PROTECT OUR PENSIONS

Broken promises mean broken lives

National United Committee to Protect Pensions

Your Pension Newsletter

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Letter to PBGC

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Regulatory Affairs Group
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Gentlemen:

On Thursday, January 5, 2017, the PBGC issued a request for information to inform the PBGC on issues arising from arrangements between employers and multiemployer plans involving an alternative “two-pool” withdrawal liability method. In that request, the PBGC was seeking information from … “all interested stakeholders, including multiemployer plan participants and beneficiaries, organizations serving or representing retirees and such other individuals ….”

The National United Committee to Protect Pensions ("NUCPP") is the type of organization referred to in the PBGC's RFI.

NUCPP was formed as a labor organization in December of 2016, for the purpose of protecting existing and future pensions of current and former union members who currently or have in the past participated in multiemployer defined benefit pension plans. Although NUCPP is a labor organization, it is not a labor union that is engaged in collective bargaining. Rather, its sole purposes are:

a. To protect participants of multi-employer defined benefit pension plans whose retirement benefits are in jeopardy by reason of the funded status of the plan.

b. To educate participants of multi-employer defined benefit pension plans as to methods that can assist these participants in protecting their pension benefits.

c. To seek out experts to design programs to protect benefits for participants in multi-employer defined benefit pension plans.

d. To seek information and provide information from the Pension Benefit Guaranty Corporation to help protect the benefits of participants of multi-employer defined benefit pension plans.

e. To provide information and to assist Congress in legislative actions to protect pension benefits of participants of multi-employer defined benefit pension plans.

f. To educate and inform unions, union members, government agencies and the public for accountability, reform and restoration of multiemployer defined benefit pension funds.

g. To support and work with all other organizations, pension funds, employers, unions and active and retired pension plan participants with the purpose of preserving and protecting multi-employer defined benefit pensions as earned and creating solutions to such pension plan solvency that is fair and equal to all.

h. To have a voice, a seat at the table and represent those that have been excluded the most and affected the most. That being the benefit participant, active and retired, from meetings, discussions, participation, hearings, proposals and input.

Although NUCPP was just organized as a national organization, its roots started as one committee to protect pensions in one state and has grown to 65 committees in 27 states since “Solutions not Bailouts” was introduced. There are thousands of members and is steadily growing. As a new organization, NUCPP has not had much time to formulate a response to the PBGC, but we do have some comments we would like to make.

NUCPP is quite aware of the reluctance of new employers to become contributing employers to a multiemployer defined benefit pension plan. Consequently NUCPP is in favor of and would support any withdrawal liability allocation arrangement, such as a “two-pool” arrangement that would encourage new employers to become participating employers in defined benefit multiemployer pension plans and also encourage existing contributing employers to multiemployer defined benefit pension plans to continue their participation in such plans.

However, NUCPP is greatly concerned with any withdrawal liability allocation arrangements that will reduce the funded status of these plans to the extent that such reduction would reduce pensions for active and retired participants of these plans.

It is NUCPP’s opinion and position that alternative withdrawal liability arrangements should enhance not only the funded status of a particular plan but, should enhance the opportunity for participants to receive the benefits that they have been promised. For example, in an alternative withdrawal liability arrangement, would it be possible to have the employers, as part of their future contribution to the plan, make a specified payment to the PBGC to be utilized if the alternative arrangement does not produce the funded status expected? We know that some plans are going to be financially more successful than other plans with these alternative arrangements and if contributing employers throughout the country that participate in these type of arrangements would make payments to the PBGC as part of their contribution, this might help assure the participants of all plans with alternative withdrawal liability arrangements, the benefits that they have been promised. Although paid by the employers, this type of payment would not necessarily be deemed to be only coming from the employer. In fact, employers negotiate pension contributions with the expectation that certain benefits will be purchased. If part of a future contribution would be paid to the PBGC, future accruals would be based on the part of the contribution that did not go to the PBGC. If structured properly, this alternative arrangement would provide more assurance to existing retirees and active participants that promised benefits would be provided either through the plan or through additional funding from the PBGC based upon the additional contributions made to the PBGC.

NUCPP believes that: (1) it is important to encourage new employers to come into plans and for existing employers to stay in the plans, and (2) any alternative withdrawal liability arrangements need to be structured to increase rather than decrease the expectations of the active participants and retirees.

NUCPP encourages out of the box creativity. Since forming our first committee, we have suggested self-contributions, assessments, restitution from fines levied and other common sense solutions that may have been overlooked to create solvency now and in the future, that is fair and equitable to all participants, employers, and funds.

In conversation with many smaller employers it is a fact that withdrawal liability is one of their primary concerns closely followed by protecting their investment and their employees. In other words, employers are concerned that their employees are not going to receive the benefits promised because of the failure of a pension fund, which was not caused by either the employer or the employee.

As we all know, the major true and tried solution to solvency for a defined benefit pension fund is increasing the ratio of actives to retired participants. We need to attract new employers and have current employers continue to remain in the plan. It is a challenge for the unions to achieve that goal with current legislation and future proposed legislation hindering that goal. Although “collective bargaining” is an agreement between both parties, employer and unions, in some states that is being discouraged.

Using creative, out of the box thinking, has there been any discussion exchanging withdrawal liability for contracts from current employers to remain in the plan and to attract new employers to the plan? As mentioned above, the main concern from the employers is the accumulating liability which could be hundreds of thousands a year to hundreds of millions a year. They cannot absorb nor pay that liability. As the small employer nears retirement he could possibly never be able to sell his company as the company's withdrawal liability far exceeds its net worth. Withdrawal liability is for the most part, money on paper, which the fund has a greater risk of never collecting due to (1) the possibility of the employer going bankrupt, (2) closing shop with lack of a buyer or just walking away. Whether any of the previous scenarios happen or not, the fund, the union, the PBGC, etc., will not collect the total withdrawal liability assessed because the withdrawing employers do not have the ability to pay. Pension Funds are relying on financial expectations that in most cases will not materialize. The number of those employers that can actually pay falls short of what is needed to cover the liability of the fund or the PBGC.

So, with that in mind, consider removing all withdrawal liability from current employers in their plans, encourage new employers to join the plan with no withdrawal liability obligations, by having all sign contracts to stay in the plan for 10, 15, 20, 25, 30 years, whatever is needed and agreed to. This would be real cash payed into the plans, a real cash flow, for the entire length of their contract. Not monies on paper that may never be recovered and leaving other companies holding the bag to pick up the difference. If an employer wants to decertify from the union, the contract is still honored with the contributions as it is currently under withdrawal liability in place. Employers could sell their businesses, with new owners paying what the business is worth not what the withdrawal liability demands, only what the term of the contract remains or renewed. The contracts could be worded and agreed to in many ways to cover current and future employees. First thought, if all goes well, employers will be getting out of it what they are paying for and will renew their contracts when the time comes. It should attract new employers.

As wild as the above seems, as we know there is a lot to be considered, and entertained, it is a concept that does address the problem of withdrawal liability, which is the main concern of all employers. It does address employers wanting to leave the plan because of withdrawal liability accumulating and it does address the possibility of attracting new employers to the plan that dislike withdrawal liability. It provides a future cash flow in real money.

As composite plans have the possibility of bleeding the multiemployer plans of their remaining funds, which in turn bleeds the participants to death, take a chance on out of the box thinking. Look and be creative. Think of all the ideas that were only dreams, but became reality and successful. Don’t take the easy way out. No matter what decision is made, down the road it will affect us all the same way, in time. Honor the promises made, especially to those that earned the promises, built all we have today and much of the future and continue to build for all today.

Thank you for letting us be part of your decision making and providing a seat and voice at the table for those that are affected the most.

Very truly yours,

Michael J. Walden
President, NUCPP

IN UNITY IS STRENGTH