



# A Whole New World for Multiemployer Funds

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## Today's Speakers

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**Want to ask a question?**

**During today's discussion, should you have any questions regarding the material, you may e-mail questions to:**  
**[Jacqueline.Rivera@buckconsultants.com](mailto:Jacqueline.Rivera@buckconsultants.com)**

**Questions will be reviewed at the end of the presentation.**

## Overview

- Effective Dates
- New Status Categories
- Funding-Improvement Plan for Endangered Status
- Rehabilitation Plan for Critical Status
- Failure to Make Contributions or to Adopt the Required Funding-Improvement or Rehabilitation Plan
- Minimum Funding Rules
- Maximum Tax-Deductible Contributions
- Modifications to Withdrawal Liability
- Plans in Reorganization
- Study by Federal Agencies
- Sunset of Funding Rules

## Overview (*continued*)

- Disclosure
  - Automatic Notification
  - Notification upon Request
  - Requests for Potential Withdrawal Liability
  - Additional Annual Reporting
  - Repeal of Summary Annual Report
  - Furnishing Summary Plan Information to Employers and Unions
- Section 420 Transfer of Excess Assets to Health Accounts
- Additional Survivor Option Required
- Election for Non-profit Plan to be Considered as a Multiemployer Plan
- Amendments
- Conclusion

# The Pension Protection Act of 2006 (PPA)

A whole new world for:

- Joint boards of trustees
- Bargaining parties
- Participants and beneficiaries
- General Intent:
  - Improve financial condition of plans
  - Improve ‘transparency’ by expanding notification requirements

## Effective Dates

- Most provisions effective for plan years beginning after December 31, 2007
- Some provisions effective as early as January 1, 2006
  - Maximum-tax rules
  - Combined limit exclusions
- Withdrawal liability (various effective dates)

## New Status Categories

- PPA establishes plan classification status categories:
  - Critical ["red zone"]
  - Seriously endangered ["orange zone"]
  - Endangered ["yellow zone"]; and
  - None of the above ["green zone"]

## New Status Categories (*continued*)

- Status tests concern:
  - Funded % =
    - **Actuarial Value of Assets**, divided by
    - **Actuarial Accrued Liability** (unit credit method) using fund's actuarial assumptions
  - Projection of funding deficiency
  - Ratios of contribution income to expected benefit payouts
- Contributions under current CBAs:
  - Deemed to continue for succeeding years unless significant demographic changes expected
- Trustees will also have input regarding any knowledge of industry trends:
  - Anticipated changes in covered employment
  - 9 – Anticipated changes in future contributions

## Annual Actuarial Certification Required

- Fund actuary's annual certification of status filed with trustees and Treasury by 90th day of plan year
  - March 31 for calendar plan years
- Subsequent certifications:
  - IF endangered or critical status THEN certification must include fund's progress
- Failure to provide certification deemed plan administration failure:
  - Penalty of up to \$1,100 per day may be assessed

## Notice to Interested Parties Based upon Actuarial Certification

- If endangered or critical, provide notice to participants, beneficiaries, bargaining parties, PBGC, Treasury
  - 30 days after date of actuarial certification
  - April 30 for calendar plan years
- If critical status, notification must address possibility of reductions to “adjustable” benefits [defined below] not yet in pay status for initial critical year
- Treasury will prescribe a model notice

## Critical Status

Any of the following four conditions –

- I. Funded % less than 65%; and  
(MV of assets + contributions over 7 years) <  
(benefits and administrative expenses over 7 years)
- II. Plan projected to have funding deficiency within 4 years (5 years if  
Funded % is 65% or less)
- III. (Normal cost and interest on unfunded liability) > contributions; and  
Present value of inactive benefits > present value of active benefits;  
and Plan projected to have funding deficiency within 5 years
- IV. (MV of assets + present value of 5 years of contributions) <  
(present value of 5 years of benefits and administrative expenses)

# Endangered Status/Seriously Endangered Status

Endangered Status:

Not in critical status and

- I. Plan's Funded % < 80%; or
- II. Plan is expected to have funding deficiency within 7 plan years

Seriously Endangered Status:

- Both of the above conditions apply

## Funding Improvement Plan for Plans in an Endangered Status

- To enable fund to meet specific benchmarks
- Adoption within 240 days after due date of actuarial certification
- Funding improvement period begins on first day of first plan year after earlier of:
  - Second anniversary of date of adoption of funding-improvement plan; or
  - Expiration of CBAs in effect on due date for actuarial certification covering at least 75% of active participants
- Funding improvement period runs for 10 years (possibly 15 years if seriously endangered)

# Funding-Improvement Plan for Endangered Status (continued)

## Funding Improvement Plan must

- Reduce underfunding by 33% over funding improvement period
  - e.g., If the plan's initial funded percentage is 76%, then the goal is to get the plan to be about 84% fundedand
- Avoid funding deficiency
- Within 30 days after adoption, Trustees must provide bargaining parties one or more schedules:
  - At least one proposal for reductions in future benefit accruals, assuming no increase or the lowest required increase in contributions under the plan [default schedule]; and
  - At least one proposal for contribution increases, assuming no reductions in benefit accruals
  - Any other relevant information
- Funding Improvement Plan to be updated and filed annually

## Funding-Improvement Plan for Endangered Status (*continued*)

- Default schedule applies if bargaining parties unable to reach an agreement
- Default schedule effective on earlier of the date:
  - Secretary of Labor certifies that parties are at an impasse; or
  - 180 days after CBAs expire

# Funding Improvement Plan for Seriously Endangered Status

- Funding Improvement Plan as above except:
  - IF Funded % < 70%; or
  - IF Funded % at least 70%, and actuary further certifies within 30 days after initial actuarial certification that:
    - Fund cannot meet its funding goals of correcting 33% over 10 years
    - Fund cannot avoid a funding deficiency over 10 years
  - THEN must reduce underfunding by 20% by the end of a 15-year funding improvement period
    - *e.g.*, If the plan's initial Funded % is 75%, then the goal is to get the plan to be 80% funded
  - Postpone funding deficiency by at least one additional year by considering:
    - Applications for the extension of amortization
    - Use of shortfall funding method
    - Cuts to the benefit accruals or benefit structure

## Funding Improvement Plan for an Endangered Status: Restrictions

- Trustees may not accept CBA with:
  - Reduction in the level of contributions
  - Suspension of contributions
  - Direct or indirect exclusion of younger or newly hired employees
- No plan amendments allowed that increase liabilities (unless required for IRS qualification) by:
  - Increase in benefits
  - Change in accrual rate
  - Accelerate vesting schedule
- Plan amendment exception:
  - If actuary certifies amendment is:
    - Consistent with Funding Improvement Plan; and
    - Paid for with contributions not required by the Funding Improvement Plan

## End of Funding Improvement Period

- Funding improvement period ends in one of three ways:
  - 1 Fund goes into green zone  
Note: goal of attaining 100% funding not required;
  - 2 Fund goes into critical status; or
  - 3 Funding improvement period expires while plan is still endangered, in which case new funding improvement period commences

# Sample Timeline for Funds in Endangered Status (based upon 2008 calendar plan year)

	<u>Due By</u>
Actuarial Certification (90 <sup>th</sup> day)	March 30, 2008
Notice to Participants of Endangered Status (30 days later)	April 29, 2008
Funding Improvement Plan: Adoption (240 days after Actuarial Certification)	November 25, 2008
Plan and Schedules to bargaining parties (30 days later)	December 25, 2008
Funding Improvement Plan Period	10-year period starting not later than January 1, 2011
Funding Improvement Period (10-year) Ends	Not later than December 31, 2020

## Rehabilitation Plan for Critical Status

- To enable fund to exit critical status by end of rehabilitation period
- Adoption within 240 days after due date of actuarial certification
- Rehabilitation period begins on first day of first plan year after earlier of:
  - second anniversary of date of adoption of rehabilitation plan;  
or
  - expiration of CBAs in effect on due date for actuarial certification covering at least 75% of the active participants
- Rehabilitation period runs for 10 years
- Rehabilitation Plan to be updated and filed annually

## Rehabilitation Plan for Critical Status (*continued*)

- Within 30 days after adoption, Trustees must provide bargaining parties one or more schedules:
  - at least one proposal for reductions in amount of future benefit accruals and “adjustable” benefits [defined later], assuming no increase or the lowest required increase in contributions under the plan [default schedule]; and
  - optional proposals for:
    - contribution increases, reduced future benefit accruals or both
    - proposals to reduce “adjustable” benefits
    - options to reduce plan expenditures, including possibility of plan mergers and consolidations.

## Rehabilitation Plan for Critical Status (*continued*)

- Default schedule applies if bargaining parties unable to reach agreement as CBAs expire
- Default schedule effective on earlier of the date:
  - Secretary of Labor certifies that parties are at an impasse; or
  - 180 days after CBAs expire
- If trustees determine that plan cannot reasonably be expected to emerge from critical status by end of rehabilitation period, then Rehabilitation Plan must:
  - Explain why
  - Specify when, if ever, plan is expected to emerge from critical status; and
  - Describe reasonable measures to emerge from critical status at a later time or to forestall possible insolvency

## Rehabilitation Plan: Possible Reductions in Benefits

- Limitation on reduction to future accruals under default schedule is smaller of:
  - Normal-retirement monthly benefit (payable as single-life annuity) equal to 1% of contributions; or
  - Existing accrual rate
- “Adjustable” benefits defined as certain benefits rights and features, *e.g.*:
  - Post-retirement death benefit options other than QJSA
  - 60-month guarantees
  - Disability benefits not yet in pay status
  - Early-retirement benefits or subsidies
  - Accrued benefits that include increases in effect for less than 5 years and not eligible for PBGC guarantee

## Rehabilitation Plan: Possible Reductions in Benefits (*continued*)

- No reductions to adjustable benefits until at least 30 days after plan sends notice to all participants, beneficiaries, contributing employers, unions
- Notice to include:
  - estimate of any affected adjustable benefit that participant would have been eligible for 30 days after notice is sent
  - information on rights and remedies of plan participants
  - how to contact the DoL for further information and assistance
- Treasury will prescribe model notice

## Rehabilitation Plan: Possible Reductions in Benefits (*continued*)

- For retirees in pay status, benefits payable due to amendments in effect for less than 5 years may be adjusted, but only after retirees have received notification required upon actuary's certification of initial critical year.
- Benefit reductions under rehabilitation plan ignored when determining unfunded vested benefits for **withdrawal liability**.
  - PBGC to prescribe simplified methods

## Rehabilitation Plan: Automatic Employer Surcharge

- Each employer is obligated to pay:
  - Initial critical year: surcharge equal to 5% of required contributions
  - Each succeeding plan year: 10% surcharge
- Surcharge continues until next CBA that meets Rehabilitation Plan
- Fund must track and treat nonpayment of surcharges as delinquent contributions
- Surcharge applies 30 days after employer notified of critical status
- Surcharge not basis for additional benefit accruals
- Surcharges ignored when determining employer's **withdrawal liability** (unless direct-attribution method or a PBGC-approved method that reflects contribution rates)
  - PBGC to prescribe simplified methods

## Rehabilitation Plan: Restrictions

- During rehabilitation period:
  - No lump sums (except mandatory under \$5000)
  - No annuity purchases
- Trustees may not accept CBA with:
  - Reduction in level of contributions
  - Suspension of contributions
  - Direct or indirect exclusion of younger or newly hired employees
- No plan amendments that increase liabilities (except if required for IRS qualification) by:
  - Increase in benefits
  - Change in accrual rate
  - Accelerate vesting schedule
- Plan amendment exception, if actuary certifies amendment is:
  - Consistent with Rehabilitation Plan; and
  - Paid for with contributions not required by Rehabilitation Plan

## End of Rehabilitation Period

- Period ends when actuary's annual certification shows plan not projected to have funding deficiency for plan year or next nine plan years (taking into account amortization extensions; ignoring shortfall method)

## Expedited Resolutions

- For plans in an endangered or critical status:
  - IF trustees not agreed on Funding Improvement Plan or Rehabilitation Plan within 60 days of required adoption date

THEN any member of board or plan sponsor may require plan sponsor to enter into expedited dispute-resolution procedure

## Nonbargained Participation

- IF employer contributes:
  - With respect to both bargained and non-bargained employees; and
  - If plan is endangered or critical
- THEN benefits and contributions for nonbargained employees, including surcharges on contributions, are determined as if nonbargained employees covered under first to expire of employer's CBAs in effect when plan entered endangered or critical status.
- IF employer contributes on behalf of only non-bargained employees
- THEN:
  - Employer considered as bargaining party
  - Participation agreement considered as CBA with term ending on first day of plan year beginning after employer is provided contribution schedule(s) delivered by the plan trustees in accordance with Funding Improvement or Rehabilitation Plan.

## Failure to Make Contributions or to Adopt the Required Funding-Improvement or Rehabilitation Plan

- For plans in critical status, excise taxes waived in event of funding deficiency
- No such relief in endangered status
- IF employer fails to make contribution under Funding Improvement or Rehabilitation Plan  
THEN tax imposed equal to missed contribution

## Failure to Make Contributions or to Adopt the Required Funding-Improvement or Rehabilitation Plan

- IF seriously endangered plan fails to meet required goals by end of funding improvement period, or
- IF critical plan either:
  - Fails to satisfy Rehabilitation Plan by end of rehabilitation period; or
  - Receives actuarial certification stating that plan is not making scheduled progress in meeting requirements under Rehabilitation Plan for 3 consecutive plan years

### THEN

- Plan treated as having accumulated funding deficiency for last plan year in funding-improvement, rehabilitation, or three consecutive-year period (and each succeeding plan year until such goals are met)
  - Excise tax is greater of contribution to meet goals or funding deficiency

## Failure to Make Contributions or to Adopt the Required Funding-Improvement or Rehabilitation Plan (*continued*)

### HOWEVER

- Treasury may waive part or all of tax if failure resulted not because of willful neglect but due to reasonable cause, *e.g.*
  - Unanticipated and material market fluctuations
  - Loss of significant contributing employer
  - Other factors to the extent that payment of this tax would be excessive or otherwise inequitable relative to failure involved

## Minimum Funding Rules

- Funding Standard Account
  - Continue to maintain funding standard account, including use of credit balance
  - New amortization period of 15 years for all new liability changes:
    - Benefit improvements or reductions (currently 30 years); or amortize over shorter period if improvement paid out over less than 15 years, *e.g.*, “13th check”
    - Changes in actuarial assumptions and methods (currently 30 years)
    - Actuarial gains or losses (currently 15 years)
  - Existing bases prior to 2008 plan year continue current amortization

## Extension of Amortization Periods

- Automatic Extension of amortization periods for up to 5 years upon application to Treasury
- Extension applies to charge bases established both before and after PPA
- Based upon valuation interest rate
- Actuary's statement must be included with application that states:
  - Absent extension, plan would have funding deficiency in current plan year or any of next 9 plan years;
  - Fund has adopted plan to improve funding status;
  - fund is projected to have sufficient assets to pay benefits and expenditures over amortization period as extended; and
  - Notice has been filed with plan participants, union, PBGC

## Extension of Amortization Periods

- Additional Extension
  - Additional 5 years of amortization for same charge bases may be requested
- Treasury must determine that:
  - Additional extension would provide adequate protection for plan participants; and
  - Denial would result in substantial risk to:
    - Voluntary continuation of plan; or
    - Substantial curtailment of pension benefit levels or employee compensation
- Notice to plan participants, unions, PBGC
  - To include description of funded status of benefits guaranteed by PBGC
- Treasury has 180 days to act upon application
- Treasury may consider information provided by interested parties

## Extension of Amortization Periods

- IF extension of amortization periods under IRC 412(e) applied for on or before June 30, 2005, is in effect  
THEN that extension is administered under pre-PPA rules including prior interest basis

## Actuarial Assumptions

- Currently, multiemployer plans use actuarial assumptions that are reasonable in the aggregate
- Under PPA, actuarial assumptions to be reasonable both individually and in the aggregate

## Maximum Tax-Deductible Contributions, Effective after 2005

- Basic annual maximum tax-deductible contribution is equal to:
  - Normal cost, plus
  - 10-year amortization of plan's unfunded liability
- Current override: basic amount not less than:
  - [100% of current liability (for benefits accrued to date valued at T-bill rates)] minus [actuarial value of assets]
- PPA changes this override as follows:
  - [140% of current liability] minus [actuarial value of assets]
- Combined limit test for DB and DC plans eliminated

## Modifications to Withdrawal Liability Rules

- Change in withdrawal liability cap applicable on sales of assets after 2006
  - Generally favorable for smaller employers
- Clarification of partial withdrawal rules
  - Applicable if employer transfers work to controlled entity
- Funds using presumptive method may apply “fresh start”
  - “Fresh start” must be as of plan year when assets exceeded value of vested benefits
  - Available to building & construction industry funds
- “Free-look rule” extended to building and construction industry funds
- Employer not required to pay assessment pending dispute resolution, in light of certain transactions viewed as attempted evasion

## Rule for Plans in Reorganization

- Testing period for projecting possible future insolvency extended from 3 years to 5 years
- Testing cycle shortened from 3 years to annually, after any determination of future insolvency

## Study of Impact of Changes in Multiemployer Plan Rules

- Treasury, Labor, and PBGC must complete study before 2012
- Agencies will report to Congress, with recommendations
- Recommendations must address effect of rules on small businesses
  - Effect of new funding requirements on financial status
  - Role of multiemployer system in helping small employers offer pension benefits

## Sunset of Funding Rules

- Funding Improvement and Rehabilitation rules do not apply for plan years beginning after 12/31/14
- BUT: rules remain in effect for fund already operating under Funding Improvement or Rehabilitation Plan at sunset date

# Reporting and Disclosure: Annual Funding Notice

- Required Elements:
  - Plan identifying information
  - Statement of actual funded percentage, less than 100% (or statement of 100% funding)
  - Statement of assets and liabilities for last three plan years
  - Statement of Funding Policy and Asset Allocations
  - Number of participants, by status: Actives, TVs, Retirees
  - If endangered or critical: statement of availability of remedial plans and data
  - Explanation of effect of any pending benefit change or known event
- Timing and Form
  - Must be issued within 120 days of plan year end
    - Exception: If fewer than 100 participants, must issue by Form 5500 deadline
  - Required to be understandable by average participant
  - May be provided in written, electronic, or other *reasonably accessible* format

## Reporting and Disclosure: Information on Request

- At request of Participants, Beneficiaries, Unions, or Employers, Plan must provide:
  - Periodic actuarial report (including any sensitivity testing)
  - Quarterly, semi-annual, or annual financial report
  - Application filed for extension of amortization periods, with any response
- Request to be limited to one per year
- Form and Limitations of Response
  - May be in written, electronic, or other accessible format
  - May not include any individually identifiable information on participants or employers
  - May not to reveal any proprietary information of plan, employers, or service provider
  - May charge for copying, mailing, etc.
- DoL to regulate form of response and permissible charges

# Reporting and Disclosure: Request for Withdrawal Liability Estimate

- Contributing employer may request:
  - Notice of estimated amount of withdrawal liability
    - Based on withdrawal at end of preceding plan year
  - Explanation of determination of estimated liability amount:
    - actuarial assumptions and methods for liabilities and assets
    - data
- Form and Limitations of Response
  - May be in written, electronic, or other accessible format
  - May charge for copying, mailing, etc.
- DoL to regulate form of response and permissible charges

# Reporting and Disclosure: Changes to Form 5500

## Additional Information required:

- Statement of funded percentage
- Number of employers obligated to contribute;
- List of employers contributing more than 5% of total contributions
- Number of participants for whom no contributions were required for last 3 plan years
  - Ratio of participant for whom no contributions were required during plan year to participants for whom no contributions were required during each of two preceding plan years
- Acknowledgment of amortization extension and effect on amortization requirement
- Acknowledgment of use shortfall funding method and resulting reduction in minimum required contribution
- Acknowledgment of critical or endangered status and summary of Funding Improvement or Rehabilitation Plan
- Number of employers that withdrew during plan year aggregate actual or estimated amount of withdrawal liability
- Statement of assets and liabilities of any merged plan
- Statement of actuarial assumptions and methods for projecting future retirements and benefit forms

## Reporting and Disclosure: Repeal of Summary Annual Report

- Summary Annual Report no longer be required after 2007 plan year.

# Reporting and Disclosure: Summary of Plan Information for Employers and Unions

- Plan must provide report to each union and contributing employer:
  - Information reported on Form 5500
  - Notice of right to copy Form 5500
  - Summary plan description
  - Summary of any material modifications
- DoL will publish model form for report

## Section 420 Transfer of Excess Assets to Health Accounts

- IRC 420 allows single-employer plans to transfer assets to 401(h) Accounts for health benefits of current retirees
- “420 Transfer” option extended to multiemployer plans
- Plans permitted to transfer assets in excess of 120% of current liability to provide health benefits for future retirees and for retirees for whom these funds are transferred pursuant to a CBA
- IRS required to issue regulations on transfers by multiemployer plans
  - Transfer to Welfare Fund instead of 401(h) Account may be allowed
- Effective after 2006 for transfers from multiemployer plans

## Additional Survivor Annuity Option Required

- Plans currently required to offer Qualified Joint & Survivor Annuity (“QJSA”) for married participants
  - Continuation to surviving spouse must be at least 50%
- PPA requires plans to offer Qualified Optional Survivor Annuity (“QOSA”)
  - If QJSA is less than 75%, QOSA must provide 75% continuation
  - If QJSA is 75% or more, QOSA must provide 50% continuation
- Delayed effective date for multiemployer plans:
  - If last CBA expires prior to 2008, then first plan year after 2007;
  - If last CBA expires during 2008, then first plan year after expiration
  - If last CBA expires after 2008, then first plan year after 2008

## Opportunities to Revoke Election of Non-Multiemployer Status or Elect Multiemployer Status

- Revocation of Election of Non-Multiemployer Status
  - MPPA permitted plans to elect not to be treated as multiemployer plans under specified conditions
  - PPA allows opportunity to revoke election of non-multiemployer status, under rules set by PBGC
- Election of Multiemployer Status
  - Available only if substantially all contributing employers are tax-exempt organizations and plan is maintained under CBAs
- Plan must provide advance notice of revocation or election to participants, union, and employers
- Deadline for revocation or election is 8/17/07

## Amendments

- Individual plan amendments will be required to conform with PPA
- Must be made on or before last day of first plan year beginning on or after January 1, 2009
  - December 31, 2009, for calendar plan years

## Conclusion

- PPA significantly alters current pension funding landscape for many multiemployer plans
- Many funds have already been considering newly required projections
- Trustees face difficult choices
- Administrators face additional time-consuming burdens
- Participants and employers may have to make sacrifices to improve long-term financial security of participant benefits

## Thank You For Attending/Question & Answers

If you have a question, press star, then one on your phone. If you wish to be removed from the queue, please press the pound sign or the hash key.

Or you can also email your question to:  
[Jacqueline.Rivera@buckconsultants.com](mailto:Jacqueline.Rivera@buckconsultants.com)

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This webcast will continue to be available for six months at this website.

<http://www.videonewswire.com/event.asp?id=35288>

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