

# **LABORERS' NATIONAL (INDUSTRIAL) PENSION FUND**

905 16th Street, N.W.  
Washington, D.C. 20006

April 30, 2010

## **NOTICE OF "CRITICAL STATUS" WITHIN THE MEANING OF THE PENSION PROTECTION ACT OF 2006**

**To All Participants, Beneficiaries in Pay Status, Participating Unions, and Contributing Employers:**

This Notice is required by the Pension Protection Act of 2006 (PPA) to inform you that the Fund's actuary has completed its annual certification of the Pension Fund's funding zone status and has determined that the Fund's funding status places it in the "critical" (red) zone for 2010. In accordance with the PPA, the actuary submitted a certification of the Fund's red zone status to the U.S. Department of the Treasury on March 31, 2010.

The Pension Fund is considered to be in the red zone for 2010 because the actuary projects that the Fund will have an "accumulated funding deficiency" under PPA standards in 2013 unless significant changes are made to improve the Fund's funding over a period of years.

### **Rehabilitation Plan**

The PPA requires the Board of Trustees to develop a Rehabilitation Plan aimed at restoring the Pension Fund's financial health over the next 10 to 12 years or more. The Rehabilitation Plan must be adopted by the Board by no later than November 26, 2010.

In general, the parties to each collective bargaining agreement will be required to make or negotiate changes in the employers' contribution obligations to implement the Rehabilitation Plan. The Rehabilitation Plan will include at least one "default schedule", and may include one or more "alternative schedules", that the bargaining parties can adopt to implement the Plan. The bargaining parties can wait until negotiations on a new collective bargaining agreement to agree on a schedule, or they can re-open their current agreement to incorporate a schedule. The law provides for imposition of a default schedule after the current agreement expires if the parties are unable to agree.

The Board of Trustees will be required by law to annually assess whether the Pension Fund is recovering its financial health and on track to emerge from red zone status within the permitted rehabilitation period. Adjustments to the Rehabilitation Plan may be necessary or appropriate over time depending on investment performance and other developments.

More details will be provided to you once the Rehabilitation Plan is developed.

### **Possible Changes in "Adjustable Benefits"**

Under the law, a Rehabilitation Plan could include contribution rate requirements and revisions to the Fund's benefit schedule for future accruals, as well as reductions in, or elimination of, so-called

“adjustable benefits” and future accruals. If reductions in adjustable benefits will be included in the Rehabilitation Plan, a separate notice explaining those reductions will be sent to you. No change in adjustable benefits will reduce any participant’s accrued benefit payable at Normal Retirement Age. Further, no reduction in adjustable benefits will be applied to any pensioner or beneficiary whose benefits began (benefit commencement date) before April 30, 2010.

The “adjustable benefits” currently offered by the Pension Fund are:

- 60-months of benefits guarantee
- Disability Pension (if not in pay status)
- Early Retirement Pension and similar retirement-type subsidies
- Various pension benefit payment options (except for the 50% Husband and Wife Pension)

If and how these adjustable benefits will be changed under the Rehabilitation Plan is not yet known.

### **Lump Sum Payment Restrictions**

Effective April 30, 2010 and until the Pension Fund emerges from red zone status, the Pension Fund is not permitted by the PPA to pay any lump sum benefits or pay any other benefit in excess of the monthly amount that would be payable to the pensioner under a single life annuity. This means that the Fund must suspend its partial lump sum option, Social Security level income option, and widow/widower lump sum option. Exceptions are made for a lump sum cash-out of a participant or beneficiary whose entire benefit entitlement has an actuarial value that does not exceed \$5,000 and the \$5,000 death benefit.

### **Temporary, Employer Contribution Surcharge**

The PPA requires the Pension Fund to impose a 5% surcharge on employer contributions due for work performed (or compensation paid) during the period June 1, 2010 through December 31, 2010. Effective January 1, 2011, the surcharge rate increases to 10%. The surcharge remains in effect with respect to any particular contributing employer until the employer agrees to a Rehabilitation Plan schedule.

The surcharge is based on the total amount of contributions owed to the Pension Fund for a month, and is payable at the same time as the employer’s regular monthly contributions. The Fund will not issue a billing to employers for the surcharge. Rather, all employers should take this Notice as notification of this new legal obligation.

For example: A contributing employer owes contributions totaling \$10,000 for work performed (or compensation paid) in June 2010. The contribution payment and report are due by July 20, 2010 under the Fund’s rules. In addition to the \$10,000, the employer must include in its July 20th contribution payment a surcharge of \$500 for a total payment of \$10,500.

Non-payment of the surcharge by an employer is treated as a violation of federal law and as a delinquent contribution that is subject to interest charges and the Fund’s contribution collection rules.

### **Contribution Rate Reductions Prohibited**

The PPA still prohibits the Pension Fund from accepting collective bargaining agreements or participation agreements that provide for (a) a reduction in the contribution rate in effect under previous agreements, (b) a suspension of contributions for any period, or (c) any new exclusion of younger or newly hired

employees from Fund coverage. Congress considered such changes to be detrimental to a multiemployer pension plan's funding improvement program.

**More Information Needed?**

For more information about this Notice, you may contact Fund Administrator Mark W. Speakes, Laborers' National (Industrial) Pension Fund, 905 16th Street, N.W., Washington, D.C. 20006. The Pension Fund's office telephone number is (202) 737- 1664. The Fund office's business hours are 8:30 A.M. to 4:15 P.M. (Eastern Time), Monday through Friday. You will have a right to obtain a copy of the Rehabilitation Plan from the Pension Fund after it is adopted by the Board of Trustees.

cc: U.S. Department of Labor  
Pension Benefit Guaranty Corporation