

American Rescue Plan Includes Significant Relief for Troubled Multiemployer Pension Plans

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On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (the “Act”), which will provide \$1.9 trillion of relief to people and organizations impacted by the COVID-19 pandemic. Once considered not politically viable in the U.S. Senate, the Act incorporates an expanded version of the Butch Lewis Emergency Pension Plan Relief Act of 2021, which has been floating around in multiemployer plan policy circles for several years. In doing so, the Act provides an unprecedented level of support to the most underfunded multiemployer pension plans in the United States, with limited strings attached.

Background

There are about 1,400 multiemployer defined benefit pension plans (“plans”) in the United States today, covering 10 million workers. Many plans are critically underfunded, threatening retirement benefits for covered participants. Further, many employers are exposed to significant liability as a result of the withdrawal liability provisions contained in the Employee Retirement Income Security Act of 1974. Moreover, the Pension Benefit Guaranty Corporation (“PBGC”) has stated that it will be unable to fund its multiemployer pension insurance program after 2026, in part due to the pending insolvency of the Central States Southeast & Southwest Areas Pension Fund, which is projected to be insolvent by 2025. The Act’s multiemployer pension provisions are designed to avert this crisis and to provide additional support to the PBGC.

Structure and Plan Eligibility

The multiemployer provisions contained in the Act are anticipated to include approximately \$86 billion in direct funding from the U.S. Department of the Treasury to the PBGC. Unlike prior policy proposals circulated in recent years, the Act’s financial assistance is in the form of grants (i.e., “free money”) instead of a loan or government bond structure. In fact, the Act expressly prohibits the PBGC from creating any repayment obligation related to the special financial assistance.

Under the statutory language, a plan is eligible for financial assistance if one of the following conditions is met:

- the plan is in critical and declining status in any plan year beginning in 2020 through 2022;
- the plan has had a suspension of benefits approved under the Multiemployer Pension Reform Act of 2014 as of the date of enactment;
- a plan actuary certified that the plan is in critical status in any plan year beginning in 2020 through 2022, has a modified funded percentage of less than 40 percent, and has a ratio of less than two active participants to three inactive participants; or
- the plan became insolvent after December 16, 2014, and has remained insolvent and has not been terminated as of the date of enactment.

The Act directs the PBGC to issue regulations within 120 days setting forth application requirements for eligible plans to obtain “special financial assistance.” The Act also allows PBGC to give priority consideration for certain plans by prohibiting applications to be filed for up to two years unless the plan can meet certain requirements demonstrating significant levels of underfunding or short-term insolvency risk.

Special Financial Assistance

The Act's multiemployer special financial assistance program is expected to have a material impact on plans that qualify due to the magnitude of the assistance an eligible plan can receive. Reports indicate that Congress expects approximately 185 plans to be eligible based on the criteria above, and the design of the program results in the plan receiving a lump sum amount necessary for the plan to fund benefits *for the next 30 years*.

Under the terms of the Act, a plan is eligible to receive the amount needed to pay all benefits due from the date it receives special financial assistance to the last day of the plan year ending in 2051. The Act requires this amount to be paid in a single, lump sum payment upon the PBGC approving the plan's application. Notably, the special financial assistance *does not* require a reduction to current benefit levels. Put another way, there is no requirement that a plan cut benefits from current levels or down to the PBGC-guaranteed level to receive special financial assistance. Further, the Act requires plans to reinstate benefit suspensions implemented under the Multiemployer Pension Reform Act of 2014.

While the terms of the special financial assistance come with no reduction in benefit requirements or loan-type conditions, one notable restriction contained in the Act requires any plan receiving special financial assistance to segregate and invest proceeds in investment-grade bonds or "other investments as approved by the PBGC." Plans that receive assistance will also be deemed to be in critical status until 2051. PBGC may also impose reasonable conditions on the special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions or allocation of expenses to other benefit plans, and withdrawal liability. But the PBGC cannot impose conditions concerning a prospective reduction in plan benefits or plan governance, nor can it create any new funding rules relating to the plan receiving special financial assistance.

Multiemployer plans will be allowed to apply for special financial assistance under the Act until December 31, 2024.

Withdrawal Liability Impact on Employers Remains Uncertain Pending PBGC Guidance

While these provisions will forestall insolvency of significantly underfunded plans and will benefit participants who would have otherwise seen dramatic decreases in benefits, the impact on employer withdrawal liability exposure remains uncertain. An earlier version of the legislation required that an employer's withdrawal liability be calculated without considering any special financial assistance received by a plan for a period of approximately 15 years. This would mean that employer withdrawal liability would remain unchanged for many plans despite the significant increase in total funding levels. However, this provision was removed in the version of the Act passed by Congress.

As referenced above, the final version of the Act permits the PBGC to impose "reasonable conditions" on plans receiving special financial assistance relating to withdrawal liability. Accordingly, employers will need to wait for PBGC guidance to determine how a plan's receipt of special financial assistance affects withdrawal liability.

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