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House Committee Advances Important Pension Funding Changes as Part of New COVID-19 Legislation

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On February 12, 2021, the House Ways and Means Committee approved key changes to the pension funding rules as part of its portion of COVID-19 budget reconciliation legislation pursuant to the budget resolution (S. Con. Res. 5) recently passed by Congress. The Ways and Means portion of the bill along with the portions of the bill reported out by other House committees last week will now be packaged together as one bill by the House Budget Committee and voted on by the House of Representatives as early as the week of February 22.

Subtitle H of the Ways and Means package includes the *Butch Lewis Emergency Pension Plan Relief Act of 2021* (the "Act"), which would make important funding changes for both single- employer and multiemployer pension plans. Specifically, the Act contains broadly available funding rule changes for single-employer and multiemployer pension plans, and significant financial assistance to deeply underfunded multiemployer pension plans. It would also increase PBGC multiemployer premiums and freeze the indexing of the Internal Revenue Code section 415 and 401(a)(17) compensation limits effective for plan years beginning after 2030. Each of these issues is discussed below.

The pension funding provisions of the Act are similar to the provisions of the HEROES Act (H.R. 6800, 116th Congress) passed by the House of Representatives on May 15, 2020. The provisions are also similar to H.R. 409 by House Ways and Means Committee Chairman Richard Neal (D-MA) and H.R. 423 by House Education and Labor Committee Chairman Bobby Scott (D-VA). The differences between those bills and the Act appear to be intended to allow the Act to comply with the limitations of the budget reconciliation process.

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As discussed further below, the legislation is expected to come up for a House vote on February 26 and a Senate vote thereafter, with the goal of it being enacted into law before existing federal unemployment benefits expire on March 14.

Funding Changes for Single-Employer and Multiemployer Plans

Single-Employer Provisions

The Act provides that in the 2020 plan year, the minimum funding requirements for single-employer pension plans will be calculated by amortizing the entire unfunded liability over 15 years. Re-amortizing the unfunded liability in this fashion is often referred to as a "fresh start". A 15-year amortization period will also apply to future changes in the unfunded liability (as opposed to the 7-year period that applies under current law). Plan sponsors may elect to apply these changes beginning in 2019, as opposed to 2020.

The Act extends and enhances the interest rate stabilization provisions that were first introduced in MAP-21, and which would start to be phased-out in 2021 under current law. The following table summarizes the stabilization corridor under current law and under the Act. Note that a narrower corridor has a larger impact on the interest rate used to determine the plan liabilities.

Current Corridor			**Proposed Corridor**	
Year	Minimum	Maximum	Minimum	Maximum
2020	90%	110%	95%	105%
2021	85%	115%	95%	105%
2022	80%	120%	95%	105%
2023	75%	125%	95%	105%
2024	70%	130%	95%	105%
2025	70%	130%	95%	105%

2026	70%	130%	90%	110%
2027	70%	130%	85%	115%
2028	70%	130%	80%	120%
2029	70%	130%	75%	125%
2030+	70%	130%	70%	130%

The Act also provides for an interest rate floor of 5% on the 25-year average that is used to stabilize the interest rates. For example, if the 25-year average of the 3rd segment rate for 2020 were to be 4%, then under current law the lower boundary of this segment rate for minimum funding purposes would be 90% of 4%, or 3.6%. Under the Act, a 5% floor applies to the 25-year average rate and the lower boundary is 95% of that rate, resulting in a rate of 4.75% for minimum funding purposes. The Joint Committee on Taxation estimates that the single-employer pension changes would raise nearly $23 billion in revenue over the 10-year budget period.

The Act modifies the definition of "community newspaper employer" to allow additional plan sponsors to qualify for the special funding rules for community newspapers enacted as part of the Setting Every Community Up for Retirement Enhancement Act of 2019. Community newspaper employers are permitted to elect to amortize their pension underfunding over 30 years and calculate plan liabilities using an 8% interest rate.

Multiemployer Provisions

For one plan year that begins on or after March 1, 2020 and before March 1, 2022, the Act allows an election to maintain the same zone status that was certified for the preceding plan year. Plans are similarly not required to update their funding improvement or rehabilitation plans for this plan year. The effect of this provision is to allow a delay before plans must take steps to offset losses incurred during the COVID-19 pandemic. Plans in critical or endangered status may also elect to extend their funding improvement or rehabilitation plans by 5 years, allowing additional time for them to achieve their funding targets.

Under the Act, plans may amortize their investment and other COVID-19 related losses incurred in either or both of the first two plan years ending after February 29, 2020 over a 30-year period, as opposed to the 15-year period that normally applies. For these two plan years, plans may also change

their asset valuation methods to spread investment losses over 10 years and may allow the smoothed actuarial value of assets to exceed the fair market value by 30%. Normally the smoothed actuarial value of assets is subject to a 5-year limit on the recognition period and a 20% corridor around the fair market value of assets. Plans electing this relief must pass a solvency test, and are subject to restrictions on improving benefits.

Financial Assistance for Underfunded Multiemployer Plans

Under the Act, the Pension Benefit Guaranty Corporation ("PBGC") would provide special financial assistance to highly distressed multiemployer pension plans that meet certain criteria. Specifically, in order to be eligible for this assistance a multiemployer plan must satisfy one or more of the following criteria:

- Is in critical and declining status for any plan year from 2020 through 2022, generally indicating that the plan is expected to exhaust its assets in 20 years or less.
- Has previously reduced benefits under the provisions of the Multiemployer Pension Reform Act of 2014 ("MPRA").
- Is in critical status for any plan year from 2020 through 2022, with a ratio of assets to liabilities (determined on a very conservative basis) of 40% or less, and a ratio of active to inactive participants of less than 2 to 3.[1]
- Became insolvent after December 14, 2014 but is not terminated (*i.e*., fully frozen).

Special financial assistance is paid to plans as single lump sums, with the amounts determined such that the plans are projected to remain solvent through their 2051 plan years. The Act specifies that deterministic projections should be used for this purpose. The amount of special financial assistance is determined without regard to whether benefits are above or below the PBGC maximum guarantee level.

The special financial assistance payable under the Act is supported by the general fund of the U.S. Treasury and will be paid through a new eighth fund within the PBGC. This differs from the existing multiemployer financial assistance provided by PBGC, which is entirely supported by premiums paid by the plans themselves. In contrast with the financial assistance that PBGC pays to insolvent multiemployer plans under current law, the special financial assistance under the Act is not subject to any repayment provisions.

PBGC is required to publish regulations implementing the Act within 120 days of enactment. The Act provides PBGC with the authority to prioritize applications from multiemployer plans that are within 5 years of failure, have unfunded liabilities eligible for guarantee by PBGC in excess of $1 billion, or have previously reduced participant benefits under MPRA. PBGC may restrict applications to only priority plans during the 2-year period following enactment of the Act, and may establish additional criteria for identifying priority plans.

In calculating the amount of financial assistance a plan will receive in order to remain solvent until 2051, asset returns must generally be projected using the lesser of (a) the interest rate assumed by the plan actuary for the 2020 plan year or (b) the third segment rate from the single-employer funding rules plus 200 basis points. The third segment rate from the single-employer funding rules plus 200 basis points currently results in an interest rate of 5.65%. The other actuarial assumptions will generally be the same as those used by the plan actuary for the 2020 plan year, unless the plan proposes the use of different assumptions and PBGC accepts the change.

The deadline for plans to apply for special financial assistance is December 31, 2025, with an extended deadline of December 31, 2026 available to plans submitting revised applications. PBGC generally has 120 days to review an application, after which the application will be deemed to be approved if PBGC has not acted on it.

The Act provides that any plan receiving special financial assistance must reinstate any benefits that were reduced under the benefit suspension provisions of MPRA. This reinstatement applies prospectively, and also includes back payments for previously suspended benefits.

The special financial assistance paid to a plan is disregarded when determining an employer's withdrawal liability for a period of 15 years. Plans are also required to provide employers and the unions representing their employees with estimates of the employers' share of the unfunded liabilities of the plan taking into account the special financial assistance.

Plans must segregate the special financial assistance received under the Act from other plan assets and may only invest the financial assistance in investment grade bonds, unless PBGC permits other investments. Subject to certain limitations, PBGC may impose conditions on plans that receive financial assistance, and such plans are deemed to be in critical status through the 2051 plan year.

Other Provisions

Multiemployer PBGC Premium Rate

The Act increases the PBGC premium rate for multiemployer pension plans to $52 per participant, effective for plan years beginning after December 31, 2030. This premium rate is indexed for inflation for years after 2031.

Cost of Living Indexing on Maximum Benefit Limits

The Act provides that the cost of living indexing that applies to the maximum compensation amount under Internal Revenue Code section 401(a)(17) and the maximum benefit and annual contribution limitations under Internal Revenue Code section 415 will freeze for plan years beginning after December 31, 2030. This change would have a material impact on retirement plans and could significantly limit future contributions and benefits, assuming it goes into effect. It also could foreshadow future legislative proposals to cut back on tax incentives for retirement plans as revenue raisers to offset the cost of other policy proposals.

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Outlook and Next Steps

The retirement plan changes in the Ways and Means package are just one part of the larger legislative package designed to address the COVID-19 pandemic. Democrats intend to pass the legislation through the budget reconciliation process, which removes procedural impediments and allows bills to pass with a simple majority in both chambers. The reconciliation process does come with limitations. For example, legislation passed in this manner must generally be limited to budgetary matters and cannot include policy changes that are considered extraneous. The Act was drafted to work within the limitations of the reconciliation process, though the Senate parliamentarian will ultimately determine if all provisions pass muster.

During the week of February 22, the House Budget Committee will combine the various committees' portions of the stimulus bill into one large bill. As of this writing, House leadership intends to bring the full package to a vote on the House floor on February 26, where it is expected to pass. The Senate is expected to vote on it shortly thereafter, with lawmakers aiming for it to become law before existing federal unemployment funds expire on March 14.

Multiemployer plans with significant levels of underfunding should closely review the special financial assistance provisions of the Act to determine whether they are likely to be eligible, and the amount of assistance they are likely to receive. All single-employer and multiemployer plans should perform analyses of the various funding relief provisions of the Act to determine the expected impact on their minimum contribution requirements and to prepare for any elections that may need to be made.

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[1] The liability measurement for this purpose is called current liability, which uses a discount rate based on 30-year Treasury securities that is below 2.5% as of the beginning of 2021.

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