Pension Fund Notes

Newsletter of the American Federation of Musicians and Employers' Pension Fund

AFM-EPF Will Likely Enter "Critical and Declining" Status in 2019

The AFM-EPF has been in "critical" status since 2010, and our actuaries project that we will enter "critical and declining" status sometime in the near future. In fact, unless the Fund earns 7% in the next five weeks, it is very likely that the Fund will enter "critical and declining" status for the year beginning April 1, 2019. Entering "critical and declining" status means that the Fund is projected to run out of money to pay benefits within 20 years. A determination of the Fund's status is made annually by our actuaries after the end of each fiscal year—March 31 for our Fund.

The Trustees continue their push for legislation in Congress to provide financial relief. However, since there is no guarantee that Congress will come together and adopt a solution, we also have to prepare for a scenario in which the Fund enters "critical and declining" status. Even if we avoid entering "critical and declining" status this year, we very likely won't be able to avoid it for more than another year or two. The long-term math simply doesn't work. With every passing month, we have to pay out much more in benefits than contributions or investment earnings bring in.

It is clear that additional contributions are not going to fix this problem. Our benefit liabilities (the value of all the future benefits earned by participants) are increasing much faster than the Federation can bargain more money into the Fund. Our actuaries have calculated that contributions would have to increase by 25% across the board immediately just to remain solvent over the next 30 years, and by 50% for the Fund to be projected to be fully funded 30 years from now. Contribution increases that high are not realistic.

Unfortunately, if the Fund enters "critical and declining" status, the Trustees are left with two unappealing options – to allow the Fund to run out of money or to apply to the government for approval to reduce benefits to try to prevent that from happening.

If the Fund does run out of money, a federal government insurer called the Pension Benefit Guaranty Corporation (PBGC) is supposed to provide funding to keep paying benefits—but it only pays benefits up to a certain limit. What's more, the PBGC itself is projected to run out of money by 2025. That means if our Pension Fund runs out of money in the future, unless something changes, everyone's benefits will be reduced to virtually nothing—an unacceptable result.

There is a second option. Under the Multiemployer Pension Reform Act (MPRA), if a fund enters "critical and declining" status, the Trustees can apply to the U.S. Department of the Treasury for approval to reduce participants' benefits by an amount sufficient to avoid insolvency. Although reducing earned benefits will be painful for everyone, absent legislative relief, the Trustees are planning to seek permission to do so because the alternative of running out of money leaves everyone with almost no benefits in the future.

Both Congress and Treasury created a long and complicated MPRA approval process that's designed to protect participants and ensure that any approved benefit reductions are necessary and are expected to actually keep a pension fund from running out of money over the long haul.

To begin with, there is the "goldilocks rule," which requires that proposed benefit reductions be sufficient to ensure that the Fund is projected to remain solvent for at least 30 years. However, the reductions can't be any larger than is necessary to remain solvent. The goldilocks rule tries to strike a balance. The government does not want plans going through the process unless it is expected to protect the plans' solvency. On the other hand, reducing even a portion of people's pensions can have a huge impact on their lives, so the government rightfully wants to make sure plans only make cuts that are absolutely necessary. This means that there is a very specific allowance for cutting benefits, and the Fund must prove to Treasury that we would be reducing them only by that amount.

If the Fund enters “critical and declining” status for the April 1, 2019 plan year, the Trustees plan to submit a MPRA application by the end of 2019. After submitting an application, the Fund must mail a notice to each of our 50,000 participants and beneficiaries of deceased participants. This notice will include an estimate of the proposed reduction to their monthly benefits.

The MPRA approval process should take at least a year (including review, public comment, Treasury approval, and a participant vote), so any benefit reductions approved by Treasury would not be expected to start until late 2020 or early 2021 at the earliest.

Potential Approaches to Benefit Reductions

While the Trustees do not have much discretion about the total amount of reductions, they still have to decide how the reductions will be designed—that is, which benefits are going to be reduced and how.

MPRA provides rules that must be strictly followed by all funds filing applications. First, MPRA includes some specific protections that limit benefit reductions for different categories of participants:

- Participants age 80 or older are fully protected.
- Participants between 75 and 79 are partially protected, using a sliding scale based on age.
- Participants receiving a disability pension benefit from the Fund are fully protected.

Additionally, no participant can have their benefit reduced below 110% of what the PBGC would pay if the Fund ran out of money.[1] Taking all of this into consideration, the Fund’s actuaries estimate that more than 50% of our participants are completely protected from benefit reductions under MPRA.

MPRA also says that benefit reductions have to be shared equitably. The law provides a list of equitable factors that can be considered by Trustees.

Benefit reductions must be based on the financial state of the Fund as of the end of the fiscal quarter before the quarter in which the application is submitted. So, we can’t know now how much benefits would be reduced. To prepare for a MPRA application, the Trustees are currently looking at alternative ways that benefits could be reduced fairly under MPRA. There are different options the Trustees could consider, including some that other pension funds have used in their applications.

For example, one equitable factor is to consider the history of benefit improvements and how high the multiplier was when participants actually earned their benefits. So, if the Trustees focused on that factor, they could consider reducing benefits earned at the $4.65 and other high multipliers, so that those benefits are calculated instead at a lower multiplier. We do not know now which multipliers would be reduced under this scenario, but it is extremely unlikely that there would be a need to lower the $1.00 multiplier.

Another equitable factor is the extent to which a participant or beneficiary is receiving a subsidized benefit. An example of a subsidized benefit is where someone took his or her retirement benefit before age 65, but did not have the benefits reduced by the full amount necessary to account for the fact that he or she is being paid for a longer period of time. Anyone who retired before age 65 prior to June 2010 received a subsidized early retirement benefit from the Fund. So, if the Trustees focused on this equitable factor, they could eliminate the subsidy for people who took early retirement before June 2010.

Other equitable factors include things like length of time in pay status, the amount of benefit or whether participants received post-retirement benefit increases.

The Trustees can also consider other factors even if they aren’t listed as examples in the statute. For example, they can look at changing any unique benefit features that were instituted when the Fund was in excellent financial condition and could afford them.

These are only examples to illustrate what kinds of approaches could be allowed in a MPRA application. The Trustees can weigh the factors in lots of different ways. The Trustees could use just one approach if it reduces benefits enough to avoid insolvency, or they could use multiple approaches. They could even decide to reduce everyone's benefit by the same percentage across the board—except for those participants who are protected, as noted above. Some other funds have used this approach.

There are no obvious right or wrong answers, and these difficult decisions will require agreement among the Trustees. No matter the approach we take, we know the result will be painful for our participants. But, we are faced with the seemingly impossible choice of reducing benefits now or seeing all benefits reduced to almost nothing when the Fund runs out of money.

Brad Eggen Appointed as "Retiree Representative"

Before an application is submitted, MPRA requires a large fund to appoint a retiree representative who will advocate for the interests of retired and deferred vested[2] participants and beneficiaries. Even though the Fund is not yet in "critical and declining" status, the Trustees have appointed Brad Eggen, a Minneapolis-St. Paul-based AFM-EPF retiree, to fill this role.

Brad has been an AFM trumpet player and brass instructor since his teens, and has worked full-time in the nightclub and jobbing scene. He has been the President of the Twin Cities Musicians Union, AFM Local 30-73, continually since 1990, including during the Minnesota Orchestra and St. Paul Chamber Orchestra lock-outs, and he has served as the Finance Committee Chair at recent AFM Conventions.

Brad has a master's degree in public affairs and a law degree. He has taught middle school instrumental students as a Band Director and has taught college courses in music business and arts administration. He is a lawyer and runs a law practice, having earned the Minnesota State Bar Association's President's Award for his service on a task force for Rules of Professional Conduct. He has been designated a "Super Lawyer" several times.

Brad has expressed his commitment to keeping retirees and deferred vested participants informed as MPRA alternatives are examined. Although not formally appointed until recently, Brad has been attending Trustee meetings for the past year to get up to speed about the Fund, to understand the Trustees' thought process and to participate in discussions about possible benefit reductions.

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While the Trustees are planning for a possible MPRA application in these ways, they also continue to push for legislation in Congress that will provide assistance to the Fund and the more than 120 other multiemployer pension funds across the nation now facing the same possibility of insolvency. The Trustees will strongly advocate for a solution that directly addresses the financial issues facing our Fund, while also treating our participants equitably.

The Trustees feel that it is incumbent on them to keep pursuing two tracks simultaneously: Energetically advocating for federal legislation that fully sustains the long-term solvency of our Fund, while <u>also</u> taking every action available under existing federal law to prevent the Fund from running out of money to pay benefits. The stakes are too high to put all of our eggs in one basket. If Congress passes legislation that allows us to withdraw our MPRA application or roll back benefit reductions while still avoiding insolvency, the Trustees can look at doing just that. In fact, this was required by the Butch Lewis Act, which unfortunately did not pass in the last Congress, but Chairman Neal of the House Ways and Means Committee has reintroduced the parallel Rehabilitation for Multiemployer Pensions Act in the Democrat-controlled House.

Your pension benefits are an important part of your retirement security. We are doing everything we can to preserve our Fund's ability to pay benefits long into the future.

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[1] The PBGC's guarantee is based in part on the number of years of vesting credit a participant has earned in the Plan. For example, the maximum guarantee for a participant with 30 years of service is $12,870 per year. The maximum guarantee for a participant with 10 years of vesting credit is $4,290. **The PBGC's website** contains more detailed information on how the maximum guarantee is calculated.

[2] A "deferred vested" participant is someone who has earned a pension benefit and isn't working in covered employment but hasn't begun to collect a pension yet.

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