Pension Reform: The Battle Continues

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Breaking through the noise to make sure your voice is heard in Washington can be very challenging. That is one reason the Construction Employers of America (CEA) was created — to ensure that signatory contractors have a voice in the policy debates in Washington affecting the construction industry. The Association of Union Constructors (TAUC) and the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA) are founding members of the CEA, which comprises more than a half-dozen national union construction contracting associations. We work together to raise awareness of the value of high-quality construction and engage on a range of public-policy initiatives to strengthen the domestic construction industry.

Unfortunately, COVID-19 restrictions on travel and large gatherings forced CEA to cancel its National Issues Conference, which would have been held May 5-7 in Washington. Each year, this premier event brings together hundreds of members from around the country to hear from federal policymakers about legislative and regulatory issues that will affect their businesses.

Multiemployer pension reform was scheduled to be one of the most important topics of discussion at the conference. While we can't meet in person, we've put together what we hope is the next best thing: a comprehensive overview of where reform efforts currently stand and the prospects for making real progress in 2020.

The Lay of the Land

Efforts to convince Congress to move forward with alternative plan designs, including a new "hybrid" or composite option for plans, have stalled while federal policymakers struggle to find solutions that both address failing pension plans and strengthen the overall multiemployer pension system. This failure to act threatens to undermine the multiemployer pension system and exacerbates the uncertainty for both the participants in these plans and the signatory employers who contribute to them.

The CEA continues to remind Congress and the administration that while only about 10% of plans in the multiemployer system face insolvency, the overall system and its contributing employers are under stress—even more so in the wake of COVID-19-related work restrictions. Many plans face significant unfunded liabilities and are subject to the same long-term risks that have driven other plans to insolvency.

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While we recognize and share the concerns about the effect of this crisis on plan participants, Congress and the administration need to understand that the system depends first and foremost on the viability of the contributing employer. Despite years of ever-increasing contributions, companies are subject to withdrawal liability that is frequently higher than the value of their company. Owners cannot sell their businesses; the risks are too great to pass along to their children or other heirs; and the liabilities hinder the ability to transfer ownership to employees and the formation of an Employee Stock Ownership Plan, ESOP.

Just staying in business is a challenge as employers face growing scrutiny from lenders and tighter credit markets. Again, we expect these problems will only increase in a post-coronavirus world. These liabilities are also a growing threat to companies' obtaining credit on reasonable terms. The unfunded liabilities create a barrier to new employers that want to enter the system and, worse, serve as an impetus for current employers to leave the plan, further destabilizing individual plans and the system overall. At the same time, policymakers need to recognize that active workers have seen decreases in their future benefits even in the face of increased contributions to their plans.

Is There a Solution on the Horizon?

We are pleased that a proposal issued late last year by Sens. Chuck Grassley, R-Iowa, and Lamar Alexander, R-Tenn — who chair the Senate committees with jurisdiction over multiemployer pension issues — has generated productive bipartisan discussions this year. While many aspects of the proposal concern stakeholders, the CEA has held that it is a blueprint to initiate bipartisan discussions, not an ending point. The good news is that composite plans are part of the proposal. It is our job to educate people on both sides of the aisle in both houses that composites are necessary to modernize the multiemployer system and can be implemented in a way that would allow broader segments of plans to use composite plans.

A key problem Congress faces is how to pay for the estimated $4 billion in annual costs to allow failing plans to partition liabilities in order to remain solvent. Some have suggested that the "system" should bear most of or all this cost. The CEA stresses that construction industry employers and active workers have already made significant sacrifices to cover unfunded liabilities in their own plans and cannot also be expected to fully finance the rescue of failing plans through premium increases. Extreme increases would weaken the financial health of individual employers and the plans. It doesn't make sense to bankrupt remaining plans to pay for the benefits promised by failed plans.

Additionally, the CEA points out that Congress has raised the PBGC premium rate for multiemployer plans over time and that the Multiemployer Pension Reform Act (MPRA) doubled its rate in 2015 and included automatic increases for inflation. Since, ultimately, the employer shoulders premium increases, construction employers argue that any increases must be phased in over a reasonable time period and that Congress should ensure that all other tools are fully deployed before considering increasing premiums. This includes fully implementing the MPRA reforms for failing plans, providing government funding to pay for proposals to partition and authorizing composite plans.

Beyond figuring out how to pay for multiemployer pension reforms, policy recommendations under discussion would significantly affect the multiemployer system. This includes a proposal to mandate a maximum rate of return — the plan "discount rate" — that plans can assume. Severe and sudden changes to the funding rules will have grave and unintended consequences. Even a modest change in investment assumptions can dramatically alter funding status. As previously stated, Congress must maintain a delicate

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