

The American Rescue Plan Act Provides Relief for Underfunded Multiemployer Pension Plans

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On March 11, 2021, President Biden signed the \$1.9 trillion COVID-19 relief bill, the American Rescue Plan Act (ARPA), into law. While the legislation contains a myriad of provisions, this article focuses on the pension provisions under the Butch Lewis Emergency Pension Plan Relief Act (Butch Lewis Act) impacting multiemployer pension plans (e.g., pension plans in which multiple employers contribute pursuant to a collective bargaining agreement).

Based on the latest reports, more than 100 multiemployer pension plans were at risk of becoming insolvent in the next twenty years, which would leave millions of retirees without their vested benefits. ARPA makes some relatively minor changes to multiemployer plans. For example, ARPA allows certain plans to amortize investment losses over a 30-year period instead of 15 years, and plans can retain their “endangered” or “critical and declining” statuses or choose to delay the election of such status.

Most notably though, ARPA allows for underfunded multiemployer pension plans to be eligible for “special financial assistance” funded by the federal insurance program for pension plans, the Pension Benefit Guaranty Corporation (PBGC). This assistance, expected to total almost \$86 billion distributed to struggling funds, would not be subject to repayment and is meant to cover all accrued benefits through 2051. Eligibility for such assistance is determined by the following:

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- Whether the plan is in critical and declining status;
- Whether the plan has approved benefit suspensions or cuts;
- Whether the plan is in critical status with a funding percentage of less than 40% with more inactive participants than active ones in any plan year beginning in 2020 through 2022; and
- Whether the plan is already insolvent.

The PBGC has yet to release guidance on how the special financial assistance will be administered or how funds can apply for such assistance. It is expected to be released within 120 days of ARPA's enactment.

Despite the welcome relief for pension plan participants, the impact of this guidance on contributing employers is less clear. ARPA is silent on whether employers are required to contribute to a pension plan beyond the original 15-year period as ERISA requires. Further, unlike the House's first version of the bill, the enacted legislation is silent on how an employer's withdrawal liability is calculated. For example, the House's version provided that for the 15 years following the pension fund's receipt of financial assistance, the total withdrawal liability would not take that assistance into account. Withdrawing employers would therefore owe the same amount as they would prior to receiving the subsidy.

Until the PBGC issues its regulations and guidance on implementing the special financial assistance to struggling funds, the impacts on contributing employers will not be completely certain. For now, contributing employers should be aware that their obligations may change in the near future.