

# **IRON WORKERS-LABORERS PENSION PLAN OF CUMBERLAND, MARYLAND**

## **Notice of Critical Status for the 2009 Plan Year April 24, 2009**

To: Participants and Beneficiaries, Local Union No. 568 of the International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 616 of the Laborers International Union of North America, Contributing Employers, Western Maryland Contractors Association, Inc., Pension Benefit Guaranty Corporation and Secretary of Labor.

The purpose of this Notice is to inform you that the Iron Workers-Laborers Pension Plan of Cumberland, Maryland (the "Plan") is in Critical Status for the 2009 Plan Year (January 1, 2009 – December 31, 2009). This is the second year in which the Plan has been found to be in Critical Status. On March 27, 2009, the Plan's actuary certified under Section 305 of ERISA and Section 432 of the Internal Revenue Code that the Plan is in Critical Status for the 2009 Plan Year. Federal law requires that you receive this Notice.

### **Critical Status**

The Plan is considered to be in critical status because it has funding or liquidity problems or both. The Plan actuary has done a projection of funding requirements for the next two plan years. For 2009, the Plan might have a funding deficiency, depending on the amount of contributions received during the plan year. For 2010, the projection shows that the Plan will have a funding deficiency. If the Plan has a projected funding deficiency for the current year or for any of the next three years, then the Plan is in critical status.

### **Rehabilitation Plan and Possibility of Reduction in Benefits**

Federal law requires pension plans in critical status to adopt a rehabilitation plan aimed at restoring the financial health of the Plan. The law permits pension plans to reduce, or even eliminate, benefits called "adjustable benefits" as part of a rehabilitation plan. If the trustees of the Plan determine that benefit reductions are necessary, you will receive a separate notice in the future identifying and explaining the effect of those reductions. Any reduction of adjustable benefits (other than a repeal of a recent benefit increase, as described below) will not reduce the level of a participant's basic benefit payable at normal retirement. In addition, except for benefit increases that were adopted or took effect on or after January 1, 2003, the reductions may only apply to participants and beneficiaries whose benefit commencement date is on or after April 26, 2008 (which is the date of the first Critical Status notice). But you should know that whether or not the Plan reduces adjustable benefits in the future, effective as of April 26, 2008, the Plan is not permitted to pay lump sum benefits (or any other payment in excess of the monthly amount paid under a single life annuity) while it is in critical status.

### **Rehabilitation Plan**

Federal law requires pension plans in critical status to adopt a rehabilitation plan aimed at restoring the financial health of the Plan. This is the second year the Plan has been in critical status. The law permits pension plans to reduce, or even eliminate, benefits called "adjustable

benefits” as part of a rehabilitation plan. On April 26, 2008, you were notified that the Plan could reduce or eliminate adjustable benefits, and that the Plan is not permitted to pay lump sum benefits (or any other payment in excess of the monthly amount paid under a single life annuity) while it is in critical status. If the trustees of the Plan determine that further benefit reductions are necessary, you will receive a separate notice in the future identifying and explaining the effect of those reductions. Any reduction of adjustable benefits (other than a repeal of a recent benefit increase, as described below) will not reduce the level of a participant’s basic benefit payable at normal retirement. In addition, the reductions may only apply to participants and beneficiaries whose benefit commencement date is on or after April 26, 2008. A Rehabilitation Plan was adopted by the Trustees on May 22, 2008. As permitted by a new law, Worker, Retiree and Employer Recovery Act of 2008, an election was made on February 6, 2009 to extend the Rehabilitation Plan for three years and not to update the schedules during the 2009 Plan Year.

### **Adjustable Benefits**

The Plan offers the following adjustable benefits which may be reduced or eliminated as part of any rehabilitation plan the Plan may adopt:

- ✓ Post-retirement death benefits;
- ✓ Sixty-month payment guarantees;
- ✓ Disability benefits (if not yet in pay status);
- ✓ Early retirement benefit or retirement-type subsidy;
- ✓ Benefit payment options other than a qualified joint and survivor annuity (QJSA);
- ✓ Recent benefit increases (that is, those that have occurred in the past 5 years);
- ✓ Service and Early Service Pension benefits (a participant may not be able to retire under these special provisions after 28 years or 25 years of service).

### **Employer Surcharge**

The law requires that all contributing employers pay to the Plan a surcharge to help correct the Plan’s financial situation. The amount of the surcharge is equal to a percentage of the amount an employer is otherwise required to contribute to the Plan under the applicable collective bargaining agreement. A 5% surcharge is applicable in the initial critical year and a 10% surcharge is applicable for each succeeding plan year thereafter in which the Plan is in critical status, until the contributing employer adopts a schedule under the Rehabilitation Plan. The Rehabilitation Plan was adopted by all contributing employers on May 22, 2008. Therefore, no employer is paying a surcharge.

### **Where to Get More Information**

For more information about this Notice, you may contact the Plan Administrator’s office at 301-777-7770 or by U.S. Mail at 119 South Centre Street, Room 6, Cumberland, Maryland 21502. You have a right to receive a copy of the Rehabilitation Plan from the Plan.

# Iron Workers-Laborers Pension Plan of Cumberland, Maryland

## Additional Explanation of Notice of Critical Status

April 24, 2009

This Additional Explanation contains further information regarding the critical status of the Iron Workers-Laborers Pension Plan of Cumberland, Maryland and Federal Law.

Please read and retain for future reference.

### I. Introduction – The Plan’s Actuarial Status for 2009

The Pension Protection Act of 2006 (“PPA”) amended the Employee Retirement Income Security Act of 1974 (“ERISA”) and the Internal Revenue Code (the “Code”) to impose funding rules for multiemployer plans, which are based on the actuarial status of the multiemployer plan. The new funding rules are effective for plan years beginning after 2007, and apply to the Iron Workers-Laborers Pension Plan of Cumberland, Maryland (the “Plan”). Beginning with the 2008 plan year, the Plan’s actuary annually must certify to the Secretary of Treasury and the trustees whether or not the Plan is in Endangered (“Yellow Zone”) or Critical Status (“Red Zone”) for that plan year. The term “*Critical Status*” is defined in ERISA Section 305(b)(2) and Code Section 432(b)(2), and it relates to the ability of the Plan to meet ERISA’s minimum funding requirements.

On March 27, 2009, the Plan’s actuary certified under ERISA Section 305 and Code Section 432 of the Internal Revenue Code that the Plan is in Critical Status for the 2009 Plan Year. The Notice of Critical Status was sent to inform you that the Plan is in Critical Status because the actuary has determined that in the next two plan years, the Plan is projected to have an accumulated funding deficiency for the 2009 and 2010 plan years.

### II. Explanation of the Rehabilitation Plan

ERISA and the Code, as amended by the PPA, require the trustees, as the Plan’s plan sponsor, to adopt a rehabilitation plan, which must be designed to reasonably enable the Plan to emerge from Critical Status over a 10-year period (extended to 13-year period on February 6, 2009). The Trustee’s must adopt a rehabilitation plan within 240 days of March 28, 2008. The Rehabilitation Plan was adopted by the Trustees on May 22, 2008. As permitted by a new law, Worker, Retiree and Employer Recovery Act of 2008, an election was made on February 6, 2009 to extend the Rehabilitation Plan for three years and not to update the schedules during the 2009 Plan Year.

The rehabilitation plan adopted by the trustees consisted of a range of options, which were proposed to the Contributing Employers and the Unions. The Employers and Unions adopted one or more options as part of the collective bargaining agreements (“CBAs”). The options describe the benefit adjustments and contribution rate increases that are necessary for the Plan to

emerge from Critical Status at the end of the 10-year period (extended to 13-year period on February 6, 2009). The PPA required that the trustees adopt a “Default Option” if the Employers and the Unions do not approve an option by way of an amendment to the CBAs. The Default Option must first reduce adjustable benefits to the maximum extent permitted by law and must reduce future benefit accruals to 1% of the hourly contribution rate, or 3.85 cents per hour.

The other options provided to the trustees require contribution increases but have fewer benefit reductions, if any. When the trustees adopted the rehabilitation plan and the bargaining parties agreed to the proposed options, the trustees are required to review the rehabilitation plan and the options annually and make adjustments, as necessary, to take into account the Plan’s actual funding. An election was made on February 6, 2009 to extend the Rehabilitation Plan for three years and not to update the schedules during the 2009 plan year. It is important to note, however, that any changes to the contribution rates stays in effect for the duration of the CBAs.

### **III. Explanation of Adjustable Benefits**

The following categories of adjustable benefits may be reduced or eliminated as per Code Section 432(e)(8):

- 1. Benefits, rights and features under the Plan, including post-retirement death benefits, the 60-month guarantees, and disability benefits not yet in pay status.**
- 2. Any early retirement benefit or retirement-type subsidy and any payment option, other than a qualified joint and survivor.**
- 3. Benefit increases that would not be eligible for a guarantee under ERISA section 4022A on the first day of the critical year (January 1, 2008) because the increases were adopted (or, if later, took effect) less than 60 months before such first day.**
- 4. Normal Service Pension benefits which permit retirement benefits at any age with 28 years of service and Early Service Pension benefits with 25 years of service.**

As stated in the Notice of Critical Status, any reduction or elimination of the adjustable benefits will **not** have an effect on a participant’s normal retirement benefits, with the exception of recent benefit increases during the past five years.

### **IV. Persons Whose Benefits May Be Adjusted**

In general, the trustees may reduce any adjustable benefits of any participant or beneficiary whose benefit commencement date (the effective date of pension, or if later, the date on which benefit payments begin) is on or after the date the Notice of Critical Status is provided. Participants and beneficiaries will be notified by a separate notice of any future benefit reductions and the effect of those reductions.

### **V. Questions**

For more information, you may contact the Plan Administrator’s office at 301-777-7770 or by U.S. Mail at 119 South Centre Street, Room 6, Cumberland, Maryland 21502.