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Multiemployer Pension Reform Likely on the Table in Phase 4 Coronavirus Bill

Alert
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By Tom Dowling and Nick Bertron

Since the coronavirus (COVID-19) first emerged as a serious health emergency, Congress has moved quickly to pass three major pieces of legislation designed to address the public economic and health crises caused by the pandemic. According to reports, House Democrats have prioritized multiemployer pension reform in previous negotiations regarding coronavirus relief legislation, and are likely to continue to do so as lawmakers consider a potential "phase 4" COVID-19 relief bill.

Since the beginning of 2018, lawmakers from both sides of the aisle have introduced three major proposals attempting to address the ongoing multiemployer pension plan crisis. The proposals, each of which are summarized below, will likely provide the framework for any pension reform discussions that may take place in the context of future COVID-19 relief legislation. At this point a timeline for any further legislative action is uncertain as both the House and Senate are out of session until April 20, but reports indicate that a fourth relief bill could be passed between late April and mid-May.

Rehabilitation for Multiemployer Pensions Act of 2019

The Rehabilitation for Multiemployer Pensions Act of 2019 (MPRA), also referred to as the "Butch-Lewis Act" proposes to establish a Pension Rehabilitation Administration (PRA) within the Department of Treasury that would administer a new trust fund to make loans to certain underfunded multiemployer defined benefit pension plans. The MPRA was reportedly included in the House version of the Coronavirus Aid, Relief and Economic Security Act (CARES Act), but was omitted from the final version signed by President Trump on March 27, 2020.

The key provisions of the MPRA include the following:

- To be eligible for a loan, a plan must: (1) be in critical and declining status as defined in the Pension Protection Act of 2006 (PPA); (2) be in critical status under the PPA, be less than 40% funded, and have a ratio of active to inactive participants less than two to five; or (3) be insolvent, and become insolvent after December 16, 2014, and have not been terminated.
- As a condition of receiving a loan, a plan cannot increase benefits, allow participating employers to reduce their plan contributions or accept a collective bargaining agreement that would reduce contribution rates.
- Loans are to have "as low an interest rate as is feasible" and would consist of only interest for 29 years, with the full principal in year 30. If a plan were unable to make any payment on the loan, then the PRA would negotiate revised loan terms for repayment. The revised terms could include installment payments over a period of time and forgiveness of all or a portion of the loan principal.
- If an employer withdraws from a multiemployer plan before the end of the 30-year loan repayment period, the plan's withdrawal liability would be calculated as if it were a mass withdrawal (which occurs when all or substantially all of the employers in a multiemployer defined benefit plan leave the plan).

Should the provisions of the MPRA be included in future COVID-19 relief legislation, employers participating in a plan receiving funds from the PRA will find it even more difficult to exit the plan due to the additional liability imposed on employers who withdraw during the 30-year loan repayment period.

Multiemployer Pension Recapitalization and Reform Plan

Senate Republicans introduced their own multiemployer pension reform plan, the Multiemployer Pensions Recapitalization and Reform Plan (MPRRP), on November 20, 2019. The plan, authored by Senate Finance Committee Chairman Chuck Grassley (R-IA.) and Health, Education, Labor and Pensions Committee Chairman Lamar Alexander (R-Tenn.), was published in the form of a white paper and technical explanation. The key components of the proposal included the following:

- **Expanded PBGC Partition Authority:** The MPRRP proposes to expand the Pension Benefit Guarantee Corporation's (PBGC) existing partition authority by establishing a "special elective partition program" that provides a 12-month window in which an expanded class of multiemployer pension plans may request a partition order from the PBGC. If approved, the plan may shift certain pension benefit liabilities to the PBGC that are attributable to participants who have been "orphaned" by employers who previously withdrew from the plan, if certain requirements are met.
- **PBGC Multiemployer Insurance Guarantee Increase:** Under current law the PBGC guarantee covers 100% of the first $11 of a participant's monthly pension benefit, plus 75% of the next $33 of the

participant's monthly pension benefit. The MPRRP proposes to increase the guarantee to 100% of the first $56 of a participant's monthly pension benefit and set a minimum monthly benefit of $250. For an individual with 30 years of service, the increased guarantee would take the participant's guaranteed maximum benefit from $12,870 per year to $20,160 per year.

- PBGC Multiemployer Plan Flat-Rate Premium Increase: The sponsor of a multiemployer pension plan pays a flat-rate premium to the PBGC for insurance coverage, which is payable with respect to every participant with a benefit under the plan. In 2019, the annual flat-rate premium was $29 per participant. The MPRRP proposes to raise the current flat-rate premium from $29 per participant to $80.
- Addition of Multiemployer Plan Variable-Rate Premium: The MPRRP proposes to add a new variable-rate premium that would be paid by multiemployer plans. The premium rate would be equal to 1% of the plan's current unfunded liabilities divided by the number of participants in the plan. The variable rate premium is capped at the lesser of: (1) $250; or (2) the plan's average benefits reported in the plan's most recent Form 5500, calculated as the total benefits distributed in the plan year divided by the participants and beneficiaries in pay status.
- Addition of "Stakeholder" Copayments: Under the MPRRP, a monthly $2.50 fixed rate co-payment would be imposed on each union and participating employer in relation to all active employees covered under the plan pursuant to a collective-bargaining agreement. Plans are responsible for collecting the co-payments and transmitting them to PBGC on a monthly basis.
- Addition of Retiree Copayment: Under the MPRRP, plans would be required to withhold co-payments from retirees equal to a fixed percentage of benefit payments (ranging from 3% to 10% of the participant's benefit) and transmit the premiums to the PBGC on a monthly basis, with the co-payments waived for certain beneficiaries. The retiree co-payment rates are based on the plan's zone status, and on whether the plan received a partition. Disabled retirees are not subject to the monthly co-payment, and co-payments for participants or beneficiaries are phased out beginning at age 75 and eliminated for those over the age of 80.
- Changes to Method for Estimating Plan Liabilities: Multiemployer plan trustees and actuaries generally employ a discount-rate assumption based on a long-term assumed rate of return on plan assets (the average discount rate assumed by multiemployer plans is 7.13%, according to the PBGC). This approach results in reported funding obligations that frequently appear lower than those reported by single-employer plans, which are required to use a more conservative discount-rate assumption. The MPRRP proposes to regulate the assumed discount rate by requiring the application of a discount rate equal to the lesser of the actuary's best estimate of the future investment experience, or a statutory cap that is equal to the lesser of (1) a 24-month average of the third segment of the yield curve used for single-employer plan purposes plus 2%; or (2) 6%. The discount rate cap would be phased in over five years. Changes in the plan's unfunded obligations solely attributable to the required decrease in the interest rate and change in the valuation of assets would be amortized over 30 years.

- New Funding Zone Status Categories and Zone Status Measurements: The MPRRP proposes to modify the existing zone status framework to include new upper-tier zones for very healthy plans and provide incentives for plans to improve their funding status, imposing fewer restrictions on such plans so long as they continue to demonstrate financial health and ability to weather potential financial "shocks" and protect participant benefits.
- Modified Withdrawal Liability Calculation: Under the proposed plan, the annual withdrawal liability an exiting employer would be required to pay would be equal to 100% of the employer's highest contribution base units (usually measured in hours of work) the employer had in the last 20 years, multiplied by its highest contribution rate in the last 10 years, subject to a minimum that is equal to the highest dollar amount of contributions made by the employer over the previous 20 years. The payment schedule for a withdrawing employer is based on the plan's funded percentage (e.g., if the plan is 140% or more funded no withdrawal liability is due, and if the plan is between 90% and 139% funded, the employer owes five years of withdrawal liability payments). The maximum payment schedule is 20-years unless the plan is terminated or in declining status. If the plan is terminated or is in declining status the maximum payment schedule is 25-years.
- Elimination of Mass Withdrawal Liability: the MPRRP would eliminate the concept of mass-withdrawal liability. No additional liability would apply upon a mass withdrawal or other termination other than the regular withdrawal liability described above.
- Multiemployer "Composite Plans": The MPRRP would authorize multiemployer plan sponsors to establish a new type of retirement plan commonly referred to as a "composite" or "hybrid" pension plan on a prospective basis. Under this type of plan design, the plan sponsor pools employer contributions for investing, but only provides benefits to participants based on the contributions and any associated gains on their investment. Employers establishing a new composite plan would be relieved of withdrawal liability for benefits in the new plan. In addition, plans and participants would not pay premiums to the PBGC.
- Incentives for Mergers among Multiemployer Plans: The MPRRP proposes an elimination of the MPRA requirement to restore benefit suspension between a "Stable Zone" or higher plan and a "Critical Zone" plan (as redefined under the proposal). The proposal extends the PBGC's current authority to include fiduciary relief if the PBGC determines that a merger between plans satisfies certain safe harbors. The PBGC would be required to provide regulations regarding withdrawal liability methods that permanently insulate employers in a Stable Zone or higher plan that merges with a declining plan from withdrawal liability attributable to the unfunded liabilities of a declining plan at the time of the merger. Additionally, the proposal eliminates the MPRA requirement that financial assistance in a facilitated merger be necessary for the merged plan to remain solvent before PBGC may provide such assistance.

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Give Retirement Options to Workers Act

The Give Retirement Options to Workers Act (Grow Act) was introduced by representatives Phil Roe (R-Tenn.) and Donald Norcross (D-N.J.) on February 14, 2018. According to reports, provisions of the Grow Act were included in alternate versions of the House's CARES Act proposal signed by President Trump on March 27, 2020.

The GROW Act proposes to amend the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code to authorize a new "composite" multiemployer pension plan (a similar proposal is included in a provision of the MPRRP, as described above). Under the GROW Act employer contributions to a composite plan are set at a fixed rate. Benefits are based on a formula, paid to participants in the form of life annuities (except for benefits that may be immediately distributed from certain plans with a low value), and may be reduced based on the plan's funded status. Plan sponsors who adopt a composite plan must take corrective actions through a realignment program whenever the plan's projected funded ratio falls below 120% for the plan year. The realignment program may include measures such as benefit reductions or proposed contribution increases. A composite plan is not covered by the PBGC or required to pay PBGC premiums. Plan sponsors are also not subject to liability for withdrawing from the plan.

For more information on the federal multiemployer pension reform proposals, please contact Tom Dowling, Nick Bertron, Joel Abrahamson, Dominic Cecere, Nicole Faulkner, Rick Pins, James Sticha, Johnny Wang or the Stinson LLP contact with whom you regularly work.

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