



SLEVIN & HART, P.C.

Benefits Update

Multiemployer Funding Relief in the American Rescue Plan Act of 2021

April 27, 2021

On March 11, 2021, President Biden signed into law the American Rescue Plan Act of 2021 (“ARPA” or the “Act”). This update summarizes the key provisions of the ARPA that impact multiemployer defined benefit pension plans, including funding relief for certain financially distressed plans through a special financial assistance program implemented by the Pension Benefit Guaranty Corporation (“PBGC”).

Special Financial Assistance Program

Eligibility. The Act establishes a special financial assistance (“SFA”) program to extend the solvency and improve the funding of eligible multiemployer defined benefit pension plans that: (i) are in critical and declining status under their actuarial or “zone” certification under the Pension Protection Act (“PPA”) in any plan year beginning in 2020 through 2022, (ii) have suspended benefits under the Multiemployer Pension Reform Act (“MPRA”), as of March 11, 2021, (iii) are certified in critical status in any year beginning in 2020 through 2022 with a modified funded percentage of less than 40% and a ratio of active to inactive participants less than 2 to 3, or (iv) became, and remained, insolvent after December 16, 2014, and have not been terminated as of March 11, 2021. Through this program, eligible plans can apply for a lump sum payment from PBGC, which is intended to equal the amount needed to pay pension benefits through 2051. This payment is not a loan and does not need to be repaid.

Amount of Assistance. Eligible plans will receive SFA in the form of a lump sum payment intended to equal the amount necessary to pay all unreduced benefits (except for adjustable benefits previously reduced under a rehabilitation plan), any benefits that were suspended under MPRA, and any benefits that were reduced under PBGC’s insolvency rules, through 2051.

Requirements for Receiving Special Financial Assistance. As a condition to receiving the SFA, a plan is required to retroactively reinstate any benefits that were either suspended as a result of a suspension plan under MPRA or reduced to PBGC-guaranteed levels following insolvency. Plans are required to pay the previously suspended benefits to all affected participants and beneficiaries in pay status effective as of the first month in which the SFA is effective. In addition, the money received through the SFA program must be segregated from other plan assets and must be invested in investment-grade bonds or other investments to be specified in future PBGC guidance. The PBGC also has discretion to impose other reasonable conditions on plans that receive money under this program.

Application and PBGC Approval Process. A plan's application that is timely filed will be deemed approved unless PBGC notifies the plan within 120 days of the filing that it is incomplete, any assumption or proposed changes to the assumptions are unreasonable, or the plan does not meet the eligibility requirements for the SFA. If a plan's application is approved, PBGC is expected to pay the approved assistance in a single lump sum payment as soon as practicable, but no later than one year after the plan's application is approved by PBGC or deemed approved. However, under the ARPA, PBGC is not permitted to pay financial assistance after September 30, 2030.

Additional Guidance. The Act requires PBGC to issue regulations or guidance regarding the application requirements by 120 days after the enactment of the law, which would be July 9, 2021. This guidance is expected to address the details of the application and the supporting documentation to be submitted, the specific dates for transfers of financial assistance to a plan following approval of its application, and an alternative application for plans that have been approved for partition prior to March 11, 2021.

The Act provides that plan sponsors may submit applications for financial assistance to PBGC through December 31, 2025. If a plan's application is denied, a revised application may be submitted until December 31, 2026. Applications received after these deadlines will not be accepted.

Other Provisions Affecting Multiemployer Plans

Adjustments to Funding Standard Account Rules. For plans that do not receive SFA, the Act allows plans that meet a solvency test as of February 29, 2020 to smooth investment losses incurred in the first two plan years ending after that date over a 10-year period (instead of the usual 5-year period) and to amortize investment losses and other actuarial losses related to COVID-19 incurred in those two plan years over a 30-year period (instead of the usual 15-year period).

Temporary Delay of Designation of Plans as in Endangered, Critical, or Critical and Declining Status. Under the Act, a plan may elect, for a plan year commencing between March 1, 2020 through February 28, 2021, or the next succeeding plan year ("Designated Plan Year"), to retain its PPA zone status from the prior year, and endangered or critical status plans will not be required to update their funding improvement or rehabilitation plan or required schedules until the plan year following the Designated Plan Year.

Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 or 2021. The Act also allows plans to elect to extend their funding improvement period or rehabilitation period, as applicable, by five years if the plan is in endangered or critical status for a plan year beginning in 2020 or 2021.

PBGC Premium Increase. The PBGC premium will be increased to \$52 per participant starting in 2031. The current PBGC premium for multiemployer plans is \$31 per participant and is subject to indexing. Without the change under the Act, the estimated PBGC premium for 2031 would be approximately \$43.

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PBGC has set up a website for information regarding its implementation of this financial assistance program, available at <https://www.pbgc.gov/american-rescue-plan-act-of-2021>. There is little guidance on the website so far, but the Act requires PBGC to issue guidance regarding the application requirements for financial assistance by July 9, 2021 (120 days after the Act became law).

Please contact Slevin & Hart for more information about how this guidance may affect your plan.

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