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# Multiemployer Alert

Update on Issues Affecting Taft-Hartley Plans MAY 2020

## Multiemployer pension legislation

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Now that Congress has passed another COVID-19 stimulus bill (referred to as phase 3.5), attention has shifted to the next phase, which could include legislation directly impacting multiemployer pension plans. This Alert provides a summary of past multiemployer pension funding relief and recent proposals.

### Past multiemployer pension funding relief

In response to the global financial crisis of 2008, Congress passed a pair of bills that provided funding relief to multiemployer pension plans suffering substantial financial losses during that event:

- The Worker, Retiree and Employer Recovery Act of 2008 (WRERA)
- The Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA)

WRERA allowed plans to "freeze" their zone status for one year. For example, if a plan was in the "green" zone for 2008 and otherwise would have been certified as "non-green" for 2009, the Trustees could have elected to remain in the green zone for 2009. This afforded some plans the opportunity to include the market recovery of 2009 in their funding improvement or rehabilitation plans, or avoid the "yellow" or "red" zones altogether. WRERA also allowed "non-green" plans to extend their funding improvement or rehabilitation periods from 10 to 13 years. For a more detailed analysis of WRERA, see Milliman's January 2009 Multiemployer Alert.

PRA allowed plans to amortize the 2008 asset losses over 30 years instead of the standard 15 for purposes of determining minimum funding requirements. In addition, it expanded the maximum smoothing period for the 2008 loss from five to 10 years and widened the smoothing corridor of 80%-120% to 80%-130% of the market value of assets in determining the actuarial value of assets. The combination of these two measures allowed plans more time to recover from the 2008 financial losses, which similarly aided in the development of their funding improvement or rehabilitation plans, or similarly allowed them to avoid the "yellow" or "red" zones. For a more detailed analysis of PRA, see Milliman's June 2010 Multiemployer Alert.

Provisions from either or both of these past laws may be considered by Congress in crafting relief for multiemployer pension plans in response to the recent market events.

## Recent proposals

Multiemployer pension plans have been a hot topic in recent years, with annual Pension Benefit Guaranty Corporation (PBGC) reports forecasting insolvency for its multiemployer insurance program by 2025 or 2026. In contrast to the funding relief measures described above, recent proposals are more far-reaching and attempt to address a wide range of issues such as direct financial assistance to severely distressed plans, avoiding the PBGC's impending solvency, and revising the funding rules for multiemployer plans. Notable proposals that have made their way through various levels of the legislative process are summarized briefly below.

- The Rehabilitation for Multiemployer Pensions Act (previously known as the "Butch Lewis Act"): This bill was passed by the House of Representatives in July 2019 and is currently with the Senate Finance Committee. The bill would establish a new office within the Department of Treasury called the Pension Rehabilitation Administration. This office would administer 30-year low-interest loans to multiemployer plans currently, or projected to become, insolvent. The loans would be funded by Treasury-issued bonds, and would be used to de-risk the plan's investments backing inactive member benefits through annuity purchases or dedicated bond portfolios. The future of this bill is uncertain as the Senate Finance Committee has not held a hearing on it to date. For a more detailed analysis of the Rehabilitation for Multiemployer Pension Act, see Milliman's July 2019 Multiemployer Review.
- The Multiemployer Pension Recapitalization and Reform Plan: In November 2019 the chairs of the Senate Finance Committee and the Senate Committee on Health, Education, Labor, and Pensions released a white paper and accompanying technical explanation, providing insight on the Senators' vision of how to address the funding difficulties for struggling plans and the PBGC. The proposal included the following key reforms:
  - Increase PBGC premiums, including the introduction of a variable rate premium based on the plan's unfunded liabilities and stakeholder premiums paid by unions, employers, and retirees
  - Expand the PBGC's authority to take over a portion of a plan's liability in order to prevent the insolvency of the plan (called a "partition")
  - Increase the PBGC benefit guarantee
  - Limit the discount rate used by plans to calculate their funded status and minimum funding requirements to no higher than 6%
  - Revise zone status rules, providing for, among other things, the ability for more plans to reduce "adjustable benefits"
  - Allow plans to adopt the alternative funding rules referred to as "composite plans," previously introduced under the Giving Retirement Options to Workers (GROW) Act
  - Make several other technical revisions

  It should be noted the proposal has not materialized into a bill, although some of the individual concepts have been included in proposed legislation. For a more detailed analysis of the Multiemployer Pension Recapitalization and Reform Plan, see Milliman's November 2019 Multiemployer Review.
- The Emergency Pension Relief Act of 2020: In March 2020, proposed legislation was prepared in the Senate that included several of the items discussed previously, including the provisions of WRERA, PRA, expanded PBGC partition authority, and increased PBGC guarantees. In addition, it included a provision that would eliminate the benefit suspension provision added to law by the Multiemployer Pension Reform Act of 2014 for those not already approved as well as restoring benefits to pre-suspension levels for plans approved for a partition.

## Summary

As lawmakers shift to the next phase of COVID-19 stimulus, a review of past funding relief and recent proposals can provide insight into what, if anything, multiemployer pension legislation could look like. Relief measures similar to those in WRERA and PRA may help healthy plans weather the storm while other proposals contain elements that could help address the multiemployer crisis. It is notable that the concepts of expanded partition authority and increased PBGC guarantees are included in proposals by both Senate Republicans and Democrats. However, differences of opinion on how these measures would be funded could be a sticking point in negotiations.

Addressing system-wide changes is a difficult undertaking, as history has shown that sometimes pension reform measures have the unintended consequence of negatively impacting the defined benefit system (see the white paper "Understanding the multiemployer pension crisis"). Careful consideration should be afforded to any potential legislation to ensure that it will help and not hurt the multiemployer defined benefit system upon which many families rely.



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