Summary

Congress recently passed the *Consolidated and Further Continuing Appropriations Act, 2015* (the Act), which provides limited authority for the trustees of deeply troubled multiemployer plans to preserve benefit levels and prevent catastrophic losses in the long term by voluntarily suspending a portion of the benefit payments in the near term. To clear up any confusion and misrepresentations, the critical facts are:

- **This voluntary authority only applies to the small minority of multiemployer plans that are certain to exhaust their assets in the near future.**
- **Funding levels are steadily improving in the majority of multiemployer plans. The benefits in these plans are not at risk, and these plans are not eligible to use this authority.**
- **In the rare cases where this voluntary authority does apply, it can only be used when it will preserve participants' long-term benefits above what they would receive under prior law, and it is subject to strict safeguards to ensure that this is the case.**

What This Does and Does Not Mean for Participants

The benefit preservation provisions in the Act only apply to multiemployer plans that are certain to run out of money**. In the 90% of plans with rising funding levels, these provisions do not apply in any way.** The legislation is crystal clear on this point. The Act is also crystal clear that the trustees must have done everything else possible to improve funding levels before using these measures. **These new tools can only be used as a last resort to prevent the devastating benefit cuts that occur when a plan exhausts its assets**. They are not available in any other circumstance. For example:

- They cannot be used to reduce employer withdrawal liability.
- They cannot be used to maintain a high rate of future benefit accrual.
- They cannot be used as an alternative to raising the contribution rate.

These measures can only be used as the final option to preserve retiree benefit payments as high as possible when inaction means benefits are certain to be cut all the way to the meager PBGC guarantee level. For example, there is a construction industry plan in the Midwest that is headed for insolvency despite having already taken dramatic steps to improve funding, and the PBGC guarantee represents an average of only 50% of participant benefits. **The Act will provide the trustees of this plan with the discretion to voluntarily reduce benefit levels by an average of 10%, which will stave off insolvency indefinitely and prevent the massive benefit losses that would otherwise occur**. This action would preserve long-term benefits far above what was possible under prior law.

Safeguards and Participant Protections

The trustee actions under this provision are limited to the minimum amount necessary to prevent the plan from running out of money while maintaining benefits at the highest possible level. In the preceding example, this is an average suspension of 10%, and the trustees are not empowered to act beyond this point. Further, trustees are only permitted to act if each and every participant receives a benefit that is at least 110% of the PBGC guarantee. This floor will only apply to plans that already pay very low benefits or face the most serious distress, **and many insolvent plans that use this provision will be able to maintain benefit levels far in excess of the PBGC guarantee**.

The benefit preservation tools are also entirely voluntary on the part of the plan trustees. If the board of trustees, half of which consists of labor representatives, is not convinced that taking this action serves the long-term interests of the plan participants, these actions cannot happen. In addition, any proposed action to preserve benefits in this way must be submitted to and approved by the U.S. Treasury Department and, if approved, submitted to the participants for a vote before any reductions take place. Lastly, under this provision, the trustees are not permitted to make any adjustments to retirees age 80 or over, or to any retirees receiving disability benefits.

The benefit preservation provisions in the Act will have no impact whatsoever on the overwhelming majority of multiemployer plan participants. Most plans are not headed for insolvency, and these plans are not permitted to take these actions. Not only that, if funding levels should deteriorate in the future, **the Act specifically requires that the trustees and bargaining parties take all other available actions first before considering these 'last resort' benefit preservation measures.** These actions include raising contribution levels, reducing future benefit accruals, and scaling back ancillary benefits like subsidized early retirement and spousal benefits.

Why is Preventing Insolvency so Important?

After a multiemployer plan exhausts its assets, the Pension Benefit Guaranty Corporation (PBGC) provides financial assistance so that benefits payments can continue. However, this assistance does not cover the benefit payments in their entirety. Depending on the benefit level of the plan, **the PBGC 'guarantee' can represent only a small fraction of participants' benefits**. As an example, in one plan in Delaware that has fully exhausted its assets, some participants have reported receiving only 20% of their benefits from the PBGC

Making matters worse, the PBGC itself is very likely to exhaust its own assets within the next 10 years. Since the PBGC is not funded by the taxpayers, **the participants in deeply troubled multiemployer plans are at risk for losing their benefits in their entirety once the PBGC no longer has any assets left.**

The Bottom Line

For the minority of plans that have already taken all reasonable measures to improve funding levels, but are still certain to run out of money, the Act provides a way for the trustees to preserve benefit levels to the maximum extent possible and at levels higher than possible under prior law. **In many cases, for the plans headed toward insolvency, a modest sacrifice today will prevent disastrous benefit cuts tomorrow.** Use of these provisions is strictly voluntary, and is subject to many restrictions that will ensure they are only used for the intended purpose of protecting participants' retirement benefits.

There are critics who claim – without providing any alternative proposals – that these provisions will lead to irresponsible or unnecessary benefit losses. **The truth is that for these deeply troubled plans, doing nothing to stop the looming catastrophic benefit losses would be irresponsible.** Everyone involved in the exhaustive process of developing these provisions would have preferred a painless solution for insolvent plans, but that is simply not possible. The business and labor leaders who first proposed these measures, and the bipartisan members of Congress who made them law, have all demonstrated the courage necessary to face unpleasant facts and make the bold decisions necessary to avoid a rapidly approaching disaster.