Stimulus Bill Provides Extensive Pension Funding Relief

Many union-run multiemployer plans are severely underfunded

By Stephen Miller, CEBS
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The federal government would provide extensive financial support for underfunded pension plans under the stimulus measure that is moving through Congress.

The U.S. House of Representatives passed the American Rescue Plan Act (https://www.congress.gov/bill/117th-congress/house-bill/1319/text) (ARPA) on Feb. 26, and the U.S. Senate did so on March 6 (www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/Senate-Passes-COVID-19-Economic-Relief-Bill.aspx). The bill will now go back to the House in order for the chamber to approve the amended Senate version.

The ARPA includes the Butch Lewis Act, which provides funding relief for both single-employer defined benefit pension plans and union-managed multiemployer pension plans.

Single-Employer Pensions

An analysis by Segal (https://www.segalco.com/consulting-insights/single-employer-db-funding-relief-bill), an HR and employee benefits consultancy, describes the following changes that the ARPA would make to funding single-employer plans:

- **Amortization of funding shortfalls.** The Internal Revenue Code allows a plan sponsor to spread (amortize) contributions required to pay for plan underfunding. The bill lowers a plan sponsor's minimum required contributions by spreading amortizations over 15 years rather than seven years, among other relief.
- **Increase interest rates.** The higher the interest rates a plan can use to value plan liabilities, the lower the value of the liabilities. The interest rates used for minimum funding are based on recent market interest rates, but the law places limits on these interest rates based on a corridor around a 25-year historical average of interest rates.

"The bill currently allows for various optional retroactive applications for 2019 and 2020," said Jonathan Price, a New York City-based corporate retirement practice leader at Segal. "It's important for employers to consider, 'How do these new optional provisions affect prior certifications, benefit restrictions or credit balance elections?' "

He added, "This is a great opportunity for employers to think about diverting cash from near-term required pension contributions to investing in their businesses and operations. The interest rate provisions of the bill provide an important additional predictability of plan liabilities."

Mike Barry, a senior consultant at retirement plan advisory firm October Three, wrote that "Although many sponsors will welcome the funding relief in ARPA, in its current form [the] legislation does present some technical issues, mainly due to the early/retroactive effective dates of some proposals (http://www.octoberthree.com/legislative-update-single-employer-db-funding-relief-in-the-american-rescue-plan-act-technical-issues-presented-by-current-proposal/)."

The legislation, by giving plan sponsors the ability to delay the effective date of these changes, "will allow some sponsors to avoid most of these issues," he explained. "But for those sponsors who would like to ... have 15-year amortization apply in determining minimum funding beginning in 2019, we will need guidance."

Multiemployer Pensions

The legislation would make severely underfunded multiemployer pension plans eligible for "special financial assistance" that is not subject to any financial repayment obligations, and which is designed to cover the amount required to pay all accrued benefits through the last day of the plan year ending in 2051.

To accomplish this, the legislation would establish a fund within the Pension Benefit Guaranty Corp. (PBCG), the federal pension insurance program, to give financial assistance to multiemployer pension plans in danger of insolvency. Those plans would not have to repay this financial assistance.

According to attorneys at law firm Seyfarth, the act "basically would result in the federal government picking up the tab for certain seriously underfunded multiemployer pension plans for the next 30 years (https://www.beneficiallyyours.com/2021/03/01/parliamentarian-to-decide-fate-of-multiemployer-pension-reform-in-the-covid-relief-act/), without imposing any costs directly on such plans or their participating employers, unions, participants or retirees."

A plan could apply for special financial assistance through Dec. 31, 2025, and would be eligible if it meets at least one of the following conditions:

- It was in critical and declining status in any plan year from 2020 through 2022.
- It had applied to suspend benefit payments to pensioners under the provisions of the Multiemployer Pension Reform Act (www.shrm.org/resourcesandtools/hr-topics/benefits/pages/multiemployer-pension-payouts.aspx) (MPRA).
- It was in critical status in any year from 2020 through 2022 and had a modified funded percentage of less than 40 percent and the percentage of active to inactive participants in the plan was less than 40 percent.
- It became insolvent after Dec. 14, 2014, and was not terminated by the date on which the new legislation was enacted.

"Multiemployer plan sponsors in critical and declining plans, or who already took advantage of the MPRA benefit suspension relief, should quickly begin to work with fund professionals to assess their eligibility for the anticipated PBGC program to provide special financial assistance," advised David Brenner, national director of multiemployer consulting at Segal. "Other multiemployer plans that have been buffeted by COVID-19 pandemic-related losses should look at the temporary relief provisions that apply to plan years beginning March 1, 2020, through Feb. 28, 2022."

As of Dec. 31, 2020, the aggregate funded percentage of all U.S. multiemployer plans climbed to 88 percent (https://us.milliman.com/en/insight/multiemployer-pension-funding-study-december-2020), from 85 percent a year earlier, according to Milliman, an actuarial and consulting firm. However, the aggregate funded percentage at the end of 2020 for the 124 critical and declining multiemployer plans was only 34 percent—less than half of what it was for the same plans at the end of 2007.

October Three's Barry noted that "multiemployer pensions are insured by a separate PBGC fund from the one that is used for single-employer plans, and while the single-employer plan [PBGC coverage] is currently well-funded, the multiemployer fund is projected to run out of money in just a few years." The financial assistance that the new legislation will provide should help to avoid the depletion of PBGC funds.

Differing Views

According to the Pension Rights Center, which supports government aid for underfunded plans, the legislation "provides a commonsense and straightforward way to address the multiemployer crisis (http://www.pensionrights.org/blog/prospects-brighten-much-needed-pension-rescue-bill-it-heads-house-floor-vote) and avert another economic catastrophe."

Critics don't agree. The legislation "would saddle taxpayers with unfunded pension promises made by eligible [multiemployer plans] (https://www.washingtonexaminer.com/opinion/op-eds/to-the-union-allies-of-the-victor-go-the-pension-spoils), which are underfunded by more than $100 billion, while providing perverse incentives for other [multiemployer plans] to subsequently qualify," wrote Aharon Friedman, former senior tax counsel to the House Ways and Means Committee.

Freeze on 401(k) Inflation-Adjustments Removed

In addition to bailing out certain multiemployer pension plans and temporarily reducing funding requirements for single-employer pension plans, the House version of the ARPA would eventually have frozen annual cost-of-living adjustments (COLAs) that apply to the contribution limits of defined contribution plans, with an exclusion for collectively bargained plans.

The intent was to help fund relief for multiemployer pensions, according to the National Association of Plan Advisors (NAPA).

In addition, the House Ways and Means Committee—which first approved (https://www.napa-net.org/news-info/daily-news/covid-relief-bill-puts-ceiling-dc-plan-limits) the legislation Feb. 11—said of the annual inflation adjustments that "such favorable tax treatment should be limited so as not to disproportionately benefit high-income individuals when compared with middle- and low-income individuals," NAPA reported (https://www.napa-net.org/news-info/daily-news/rescue-plan-act-still-caps-retirement-contribution-limits).

After the financial services industry and others opposed the measure, the Senate removed this provision from its version of the bill.

An amendment (https://benefitslink.com/src/Congress/hr1319-senate-substitute.pdf) offered by Senate Majority Leader Chuck Schumer, D-N.Y., "removes the COLA freeze limit from the underlying bill," the website 401(k)Specialist reported (https://401kspecialistmag.com/freeze-on-401k-contribution-colas-removed-from-stimulus-bill-ara/).