



## Insight

# The American Rescue Plan, Multiemployer Pension Bailouts, and the PBGC

GORDON GRAY | APRIL 26, 2021

## Executive Summary

- The American Rescue Plan provides an \$83 billion taxpayer bailout of the most severely underfunded private, multiemployer pensions.
- It is unclear how these taxpayer funds will be treated for the purposes of other, critical calculations related to plan funding and participation.
- Despite lacking clear statutory authority, the Pension Benefit Guaranty Corporation may issue regulations that substantially complicate efforts by plan sponsors and beneficiaries to reevaluate ongoing participation based on the bailout.

## Introduction

There are about 1,400 multiemployer pension plans covering 10 million active and retired workers. Many of these plans are critically underfunded and are about to go insolvent, risking the retirement benefits of covered workers. Meanwhile, the federal backstop for such plans – the Pension Benefit Guaranty Corporation’s (PBGC) multiemployer revolving fund – will become exhausted in 2027 and will not have the resources to protect retirees if the multiemployer-pension system’s finances continue to deteriorate. Despite years of good-faith, bipartisan negotiations seeking to responsibly address this challenge, the American Rescue Plan Act (ARP) enacted in March provides more than \$80 billion in taxpayer grants – lump-sum payments to private pension plans – to keep a subset of these plans solvent.

But in their hasty design of this taxpayer bailout, the congressional majority has introduced new complexity and pitfalls into the multiemployer-pension system. In giving these plans a bailout, Congress essentially made the most distressed plans whole, potentially affording new flexibility for employers, plans, and participants to redefine their plans or withdraw entirely. According to reports, regulators may be looking to restrict plans’, employees’, and employers’ flexibility and essentially keep them tied to these struggling plans – at least for a while.

## The American Rescue Plan and Multiemployer Pensions

The ARP provided the most severely underfunded private multiemployer pension plans with an estimated \$83 billion in taxpayer funds.<sup>[1]</sup> Under the ARP, the Treasury Department would provide lump-sum payments by way of the PBGC to eligible plans in the amount sufficient to pay benefits through 2051, based on projections from plans’ most recent filings. The grants are placed in separated accounts and must be invested in PBGC-approved instruments, but plans can use these funds to liquidate benefit obligations at their discretion. According to the Congressional Budget Office (CBO), the multiemployer “relief” would increase spending over

10 years by \$83.3 billion and increase revenue by \$2.1 billion for a net deficit increase of \$81.2 billion.

To qualify for relief, plans must meet at least one of four criteria:

- Over the period 2020-2022, be in critical and declining status (projected insolvency) or have an approved suspension of benefits (only allowed for plans in critical and declining status);
- Over the period 2020-2022, be in critical status (funded at less than 65 percent), be funded at less than 40 percent, and have a ratio of active to inactive beneficiaries of less than 2:3;
- Be insolvent but not terminated;
- Be approved for a benefit suspension by the time the ARP was enacted.

For 2020, [186 plans filed notices](#) with the Department of Labor that they were either in critical and declining status or in critical status. According to CBO, as many as 336 plans could receive grants under this policy, though over the 500 simulations, CBO estimated on average that 185 would receive assistance under this policy. Simply handing over taxpayer funds to prop-up failing private pensions introduced some additional complexity with which regulators must now grapple, however.

## **Withdrawal Liability**

The 1980 Multiemployer Pension Plan Amendments Act (MPPAA) imposed an exit penalty, called a “withdrawal liability,” on employers who withdraw from an underfunded plan. Withdrawal liability was introduced to prevent withdrawing employers from shifting pension obligations to the remaining employers in a plan. After a withdrawal, the plan determines whether participants’ vested benefits are greater than the value of plan assets. If this is the case, the plan will calculate the withdrawing employer’s share of the unfunded vested benefits based on one of several formulas in MPPAA and collect it from the employer. A reduction in the requirement to contribute, including layoffs, plant closures, or changes in the collective bargaining agreement, can trigger a complete or partial withdrawal from a plan, thus resulting in the imposition of withdrawal liability. If all, or substantially all, of the contributing employers withdraw, the withdrawal is categorized as a mass withdrawal.

An employer’s withdrawal liability is based on its allocated share of the total plan’s unfunded vested benefits (UVBs). The amount of the employer share further depends on the date of valuation of the plan’s assets and liabilities, the actuarial assumptions and methods used, and the allocation method adopted by the plan. The periodic payment amount is calculated based on the employer’s historical contribution rates and contribution base units (for example, hours or wages).<sup>[2]</sup> In general, the maximum amount of an annual payment is calculated by multiplying the employer’s highest average annual contribution base units for any three consecutive years during most recent 10 years, by the highest contribution rate during those same 10 years.<sup>[3]</sup>

The law contains two basic types of allocation methods:

- The direct attribution method, which involves tracing UVBs attributable to the employer’s workers, and
- The pro rata method, which allocates liability in proportion to the employer’s share of the contributions over a period of time.

Additionally, there are special provisions meant to limit the impact of withdrawal liability. These include a *de minimis* reduction adjustment, which reduces small withdrawal liability obligations, and a 20-year payment cap.

An employer that withdraws does not need to pay the withdrawal liability in a lump sum. Instead, the employer may pay down its withdrawal liability obligation, with accumulated interest, through periodic payments. In addition, the employer's withdrawal liability payments are limited to 20 years. After 20 years pass, any unpaid withdrawal liability is reallocated among the remaining employers in the plan. Under a mass withdrawal, however, the 20-year cap no longer applies.

In practice, an exiting employer's actual payment is often based on its ability to pay.<sup>[4]</sup> The lump-sum settlement amount is usually just a percentage of the present value of the future withdrawal liability payments. In very well-funded plans, there is often no withdrawal liability associated with exiting. In plans that are moderately well-funded, the withdrawal liability is usually paid off before the 20-year cap is hit. In poorly funded plans, however, withdrawal liability payments are often limited by the 20-year cap.

## **ARP and Withdrawal Liability**

When sponsors withdraw from plans, their prior employees who have vested benefits become known as "orphan participants," and their liabilities within the plan are known as "orphan liabilities." On the order of 1 million plan participants fall into this category and reflect a challenge inherent to the structure of multiemployer pension: For some plans, a significant share of the original sponsors have long departed, essentially leaving the remaining sponsors holding the proverbial bag. For the most critically underfunded plans, the remaining sponsors face growing obligations that pose risks to their wherewithal.<sup>[5]</sup> With a substantial improvement in the financial outlook for the most distressed plans, the calculus may change for remaining sponsors and plan participants.

The decision to provide distressed multiemployer plans with lump-sum taxpayer-funded grants was a consequence of the [congressional majority's decision to abandon](#) the gradual, but meaningful, bipartisan negotiation to address the severe underfunding in certain plans in the multiemployer system. Instead, as noted above, Congress passed the ARP through [reconciliation](#), which has certain limits, but can be enacted through simple majority vote. This legislative path shaped the assistance package and the decision to provide lump-sum grants to the plans to accord with Senate rules.

Under the Employee Retirement Income Security Act, UVBs are based on "the value of nonforfeitable benefits under the plan, less...the value of the assets of the plan."<sup>[6]</sup> A plain reading of the ARP suggests that the grants provided to these distressed plans would be considered as plan assets. Accordingly, the taxpayer infusion to these plans could have the effect of reducing the value of UVBs. The substantial increase in plan assets, all else equal, would have the effect of reducing a sponsor's withdrawal liability. It could also provide relief for these employers to the extent the grants alleviate sponsors' contribution rates.

## **Regulation**

The PBGC is required to issue guidance related to the multiemployer assistance grants within 120 days of enactment of the ARP, which means the federally chartered entity should issue these requirements by July 9. Among the issues that PBGC must determine is the assumptions that underpin the grant amounts. It is unclear if PBGC will consider a plan's assets in the determination of a grant amount. The PBGC could simply assume that

the grants must be sufficient in combination with existing plan assets to keep plans solvent through 2051. Under this assumption, thereafter the plans would become insolvent.

Perhaps more complicated still, PBGC must determine whether plans should consider whether the taxpayer grants are plan assets for the purposes of calculating UVBs. Congress attempted to exclude the grants from the calculation of UVBs, but that limitation was struck from the bill for failing to comply with Senate rules governing reconciliation.<sup>[7]</sup> Therefore, Congress contemplated that such a limitation required statutory language, which ultimately was *not* enacted. Nevertheless, the PBGC is [reportedly considering](#) issuing guidance that would do precisely that, though on what statutory authority is likely subject to dispute.

According to this report, the PBGC is considering requiring affected plans to disregard the grants for the purposes of calculating UVBs, and therefore ultimately an employer's withdrawal liability, for at least 15 years. Under such a scenario, contributing employers would face substantially higher withdrawal liabilities than otherwise, and would likely face higher contribution rates than otherwise during the same period. The multiemployer system is nominally voluntary, but for those sponsors still in these plans and essentially trapped by prohibitively high withdrawal liabilities, orphan liabilities, and high contribution limits, it may appear otherwise. A rule that disregarded the grants would effectively require those sponsors to remain in the plan, though benefits are funded through 2051 irrespective of their enduring participation. If an employer and its employees opted to withdrawal from a fund, the employer would still be liable for its share of UVBs for benefits beyond 2051 (which the government did not fund). Such a result would leave the funds no worse off – all of the orphaned participants' benefits would be fully funded. The funds would have everything they need; the employees would get all of the pension benefits they earned; withdrawing employers and employees would have the flexibility to choose, together, the retirement vehicle they preferred; and remaining employers would not be left "holding the bag."

## Conclusion

The multiemployer pension system has faced serial underfunding for years. Over those years, policymakers, regulators, and observers identified the risks these plans posed to taxpayers. Nevertheless, Congress failed repeatedly to meaningfully address these threats, resulting in a taxpayer bailout as many predicted. Now that Congress has provided a taxpayer bailout, it falls to regulators to determine the fine points of the policy. A plain reading of the relevant statutory language suggests PBGC is limited in its ability to exclude the taxpayer assistance for the purposes of certain calculations – including withdrawal liability. Now that these plans have been made whole, plan sponsors and participants may have an opportunity to reevaluate plan participation. Despite lacking clear statutory authority, the PBGC may issue regulations that substantially complicate that opportunity.

[1] See <https://www.americanactionforum.org/insight/future-risks-confronting-the-multiemployer-pension-system/> for more detail on the multiemployer pension system.

[2] Employee Retirement Income Security Act of 1974 (ERISA) Secs. 4201, 4202, 4206, 4209, 4211 and 4219

[3] [https://www.ifebp.org/education/schedule/Documents/1601/P14\\_Basics\\_of\\_Withdrawal\\_Liability.pdf](https://www.ifebp.org/education/schedule/Documents/1601/P14_Basics_of_Withdrawal_Liability.pdf)

[4] [http://www.actuary.org/files/publications/Joint\\_Select\\_Committee\\_Multiemployer\\_Plans\\_Questions\\_for\\_Record\\_05.18](http://www.actuary.org/files/publications/Joint_Select_Committee_Multiemployer_Plans_Questions_for_Record_05.18)

[5] See testimony cited in [https://www.uschamber.com/sites/default/files/arp\\_multiemployer\\_comments\\_-\\_final.pdf](https://www.uschamber.com/sites/default/files/arp_multiemployer_comments_-_final.pdf)

[6] 29 U.S. Code §1393

[7] See [H.R. 1319](#) as passed by the House of Representatives.