GROOM
LAW GROUP
CHARTERED

BENEFITS BRIEF

Updated October 30, 2015 www.groom.com

If you have questions, please contact your regular Groom attorney or one of the attorneys listed below:

Mark E. Carolan
mcarolan@groom.com
(202) 861-5424

Michael P. Kreps
mkreps@groom.com
(202) 861-5415

Louis T. Mazawey
lmazawey@groom.com
(202) 861-6608

Joshua Shapiro
jshapiro@groom.com
(202) 861-2613

Brigen L. Winters
bwinters@groom.com
(202) 861-6628

Congress Passes Budget Deal Affecting DB and Health Plans

Last night, Congress passed a two-year budget agreement – the Bipartisan Budget Act of 2015 (H.R. 1314) – that raises spending caps and lifts the national debt ceiling. Among the fiscal provisions are several changes to pension and healthcare benefits, which were largely included to generate an estimated $12.4 billion in revenue to help offset the cost of the legislation. The House passed the deal on October 28, and Senate passed the measure in a rare, early morning vote on October 30, several days in advance of the November 3 debt limit deadline. The President is expected to sign the legislation soon. We briefly summarize the current pension-related provisions below.

PBGC Premium Increases: The law increases Pension Benefit Guaranty Corporation ("PBGC") flat-rate and variable-rate premiums for single-employer defined benefit pension plans as follows:

	Old Flat Rate	New Flat Rate	Old Variable Rate (per $1,000 unfunded vested benefits)	New Variable Rate (per $1,000 unfunded vested benefits)
2016 - no change	$64	$64	$30	$30
2017	$64, indexed for inflation	$69	$30, indexed for inflation	$33, indexed for inflation
2018	$64, indexed for inflation	$74	$30, indexed for inflation	$37, indexed for inflation
2019	$64, indexed for inflation	$80	$30, indexed for inflation	$41, indexed for inflation
2020	$64, indexed for inflation	$80, indexed for inflation	$30, indexed for inflation	$41, indexed for inflation

The variable-rate premium cap – $500 per participant in 2016 – would still apply.
Under Congressional "scoring" rules, PBGC premium increases are generally scored as revenue increases, and in this case, the revenue is being used to offset some of the costs of the budget agreement. There is considerable precedent for that. For example, the Moving Ahead for Progress in the 21st Century Act of 2012 ("MAP-21") and the Highway and Transportation Funding Act of 2014 were both paid for, in part, by significant PBGC premium hikes.

GROOM
LAW GROUP
CHARTERED

Extension of DB Funding Stabilization Rates: The law also further extends the stabilized interest rates for funding defined benefit plans through 2020 before phasing out. After that, the stabilization corridor is reduced over the next four years.

For funding purposes, interest rates currently must fall within a 25-year average corridor. The corridor was scheduled to be expanded (*i.e.*, mostly phased out) after 2017, effectively lowering the minimum interest rate, which has the effect of raising a plan's minimum funding requirement. The new law extends the current corridor (*i.e.,* which has the effect of extending funding relief) through 2020, and more gradually reduce it until 2024, as follows:

Calendar Year:	Current Corridor: Minimum – Maximum	New Corridor: Minimum – Maximum
2016	90% - 110%	90% - 110%
2017	90% - 110%	90% - 110%
2018	85% - 115%	90% - 110%
2019	80% - 120%	90% - 110%
2020	75% - 125%	90% - 110%
2021	70% - 130%	85% - 115%
2022	70% - 130%	80% - 120%
2023	70% - 130%	75% - 125%
After 2024	70% - 130%	70% - 130%

Funding stabilization is scored to raise revenue because increased tax collections are expected to reduce the tax-deductible minimum required contribution for funding defined benefit plans. Because funding stabilization is disregarded for purposes of calculating the variable rate premium, it is also expected to increase PBGC premium collections by allowing plan sponsors to carry more unfunded benefit liabilities.

Accelerate 2025 PBGC Premium Due Date: Currently, a defined benefit plan must pay the applicable PBGC premiums by the 15th day of the tenth month after the start of the plan year (for calendar year plans, October 15th). The new law moves the due date forward one month (September 15th for calendar year plans) for 2025 only. This one-time, one-month acceleration has the effect of raising revenue because it pulls one more year into the 10-year window used for budget scoring purposes.

Expand Options for Plan-Specific Mortality Tables: Although the specifics aren't entirely clear, the law allows more plans to use their own mortality tables. Currently, plan sponsors are permitted to use a mortality table based on the plan's own mortality experience if approved by the IRS. To get that approval, the plan sponsor must demonstrate that the plan has a sufficient number of plan participants to justify an alternative table, and the plan must have been maintained for a long enough time to have credible information. The IRS prescribes its own methods to determine whether a plan has sufficient experience to use its own mortality and how the plan-specific rates are determined. In general, only very large plans can use this rule now.

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.

© 2015 Groom Law Group, Chartered • 1701 Pennsylvania Ave NW • Washington, DC 20006. All rights reserved.

The law significantly expands how a plan sponsor can show whether it has the credible information necessary to use its own mortality tables. The determination of whether a plan has credible information is made in accordance with "established actuarial credibility theory," which may be materially different from the current IRS standards. A plan is also permitted to adjust the IRS tables by plan-specific mortality.

In light of the new mortality tables published by the Society of Actuaries – which are expected to apply for minimum funding purposes in 2017 – this new provision could give an alternative for certain plan sponsors that can create their own tables. However, the new law does not provide any specifics regarding what is "established actuarial credibility theory" for these purposes, and the use of a plan-specific mortality table will still need to be approved by the IRS.

We understand that the mortality table provision raises some revenue. By reducing plan liabilities, it is estimated to reduce some employers' pension contributions – like funding stabilization, this reduces employers' pension-related tax deductions.

Repeal of ACA Automatic Enrollment: The new law also repeals the requirement in section 18A of the Fair Labor Standards Act ("FLSA"), as added by the Affordable Care Act, that employers with more than 200 fulltime employees automatically enroll new full-time employees in the employer's health benefit plans and continue the enrollment of current employees in such plans. The Department of Labor ("DOL") issued FAQ guidance in 2010 indicating that the requirement would not take effect until implementing regulations were issued, and that it anticipated that regulations would be issued by 2014. Subsequently, in 2012, the DOL issued guidance indicating that implementing guidance would not be issued by 2014 but provided no timetable for the issuance of guidance. Business groups have been vocal in their opposition to the provision and given the administration's lack of urgency in implementing it, there has been growing support for repealing it. Repeal of the provision also raises a significant amount of revenue.

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.

© 2015 Groom Law Group, Chartered • 1701 Pennsylvania Ave NW • Washington, DC 20006. All rights reserved.