The McKeogh Company

March 16, 2021

PENSION NEWS

AMERICAN RESCUE PLAN ACT OF 2021

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 into law.

Subtitle H of the Act includes pension reform. Former versions of the pension section were titled "Butch Lewis Emergency Pension Plan Relief Act of 2021."

This article will provide a brief summary of the Act's pension provisions.

Multiemployer Plans — Temporary Relief

Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical, or Critical and Declining Status

- For the plan year beginning in the period from March 1, 2020 to February 28, 2021 or the next succeeding plan year, plans will be permitted to push the pause button as to zone status and elect to use the prior year status. So, a calendar year plan, for example, could elect to use its 2020 zone status for 2021, or its 2021 zone status for 2022. This will provide relief to plans moving to a less favorable category.
- An endangered or critical status plan which elects a temporary delay of status will not be required to update its funding improvement plan or rehabilitation plan until the year following the applicable "pause" year.
- Plans must notify the Secretary of the Treasury and plan participants of the election.

> *Comment:*
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> *Any plan that would have been in critical status absent an election to pause its zone status will not be assessed an excise tax on any accumulated funding deficiency in the election year.*

Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 or 2021

- If a plan is certified to be in critical or endangered status for a plan year beginning in 2020 or 2021, it will be eligible to elect an extended funding improvement or rehabilitation period.
- Funding improvement plan periods for endangered plans will be extended from 10 to 15 years, funding improvement plan periods for seriously endangered plans will be extended from 15 to 20 years and rehabilitation plan periods will be extended from 10 to 15 years.
- Extensions are effective for plan years beginning after December 31, 2019.

> *Comments / Outstanding Questions:*
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> ** How will WRERA extensions be treated?*
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> ** Will eligible plans that change status after 2021 be eligible for the extended period?*

Adjustments to Funding Standard Account Rules

- Plans which meet certain solvency tests as of February 29, 2020 may elect to amortize net investment losses and other losses related to COVID-19 (including experience losses related to reductions in contributions, reductions in employment, and deviations from anticipated retirement rates, as determined by the plan sponsor) over an extended period (up to 30 years).
- Plans that elect this option will be subject to certain restrictions on benefit increases for a limited number of years.

> *Comments:*
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> ** Note that this is similar to the relief that was provided to plans related to 2008 investment losses. The concept of non-investment losses was not included in the 2008 relief.*
>
> ** There is no immediate guidance on how to calculate and reflect demographic experience losses for purposes of this extended amortization.*
>
> ** Plans which receive financial assistance are not eligible for extended amortizations.*

Multiemployer Plans — Financial Assistance

Special Financial Assistance Program for Financially Troubled Multiemployer Plans

- Eligible plans may apply to the PBGC for financial assistance. To determine eligibility, a plan must pass one of the following four tests: (1) certified as critical and declining in a plan year beginning in 2020, 2021, or 2022, (2) received approval for benefit suspensions prior to 3/11/2021, (3) certified in critical status with a RPA current liability funded percentage less than 40% and a ratio of active to inactive participants less than 2/3 in a plan year beginning in 2020, 2021, or 2022, or (4) became insolvent after December 16, 2014 and has remained insolvent but not terminated as of 3/11/2021.
- If approved, financial aid will be provided in the form of a lump sum equal to the amount of money required for plans to pay all benefits through 2051. There is no stated cap on the amount of aid that will be provided to an individual plan.
- Any plans that have suspended benefits and receive finan-

cial aid will need to restore benefits to the pre-suspension levels and repay participants the benefits that had been reduced during the suspension period.

- Priority consideration may be granted for the first two years of the program for (1) plans likely to go insolvent within five years, (2) plans with an expected level of aid of $1.0 billion or more, (3) plans that suspended benefits, or (4) other plans deemed eligible based on facts and circumstances.
- There is no requirement for plans to repay the money.
- Applications are due by December 31, 2025. Revised applications may be accepted through December 31, 2026.
- There will be restrictions on the assumptions used to determine eligibility and the amount of aid provided.
- The financial aid will come with restrictions on the plans.
  - Limited investment options for the money.
  - Limited uses of the money — namely to pay benefits and expenses.
  - Plans will be presumed to be red zone (i.e. critical status) through 2051.
  - Plans will have restrictions on benefit improvements and contribution reductions.
  - Plans will be prohibited from imposing benefit suspensions prospectively.
  - Plans that receive aid will continue to pay PBGC premiums.

Comments:

** Plans that receive financial assistance for restoring benefits that were previously suspended will see an increase in both assets* <u>*and*</u> *liabilities. It is not guaranteed that the funded position will improve.*

** The law spells out the rules defining which plans are eligible for relief (see first bullet point in this section), but it is possible that when the amount of relief is calculated, the result will be $0. If a plan is projected to have enough money to pay all benefits and expenses through 2051, then no assistance would be provided. More guidance is needed as to how the financial relief will be calculated.*

** There are several timing issues with respect to the interaction of the new law's provisions. For example, the special rules for extending the time to amortize losses due to the pandemic are not available to plans getting special financial assistance. Plans have until 2025 to apply for assistance. So, for years before 2025, a plan might not know whether it is eligible for the amortization extensions or not.*

Multiemployer—PBGC Premiums

- The flat rate premiums to the Pension Benefit Guaranty Corporation (PBGC), which are $31 per participant in 2021, will increase to $52 per person for plans years beginning after December 31, 2030 and will be indexed for inflation thereafter.

Comment:

Under current law, the PBGC premium rate is indexed and has been increasing approximately $1 per year since 2015. So the increase in 2031 may be in the range of $8—$12 per participant.

Single Employer Plans

<u>Extended Amortizations</u>

- For plan years beginning after December 31, 2021 (or, with sponsor election, plan years beginning after December 31, 2018, December 31, 2019, or December 31, 2020), shortfall amortization bases before the applicable year will be reduced to zero and the shortfall base in the applicable year and all subsequent years will be amortized over 15 years.

<u>Extension of Pension Funding Stabilization Percentages</u>

- Interest rates used for funding may continue to be smoothed in relation to the 25-year average. The applicable corridor around 25-year interest rates is set to 95% to 105% for any plan year starting in 2020 and ending in 2025, with a diminishing corridor through 2029.
- A floor of 5% was added to each smoothed segment rate used for funding purposes.

Comments / Outstanding Questions:

** If the relief is applied retroactively, can plans recategorize contributions made for prior years?*

** Will carryover balance / prefunding balance be re-calculated? How?*

** Can prior elections to burn the credit balance be voided?*

Now What?

This law presents sweeping changes to the pension landscape. Regulations are expected within 120 days from the law's enactment which will offer additional clarification and guidance.

The summary presented here is subject to change and/or clarification as more information becomes available.

Please contact your McKeogh Company consultant for more information about how this legislation will affect your plans.

IMPORTANT:

This newsletter is meant to discuss important topics, but is not meant to be an authoritative description of any law.

Legal counsel should be consulted before taking any action in connection with compliance with any law.

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