

Multiemployer Pension Plans Get a Reprieve — But More Reform Is Needed

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After many years of discussion and debate, Congress has taken action on the impending multiemployer pension crisis — which, if left unaddressed, would have led to the failure of over 150 plans covering roughly 1.5 million active and retired workers. Although primarily aimed at the COVID-19 pandemic, the recently passed American Rescue Plan Act (ARPA) provides special financial assistance to failing multiemployer plans that will keep these plans afloat for many years to come. ARPA also contains temporary funding relief that is broadly available to multiemployer pension plans.

Despite extensive negotiations that sought a bipartisan solution to the pension crisis, ARPA was passed along strictly partisan lines. While ARPA does not address the fundamental weaknesses of the multiemployer pension system that led to the current crisis, it has averted the imminent collapse of the system, which is good news for participants and contributing employers.

The temporary funding relief provisions of ARPA allow plans to freeze their zone statuses for a year, extend their funding improvement and rehabilitation periods, and recognize investment and other losses over an expanded time horizon. These provisions may allow some plans to take less severe measures to improve their funding levels compared with prior law. However, those measures would need to remain in place over a longer period of time, as ARPA does not make any permanent changes to the funding goals. The temporary funding relief provisions of ARPA may have a modest impact on near-term contribution and benefit levels but are unlikely to affect many plans dramatically.

Under ARPA, underfunded multiemployer plans that meet certain conditions will receive lump sum payments from the government that do not need to be repaid. The Congressional Budget Office has estimated that these payments will total \$86 billion, though the legislation does not cap the amount that can be paid. Plans that are projected to be insolvent within 20 years or have implemented benefit suspensions under the Multiemployer Pension Reform Act are eligible for assistance under ARPA. Certain recently insolvent plans are also eligible, as are critical status plans that have a ratio of active to inactive participants of less than 2-to-3 and a funded ratio below a specified level.

The application window for special financial assistance is open for four years, so it is not necessary for plans to act immediately. The amount of financial assistance that eligible plans will receive is determined such that plans will be projected to remain solvent until 2051. There are some significant ambiguities in the assumptions and methodologies used to determine the amount of assistance, and depending on how those ambiguities are resolved, eligible plans might actually be solvent for a longer or shorter period of time. Regulations clarifying the amount of assistance are likely to be issued in July, and plans are not able to apply for assistance until then.

ARPA special financial assistance is, of course, an enormously positive development for the participants and employers in the deeply underfunded plans that will receive payments. The positive impacts of ARPA are, however, not limited to the plans that are eligible for assistance. Keeping plans solvent reduces the liabilities of the

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Pension Benefit Guaranty Corporation, thereby reducing the need for higher PBGC premiums. In the absence of ARPA, it is likely that those premiums would have increased dramatically across all multiemployer plans in the coming years, as opposed to the far more modest deferred increase that was included in ARPA.

Additionally, without ARPA, in roughly five years a very large number of participants would have lost their benefits nearly in their entirety. It is likely that Congress would have stepped in to prevent this calamity at that time, but a last-minute bailout might have been accompanied by punitive measures targeting labor unions. Many members of Congress blame unions for the pension crisis, as well as other perceived issues, and being forced to save more than a million participants from massive benefit losses would have provided a pretext for significant anti-union measures. The collectively bargained employers contributing to

SPOTLIGHT ON PENSIONS

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the pension plans might have ended up as collateral damage.

While ARPA has dealt with the immediate problem in the multiemployer pension system, much remains to be done. All the instabilities and weaknesses that allowed roughly 150 plans to become hopelessly underfunded remain, and there is nothing preventing the plans that are currently healthy from meeting the same fate in the future. Moreover, the employers contributing to multiemployer plans are still essentially acting as insurers of future stock market returns. The absurdity of this arrangement becomes clear when you consider that no actual insurance company is willing to take on such a risk.

The multiemployer pension system will

not become truly sustainable until it is reformed to manage risk more appropriately. Either benefits must be supported by low-risk investments, or to the extent that investment risk is taken, the benefits provided must be flexible enough to absorb that risk when necessary. To this end, for years Congress has considered authorizing a new type of multiemployer retirement plan known as a composite plan. Composite plans operate much like current pension plans, except that there is no concept of withdrawal liability, and once an underfunded plan has taken all the traditional measures to raise its funding level, the trustees are authorized to reduced benefit levels to maintain the financial integrity of the plan. Composite plans have

been included in proposals released by both Democrats and Republicans, though they could not be included in ARPA due to procedural constraints.

To use a metaphor, ARPA has extinguished the flames but the house remains highly flammable. Permanent fundamental reforms are needed to ensure that plans do not make promises to participants that they cannot keep, and to ensure that employers are not subjected to unreasonable and unmanageable financial risks. Composite plans represent a large step in the right direction and are one of the few topics on which both parties have agreed in recent years. It is imperative that all stakeholders continue to remind members of Congress that the job is not finished yet. ■



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