

Notice of Critical Status For

Exhibition Employees Local 829 Pension Fund

As you know, the Pension Protection Act of 2006 (“PPA”) added requirements for measuring the financial health of multiemployer pension plans such as the Exhibition Employees Local 829 Pension Fund (the “Plan”). Starting with the 2008 plan year, the PPA requires that the Plan’s actuary determine the Plan’s financial status under new rules and certify that status to the IRS and the Independent Fiduciary on an annual basis. It is important to note that if the Plan’s status for a plan year is either “endangered” (known as the yellow zone), “critical” or “critical and declining” (known as the red zone), the Independent Fiduciary must notify all participants, employers, unions and other parties in writing of this certification, as well as take corrective action to restore the financial health of the Plan.

This is to inform you that on April 30, 2021 the plan actuary certified to the U.S. Department of the Treasury, and also to the Independent Fiduciary, that the plan is in critical and declining status for the plan year beginning February 1, 2021. Federal law requires that you receive this notice.

Critical and Declining Status

The plan is considered to be in critical & declining status because it has funding or liquidity problems, or both. More specifically, the plan’s actuary determined that the Plan has a projected funding deficiency for the plan year ending January 31, 2022 and a projected insolvency within 15 years from February 1, 2021.

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 it has been determined 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, the reductions may only apply to participants and beneficiaries whose benefit commencement date is on or after May 31, 2019. But you should know that whether or not the plan reduces adjustable benefits in the future, effective as of May 31, 2019, 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. A Rehabilitation Plan was adopted on December 23, 2019 that includes a Preferred Schedule and a Default Schedule and is intended to forestall insolvency.

Adjustable Benefits

As indicated above, adjustable benefits may be reduced or eliminated as part of any rehabilitation plan pension may adopt. “Adjustable benefits” means:

1. Benefits, rights, and features under the plan, including post-retirement death benefits, 36-month guarantees, disability benefits not yet in pay status, and similar benefits,

2. Any early retirement benefit or retirement-type subsidy (within the meaning of section 411(d)(6)(B)(i)) and any benefit payment option (other than the qualified joint-and survivor annuity), and
3. Benefit increases that would not be eligible for a guarantee under section 4022A of the Employee Retirement Income Security Act of 1974 on the first day of initial critical year because the increases were adopted (or, if later, took effect) less than 60 months before such first day.

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. With some exceptions, 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 employer agrees to and begins contributing under a collective bargaining agreement that implements one of the schedules in the rehabilitation plan.

For the remainder of the first year, the 5% surcharge will be due with respect to any contribution required to be paid on or after June 30, 2019, or actually paid after that date even if originally due earlier, and will continue until January 31, 2020. For subsequent Plan years, i.e., beginning February 1, 2020, the 10% surcharge will apply to contributions required to be paid or actually paid on and after that date.

Where to Get More Information

For more information about this notice, you may contact Henry Henkel, Fund Manager of the Exhibition Employees Local 829 Pension Fund at 201-592-6800, Zenith American Solutions, 140 Sylvan Avenue, Suite 303, Englewood Cliffs, NJ 07632. You have a right to receive a copy of the rehabilitation plan from the plan.

The American Rescue Plan Act of 2021 (ARPA) was signed into law on March 11. Among other things, ARPA provides financial assistance to multiemployer pension plans with solvency issues. Specifically, multiemployer plans that meet specific eligibility requirements may receive "special financial assistance" from the Pension Benefit Guaranty Corporation (PBGC). The Fund's actuary has indicated that the amount of the special financial assistance appears intended to enable plans to remain solvent and pay benefits without reduction at least through 2051, and perhaps longer. The Independent Fiduciary anticipates guidance from PBGC in July 2021 that will clarify certain provisions in the new law.