

Bar & Restaurant and On-Sale Pension Fund

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NOTICE OF ZONE STATUS AND ELECTION TO FREEZE STATUS FOR 2009 BAR & RESTAURANT AND ON-SALE PENSION PLAN, EIN:41-6158573. PN:001

To: All Participants, Beneficiaries, UNITE HERE Local 17, Contributing Employers, Pension Benefit Guaranty Corporation and Department of Labor

Background

The Pension Protection Act of 2006 ("PPA") amended ERISA and the Internal Revenue Code to, among other things, impose additional funding rules for multiemployer plans with the goal of improving the financial condition of these plans. The PPA also developed status categories based on a plan's funding level. Beginning in 2008, the Plan's actuary is required to annually certify to the Secretary of the Treasury and the Plan's Board of Trustees whether or not the Plan is in Endangered or Critical Status (referred to as being in the yellow zone or red zone). For the 2008 Plan Year, the actuary certified that the Plan was neither in Endangered or Critical Status (that is, the plan was considered to be in the "green" zone). This is not the case for the Plan Year beginning January 1, 2009.

Due to the large losses suffered in the financial markets during 2008, the Plan's actuary has certified that the Plan is in Critical Status for the 2009 Plan Year. The Plan is considered to be in Critical Status because the Plan is projected to be below the minimum funding level required by law within the next four years, i.e., by 2012.

Under the PPA, plans in Critical Status must 1) develop a rehabilitation plan to stabilize the plan's funding status; 2) present the bargaining parties with one or more schedules of contribution increases and benefit reductions, and 3) impose temporary surcharges on contribution rates for contributing employers pending their adoption of a rehabilitation plan.

Election to Freeze Zone Status

The Worker, Retiree and Employer Recovery Act of 2008 (WRERA) was passed in December. This law provides plan trustees with the option to freeze their plan's zone status for the 2009 plan year at the level determined for 2008. This notice is to inform you that the Board of Trustees has elected under section 204 of WRERA to treat the Plan as being neither in Endangered nor Critical Status for the plan year beginning on January 1, 2009. This means that for the 2009 plan year, the requirements for plans in Critical or endangered status will not apply. However, the election applies only for the current plan year. The Trustees elected to freeze the zone status to provide time to consider all options available to improve the Plan's funding status. If the Plan is certified to be in endangered or Critical status for 2010, notice of the Plan's status will be provided and steps will be taken to improve the Plan's funded situation, which steps may include increases in contributions and reductions in future benefit accruals. If in Critical Status in 2010, the steps would include a surcharge on employer contributions and may also include amendments to reduce early retirement benefits for future retirees.

Additional information can be obtained from the Plan Administrator at (952) 854-0795, 3001 Metro Drive, Suite 500, Bloomington, MN 55425.