

March 13, 2008

Summary of House-Passed PPA Multiemployer Technical Corrections

On March 12, the House passed H.R. 3361, the "Pension Protection Technical Corrections Act." Late last year, the Senate passed its version of PPA technical corrections (S. 1974, also entitled the "Pension Protection Technical Corrections Act"), which is very similar to the House-passed version of H.R. 3361. The Senate now must pass an identical version of H.R. 3361 for the bill to go to the President for his signature.

Among other things, the House-passed technical corrections bill includes certain changes to the multiemployer plan provisions included in the Pension Protection Act ("PPA"). For the most part, the bill simply fixes clerical and cross reference errors. ***Notably, the House-passed bill includes the change the Multiemployer Coalition requested to amend the PPA critical status rules so that the limitation on lump sums and similar payments does not apply to participants who had commenced receiving Social Security level income payments before the notice of critical status was sent.*** This provision had been dropped from the Senate-passed version of PPA technical corrections.

Among the other more notable changes and clarifications included in the House-passed bill are the following:

- The fix to the \$1,100/day excise tax on the trustees of a critical status plan for the failure to adopt a rehabilitation plan by the end of the 240-day period, so that the excise tax applies only to the period beginning on the day following the end of the 240-day period set forth in the statute. (As drafted in the PPA, the excise tax could be as much as \$265,100 for adopting the rehabilitation plan one day late.)
- The technical correction providing that the trustees of an endangered or critical status plan are required to implement the default schedule 180 days after the date the collective bargaining agreement expires, and removing the rule that the default schedule could be implemented earlier if the DOL certified that the parties are at an impasse.
- The technical correction clarifying that the failure by an employer to make contributions required under a default schedule imposed by the trustees is enforceable as a delinquent contribution under the ERISA enforcement rules.
- The technical correction amending the Code to define the term "plan sponsor" in the same manner as it is defined in ERISA (i.e., "the association, committee, joint board of trustees, or other similar group of representatives of the parties").
- The technical correction clarifying that, under the PPA rule allowing a multiemployer plan to go on or off the shortfall method without IRS permission if the plan has not, among other things, "used" the shortfall method during the preceding 5-year period, the plan is only required not to have "adopted or ceased using" the shortfall method during the applicable 5-year period.

- A technical correction providing that the prohibition on disclosing individually identifiable information does not apply with respect to any "plan investment manager or adviser, or with respect to any other person (other than an employee of the plan) preparing a financial report" required to be provided upon request.
- A change to the annual funding notice requirement for multiemployer plans regarding valuing assets and liabilities for the current plan year and the two preceding years to (1) apparently require that assets be reported on the basis of both fair market value and actuarial value, and (2) require use of the unit credit funding method, whether or not the plan uses it, by keying off the method in the endangered and critical status definitions section. (According to the staff summary of the bill, the changes are intended to conform the information that must be provided by a multiemployer plan with respect to assets and liabilities to the information that must be provided by a single employer plan.)

All of the changes are effective as if included in PPA.