBGC of partitioning is paid from multiemployer program only
- **Implementation**
  - PBGC will transfer assets to newly-partitioned (successor) plan sufficient to keep it solvent
  - Trustees of original plan will continue to govern and administer successor plan
  - Certain adjustments for withdrawal liability will apply (covered later)

Rules are effective for plan years beginning after 12/31/2014

Partitions (Cont.)

- **Ongoing obligations for original plan**
  - Benefit payments: original plan will pay benefits to participants in successor plan:
    - Monthly benefit in original plan (reflecting benefit suspensions, if applicable),
    - LESS monthly benefit guaranteed by the PBGC
  - Benefit improvements: if benefits are improved during the 10 years after the partition, original plan will pay to the PBGC for each plan year to which the improvement applies:
    - Total value of the benefit increase for the year, but not more than the total benefits paid by the successor plan for the year
  - Premiums: original plan will pay PBGC premiums on participants in successor plan for the 10-year period after the partition
- **PBGC must notify Congress and affected participants**
  - Within 14 days after partition is ordered
  - House Education and Workforce Committee; Senate Finance and HELP Committees

Rules are effective for plan years beginning after 12/31/2014

Multiemployer Pension Reform Act: Increase PBGC Premiums

Increase PBGC Premiums

- **Flat rate premium**
  - $26 per participant and beneficiary for 2015 plan year
  - Premium is automatically increased with inflation in future years
    - Inflation based on national average wage index
    - Premium is rounded to the nearest $1
- **Separate fund**
  - Set up separate fund within multiemployer program
    - Funded with $777 million in premium revenue from 2016 through 2020.
    - Non-interest-bearing account
    - Financial assistance withdrawn proportionately from separate fund and other funds
- **Report to Congress**
  - PBGC must submit a report to Congress no later than January 1, 2016
  - Report whether premiums are sufficient to sustain program for next 10 and 20 years
  - Propose a schedule of revised premiums if current premiums are insufficient

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Multiemployer Pension Reform Act: Withdrawal Liability Changes

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Withdrawal Liability Changes

- **Disregard certain adjustments for withdrawal liability**
  - Disregard benefit suspensions (in addition to adjustable benefit reductions)
    - Reflect suspensions for withdrawals occurring more than 10 years after suspensions.
  - Disregard contribution surcharges (critical status only)
    - Applies to allocation of unfunded vested benefits and statutory payment schedule
      - Exception: does not apply to direct attribution method
  - Disregard contribution rate increases (funding improvement plan or rehabilitation plan)
    - Generally applies to allocation of unfunded vested benefits
      - Exception: does not apply to direct attribution method
      - Exception: does not apply after emergence from critical or endangered status
    - Also applies to determining statutory payment schedule
  - PBGC will issue guidance on simplified methods to apply above rules
- **Withdrawal liability following a partition**
  - For withdrawals occurring in first 10 years after partition: both original and successor plans
  - For withdrawals occurring more than 10 years after partition: original plan only

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Unfinished business…

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What's Next: Innovative Plan Designs

- **The MPRA does not address one other component of *Solutions Not Bailouts*: Innovative plan designs**
  - To help stabilize the multiemployer pension system, eliminate future withdrawal liability, retain and attract employers
- **Subsequent legislation (hopefully, this spring) is expected to introduce the "Composite" plan design concept**
  - Conservatively funded – first year contributions must be at least 120% of first year benefit liabilities
  - Rules for adjusting benefits (either up or down), based on funding levels
  - No withdrawal liability: Funding rules ensure that accrued benefits will always remain fully funded
  - Legacy liabilities in original plan remain subject to PPA funding rules and withdrawal liability
    - Composite plan design applies only to *future* benefit accruals

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What's Next: Addressing the PBGC Shortfall

- **Despite MPRA's increased PBGC premiums to $26 per participant, PBGC is still facing a potentially significant multiemployer program shortfall**
  - NCCMP and others are exploring alternative means of increasing PBGC revenues
    - Seeking revised premium structure that equitably addresses different situations among healthy/unhealthy plans, high/low benefit plans, etc.
    - Savings due to benefit suspensions for severely troubled plans is a key determining factor of PBGC's funding needs
      - Need reliable estimate of expected PBGC savings that will be generated by benefit suspensions

Questions?