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Policy Options for Multiemployer Defined Benefit Pension Plans

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SUMMARY

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Policy Options for Multiemployer Defined Benefit Pension Plans

Multiemployer defined benefit (DB) pension plans are pensions sponsored by more than one employer and maintained as part of a collective bargaining agreement. In DB pensions, participants receive a monthly benefit in retirement that is based on a formula. In multiemployer DB pensions, the formula typically multiplies a dollar amount by the number of years of service the employee has worked for employers that participate in the DB plan.

The Pension Benefit Guaranty Corporation (PBGC) is a federally-chartered corporation that insures participant benefits in private-sector DB pension plans. Although PBGC is projected to have sufficient resources to provide financial assistance to multiemployer DB plans through 2025, the projected insolvency of many multiemployer DB pension plans will likely result in a substantial strain on PBGC's multiemployer insurance program. In a report released in June 2017, PBGC indicated that the multiemployer insurance program is highly likely to become insolvent in 2025. In the absence of increased financial resources for PBGC, participants in insolvent multiemployer DB pension plans would likely see sharp reductions in their pension benefits.

As a result of a variety of factors—such as the recessions in 2001 and from 2007 to 2009—about 10% to 15% of multiemployer plan participants are in multiemployer DB plans that are likely to become insolvent over the next 19 years and run out of funds from which to pay benefits owed to participants.

The Bipartisan Budget Act of 2018 (P.L. 115-123), enacted February 9, 2018, created the Joint Select Committee on Solvency of Multiemployer Pension Plans to address the impending insolvencies of several large multiemployer DB pension plans and PBGC. The committee must provide to Congress no later than November 30, 2018, a report and proposed legislative language to improve the solvency of multiemployer DB plans and the PBGC. The report and proposed legislative language must be approved by (1) a majority of committee members appointed by the Speaker of the House and Majority Leader of the Senate and (2) a majority of committee members appointed by the Minority Leader of the House and Minority Leader of the Senate. P.L. 115-123 provides for expedited procedures in the Senate if the committee approves of the proposed legislative language. There are no provisions that provide any special procedures governing House consideration of such legislation.

Many policy options have been discussed in committee hearings and in the multiemployer pension plan community by policymakers and stakeholders. Not all options directly address the solvency of financially distressed multiemployer plans or PBGC, but they could be considered as part of a comprehensive package of policy options. The options include

- assistance for financially troubled multiemployer plans with subsidized loans or partitions;
- changes to the maximum benefit limit imposed on plans when they receive PBGC financial assistance;
- changes to PBGC's premium structure;
- stricter funding rules; and
- alternative pension plan designs.

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Introduction

Pension plans are classified by whether they are sponsored by one employer (single-employer plans) or by more than one employer (multiemployer and multiple employer plans). *Multiemployer* pension plans are sponsored by employers in the same industry and maintained as part of a collective bargaining agreement. *Multiple employer* plans are sponsored by more than one employer but are not maintained as part of collective bargaining agreements.[1] This report focuses on multiemployer plans.

Pension plans may also be classified according to whether they are defined benefit (DB) or defined contribution (DC) plans. With DB plans, participants receive regular monthly benefit payments in retirement (which some refer to as a "traditional" pension).[2] With DC plans, of which the 401(k) plan is the most common, participants have individual accounts that are the basis of income in retirement. DB plans are the subject of this report.[3]

Background on Multiemployer Plans

In 2017, there were an estimated 10.6 million participants in 1,374 multiemployer plans.[4] Multiemployer DB pensions are of current concern to Congress because approximately 10% to 15% of participants are in plans that are in critical and declining status and may become insolvent within 19 years.[5] When a multiemployer pension plan becomes insolvent, the Pension Benefit Guaranty Corporation (PBGC), a federally-chartered corporation that insures private-sector DB pension benefits, provides financial assistance to the plan so the plan can continue to pay promised benefits, up to a statutory maximum.[6] Currently, plans that receive PBGC financial assistance can provide up to $12,870 per year for an individual with 30 years of service in the

[1] Multiple employer pension plans are not common. The Government Accountability Office (GAO) indicated that about 0.7% of private-sector pension plans were multiple employer pension plans. See GAO, *Federal Agencies Should Collect Data and Coordinate Oversight of Multiple Employer Plans*, GAO-12-665, September 13, 2012, p. 10, http://www.gao.gov/assets/650/648285.pdf.

[2] In some DB plans, participants have the option to receive an actuarially equivalent lump-sum payment at retirement in lieu of an annuity. Typically, an annuity is a monthly payment for life.

[3] For more background information on multiemployer DB plans, see CRS Report R43305, *Multiemployer Defined Benefit (DB) Pension Plans: A Primer*; Joint Committee on Taxation, Present Law Relating To MultiEmployer Defined Benefit Plans, JCX-30-18, April 17, 2018, https://www.jct.gov/publications.html?func=startdown&id=5089; and Alicia H. Munnell, Jean-Pierre Aubry, and Caroline V. Crawford, *Multiemployer Pension Plans: Current Status and Future Trends*, Center for Retirement Research, December 2017, http://crr.bc.edu/wp-content/uploads/2017/12/multiemployer_specialreport_1_4_2018.pdf.

[4] See Pension Benefit Guaranty Corporation (PBGC), *2016 Pension Insurance Data Tables*, Table M-5 and Table M-6, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf. The 2016 data tables contain some data for 2017.

[5] Multiemployer DB plans are required to report their financial condition as being in one of several categories (referred to as the plan's "zone status"). Plans that are in critical and declining status are estimated to become insolvent (and unable to pay benefits) within 14 year or 19 years, as provided in law. For more information, see **Table 1** and **Table 2** in CRS Report R45187, *Data on Multiemployer Defined Benefit (DB) Pension Plans*.

[6] For more about PBGC, see CRS Report 95-118, *Pension Benefit Guaranty Corporation (PBGC): A Primer*, or CRS In Focus IF10492, *An Overview of the Pension Benefit Guaranty Corporation (PBGC)*.

plan.[7] The guarantee is not indexed for changes in the cost of living and was last increased in 2000.[8]

At the end of FY2017, PBGC reported a deficit of $65.1 billion in the multiemployer insurance program.[9] The Congressional Budget Office (CBO) provided several estimates (using different accounting methods) of PBGC's financial condition.[10] CBO's *cash-based* estimates account for spending and revenue in the years when they are expected to occur. CBO estimates that from 2017 to 2026, PBGC will be obligated to pay $9 billion in claims but will only have sufficient resources to pay $6 billion. From 2027 to 2036, CBO cash-based estimates indicate that claims to PBGC will be $35 billion but PBGC will only have sufficient resources to pay $5 billion. CBO also provided *fair-value* estimates, which are the present value of all expected future claims for financial assistance, net of premiums received.[11] CBO's fair-value estimate of PBGC's future obligations was $101 billion. There is no obligation on the part of the federal government to provide financial assistance to PBGC.[12]

Because of the projected plan insolvencies, PBGC has projected that it will likely not have the resources to provide sufficient financial assistance to insolvent plans at the maximum guarantee level beginning in 2025. In such a scenario, most participants would receive less than $2,000 per year because PBGC would be able to provide annual financial assistance equal only to its annual premium revenue, which was $291 million in FY2017.[13]

In addition, employers in plans that are projected to become insolvent might exit such plans based on concerns that they may have to pay increasingly larger amounts of withdrawal liability if they

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[7] The guarantee is more than $12,870 per year for an individual with more than 30 years of service in the plan and less than $12,870 per year for an individual with less than 30 years of service in the plan. More information is available at Pension Benefit Guaranty Corporation, *Multiemployer Benefit Guarantees*, https://www.pbgc.gov/prac/multiemployer/multiemployer-benefit-guarantees. Using 2013 data, PBGC estimated that 79% of participants in multiemployer plans that were receiving financial assistance receive their full benefit as earned in the plan (e.g., their benefits were below the PBGC maximum guarantee.) See Pension Benefit Guaranty Study, PBGC's Multiemployer Guarantee, March 2015, at https://www.pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf. The study considered only reductions in benefits because of the maximum guarantee and did not consider the effect of the likely insolvency of PBGC.

[8] See Pension Benefit Guaranty Corporation (PBGC), *2016 Pension Insurance Data Tables*, Table M-55, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf.

[9] Pension Benefit Guaranty Corporation, *2017 Annual Report*, November 15, 2017, p. 32, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2017.pdf.

[10] Congressional Budget Office, *Options to Improve the Financial Condition of the Pension Benefit Guaranty Corporation's Multiemployer Program*, 51356, August 2016, https://www.cbo.gov/publication/51536.

[11] Present value is the current value of a future sum of money. For an explanation of present value in the context of a pension plan, see the appendix to CRS Report R43305, *Multiemployer Defined Benefit (DB) Pension Plans: A Primer*.

[12] See U.S.C. §1302 (g)(2), which states that the "United States is not liable for any obligation or liability incurred by the corporation."

[13] See Pension Benefit Guaranty Corporation, "PBGC Projections: Multiemployer Program Likely Insolvent by the End of 2025; Single-Employer Program Likely to Eliminate Deficit by 2022," press release, August 3, 2017, https://www.pbgc.gov/news/press/releases/pr17-04. Additionally, the National Coordinating Committee for Multiemployer Plans (NCCMP) estimated that participants in 12 plans that applied for benefit reductions under the Multiemployer Pension Reform Act of 2014 (MPRA) would see a 53% reduction in benefits as a result of the PBGC maximum guarantee were these plans to become insolvent and receive PBGC financial assistance. The presentation did not indicate what percentage of participants in those plans would see benefit reductions. See National Coordinating Committee on Multiemployer Pensions, *Multiemployer Pension Facts and the National Economic Impact*, January 5, 2018, http://nccmp.org/wp-content/uploads/2018/01/Multiemployer-Pension-Facts-and-the-National-Economic-Impact-Jan-5-2018.pdf.

remain.[14] Some experts refer to a multiemployer plan "death spiral" as an increasing number of employers leave financially-troubled multiemployer plans in order to avoid larger future obligations to the plans.[15]

This report is not intended to be an exhaustive presentation of the many policy options that stakeholders have offered. This report provides an overview of policy options that have been discussed in committee hearings and in the multiemployer pension plan community by policymakers and stakeholders, including options that would provide assistance for financially-troubled multiemployer plans with subsidized loans, direct financial assistance, or partitions (which would transfer some participant's benefits to a newly created plan); changes to the maximum benefit limit imposed on plans when they receive PBGC financial assistance; changes to PBGC's premium structure; and stricter funding rules and alternative pension plan designs. **Table 1** provides a summary of these selected policy options.

Table 1. Summary of Selected Policy Options and Possible Consequences for Multiemployer Defined Benefit Pension Plans

Policy Option	Possible Consequences
Inaction / Doing nothing	Participants face large benefit reductions. Large numbers of employers might exit plans. Some employers might face financial distress.
Assisting Financially-Troubled Plans	
Loans and Direct Financial Assistance	Eligible plans would receive financial assistance that may or may not have to be repaid to pay benefits. Some plans might become insolvent even with loans.
Partitions	Selected participants would be transferred to new plans. New plans would receive financial assistance from Pension Benefit Guaranty Corporation (PBGC). PBGC would receive sufficient funding for expanded partitioning authority. Original plan could be projected to be solvent. Changes to partition rules (for example, by transferring orphans, who are participants whose employer no longer contributes to the plan, to new plans) could ensure all participants in original plan have a contributing employer.

[14] Withdrawal liability is an employer's share of unfunded vested benefits (benefits to which participants have a contractual right but which the plan has insufficient assets to pay). For more information see Withdrawal Liability, PBGC, available at http://www.pbgc.gov/prac/multiemployer/withdrawal-liability.html or Lisa Schilling, *U.S. Multiemployer Pension Plan Withdrawal Liability Basics and Collectibility*, Society of Actuaries, August 2018, https://www.soa.org/research-reports/2018/multiemployer-pension-basics-collectibility.

[15] See, for example, Colleen Ray, "Fueling the Death Spiral for Workers' Pensions: The Bankruptcy Process and Multiemployer Pension Plans," *Villanova Law Review*, vol. 58, no. 6 (2014).

Policy Option	Possible Consequences
Changing Pension Benefit Guaranty Corporation Maximum Benefit and Premium Structure	
Increasing PBGC Maximum Benefit	Current benefit is generally agreed to be too low. Increase to maximum benefit would increase PBGC deficit.
Changes to PBGC Premium Structure	Higher premiums could delay PBGC's insolvency but could harm plans. New premiums (such as variable-rate, risk-based, or exit premiums) could better align plan incentives with PBGC long-term solvency. Higher premium levels might result in employers or employees choosing to exit multiemployer plans.
Preventing Future Plan Insolvencies	
Strengthening Funding Rules	Funding rules that required fewer investments in equities would lessen likelihood of large decreases in the value of plan assets. Lower discount rate to value plan liabilities would be perceived by some as more appropriate. Either employer contributions would have to increase or promised benefits to participants would have to decrease.
Variable Annuity and Composite Plans	Investment losses would not cause employer contributions to increase. The dollar amounts of participants' benefits could increase or decrease, perhaps significantly. Employers in composite plans would not be subject to withdrawal liability. Composite plans would not be subject to PBGC premiums nor would participants have PBGC protections.

Source: Congressional Research Service.

The Joint Select Committee on Solvency of Multiemployer Pension Plans

In response to the increasing concerns of policymakers and stakeholders (such as participants, participating employers, and plans), the Bipartisan Budget Act of 2018 (P.L. 115-123) created a new joint select committee of the House and Senate: The Joint Select Committee on Solvency of Multiemployer Pension Plans. The committee has 16 Members of the House and Senate—four chosen by each of the chambers' party leaders—and is tasked with formulating recommendations and legislative language that will "significantly improve the solvency of multiemployer pension plans and the Pension Benefit Guaranty Corporation."[16] The committee is required to vote on a report containing findings, conclusions, recommendations, and legislative language to carry out the recommendations by November 30, 2018. Provided the report is agreed to by a majority of committee members from each party, P.L. 115-123 contains procedures for expedited

[16] The committee members are Senators Orrin Hatch (Chairman), Sherrod Brown (Co-Chairman), Lamar Alexander, Mike Crapo, Rob Portman, Heidi Heitkamp, Tina Smith, Joe Manchin, and Representatives Virginia Foxx, Phil Roe, Vern Buchanan, David Schweikert, Richard Neal, Bobby Scott, Donald Norcross, and Debbie Dingell. Additional information is available in CRS Report R45107, *Joint Select Committee on Solvency of Multiemployer Pension Plans: Structure, Procedures, and CRS Experts*.

consideration of the legislative text in the Senate, though there are no such provisions for consideration in the House.

Possible Effects of Inaction

Some Members of Congress have said that doing nothing is not an option.[17] In the absence of enacted legislation, beginning in 2025 when PBGC is projected to run out of resources, the benefits that are owed to participants in insolvent plans will be far greater than the PBGC's resources.[18] At the end of FY2017, PBGC's multiemployer program had $2.3 billion in assets and received $291 million in premium income in that fiscal year.[19] Once its assets are exhausted, PBGC would be able to provide financial assistance to plans equal only to the amount of its premium revenue. PBGC indicated that most participants would receive less than $2,000 per year.[20] Further, some policy analysts have raised concerns about possible contagion effects that may exacerbate an already large problem: The insolvency of a multiemployer plan could cause large withdrawal liability assessments for the employers in that plan. If these increased withdrawal liability assessments cause financial distress for some of these employers, it could affect their contributions to other multiemployer plans in which they participate. In addition, withdrawal liability amounts might need to be disclosed in employers' financial statements, which some have suggested could limit these employers' access to credit.[21]

Some policymakers have noted that a solution to the issues created by the projected insolvencies of multiemployer plans likely will present challenges to stakeholders. For example, Senator Orrin Hatch indicated that, "there are no magic bullets, and any solutions we come up with are bound to make at least some people unhappy."[22] Others, for example Representative Marcy Kaptur, have called for a "shared sacrifice" approach.[23] The considerable size and nature of the problem likely

[17] See for example, Representative Jared Polis, ranking member, Subcommittee on Health, Employment, Labor, and Pensions, *Examining Reforms To Modernize The Multiemployer Pension System*, hearing, April 29, 2015, https://www.gpo.gov/fdsys/pkg/CHRG-114hhrg94314/html/CHRG-114hhrg94314.htm or Representative Donald Norcross, https://www.pensions.senate.gov/sites/default/files/3-14-18-JSC-Business%20Meeting.pdf.

[18] See Pension Benefit Guaranty Corporation, "PBGC Projections: Multiemployer Program Likely Insolvent by the End of 2025; Single-Employer Program Likely to Eliminate Deficit by 2022," press release, August 3, 2017, https://www.pbgc.gov/news/press/releases/pr17-04.

[19] See Pension Benefit Guaranty Corporation, *2017 Annual Report*, November 15, 2017, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2017.pdf.

[20] See Pension Benefit Guaranty Corporation, "PBGC Projections: Multiemployer Program Likely Insolvent by the End of 2025; Single-Employer Program Likely to Eliminate Deficit by 2022," press release, August 3, 2017, https://www.pbgc.gov/news/press/releases/pr17-04.

[21] See, for example, Barbara Chambers, "Multiemployer Defined Benefit Pension Plans' Liability Spillovers: Important Connections in U.S. Unionized Industries," 2017 FMA European Conference Program, Lisbon, Portugal, June 2017, http://www.fmaconferences.org/Lisbon/Papers/multiemployer_pension_plans_liability_spillovers.pdf and Aliya Wong, *Testimony: Employer Perspectives on Multiemployer Pension Plans*, U.S. Chamber of Commerce, Testimony Before The United States Senate & United States House Of Representatives Joint Select Committee On Solvency Of Multiemployer Pension Plans, June 13, 2018, https://www.uschamber.com/testimony/testimony-employer-perspectives-multiemployer-pension-plans. For a discussion that calls the contagion effects "smoke and mirrors" see Rachel Greszler, *Why Government Loans to Private Union Pensions Would Be Bailouts—and Could Cost Taxpayers More than Cash Bailouts*, The Heritage Foundation, Backgrounder No. 3283, February 5, 2018, https://www.heritage.org/sites/default/files/2018-02/BG3283.pdf.

[22] See Hatch Opening Statement at Joint Select Committee on Pensions Organizing Meeting, U.S. Congress, Senate Joint Select Committee on Solvency of Multiemployer Pension Plans, *Open Executive Session to Organize the Joint Select Committee*, 115th Cong., 2nd sess., March 14, 2018, https://www.pensions.senate.gov/sites/default/files/Hatch%20Statement.pdf.

[23] See, for example, Marcy Kaptur, "Introduction [O]f the 'Keep Our Pension Promises Act'," Extension of Remarks,

requires some concession from all stakeholders: employers, plans, participants, and U.S. taxpayers. Finding the balance needed to gain the buy-in from each group of stakeholders is likely to be a complex process, but critical to the success of the Joint Select Committee.

Some stakeholders argue against providing loans or financial assistance to multiemployer plans.[24] Their concerns include the following: a loan program for multiemployer plans could be viewed as a bailout, particularly if there are provisions that provide for forgiveness of part or all of a loan; loans and financial assistance to multiemployer plans would be too costly for U.S. taxpayers; and there is no precedent for the U.S. government providing financial assistance to private-sector pension plans, which could lead to proposals for financial assistance to underfunded state and local government pension plans.[25]

Costs to Certain Employers If Participants' Benefits Are Reduced

Several employers have promised to offset benefit reductions for certain former employees in some multiemployer pension plans to which the employers had previously contributed. These employers could benefit financially if proposals to assist financially-troubled plans were enacted and did not include any benefit reductions (for example, some of the proposals do not require any benefit reductions for participants in plans that receive a loan or are partitioned). United Parcel Service (UPS) and Kroger are two employers that withdrew from the Central States multiemployer plan and, as part of their agreement to leave the plan, agreed to offset reductions in pension benefits to certain former employees in the plan.[26] If proposals are enacted that do not reduce participants' benefits, participants in Central States would receive their full benefits so these employers would not need to offset any benefit reductions.[27]

In the absence of any financial assistance to PBGC or to Central States, the offsets these companies would have to provide could be very large. For example, UPS indicated in its 2016 Annual Report that its obligation could be about $4.0 billion.[28] Kroger announced the agreement in December 2017 and has not indicated the amount of its potential financial responsibility.[29]

Congressional Record, vol. 163, part 82 (May 11, 2017), p. E626.

[24] See, for example, Rachel Greszler, *Why Government Loans to Private Union Pensions Would Be Bailouts—and Could Cost Taxpayers More than Cash Bailouts*, The Heritage Foundation, February 5, 2018, https://www.heritage.org/budget-and-spending/report/why-government-loans-private-union-pensions-would-be-bailouts-and-could or Pensions & Investments, *Just say no to multiemployer plan bailout*, Editorial, May 28, 2018, http://www.pionline.com/article/20180528/PRINT/180529895/just-say-no-to-multiemployer-plan-bailout.

[25] There are some differences between private-sector and state and local government DB pension plans: state and local pension plans are not covered by ERISA, receive minimal federal oversight, and do not have a insurance program that was established in federal law.

[26] Central States is one of the largest multiemployer plans and the insolvency of this plan would result in the insolvency of PBGC. In FY2013, PBGC estimated that its obligation to Central States would be $20 billion. See PBGC FY2013 Annual Report, p. 58, https://www.pbgc.gov/sites/default/files/legacy/docs/2013-annual-report.pdf.

[27] It is possible that other employers have promised to offset reductions in benefits to some participants in Central States and other multiemployer pension plans, although the Congressional Research Service (CRS) is not aware of any as of the date of this report.

[28] See *United Parcel Service 2016 Annual Report*, http://nasdaqomx.mobular.net/nasdaqomx/7/3521/5025/.

[29] See The Kroger Co., "Kroger and International Brotherhood of Teamsters Protect Pensions: Associates Approve Kroger Withdrawal from Central States Pension Fund," press release, December 13, 2017, https://www.sec.gov/Archives/edgar/data/56873/000110465917073023/a17-28343_1ex99d1.htm.

Policy Option: Assist Financially Troubled Plans

Policy options to assist financially-troubled plans include (1) loans subsidized by the federal government and direct funding and (2) partitions, which would remove specified liabilities from financially-troubled plans.

Loans and Financial Assistance to Financially Troubled Plans

Two proposals introduced in the 115th Congress would direct the U.S. Treasury to provide loans to financially-troubled plans. The loan programs differ in the loan amounts and the extent, if any, of reductions to participants' benefits. An important consideration to the effectiveness of this approach is whether plans that receive loans will be able to accumulate sufficient funds to repay the loan principal when it is due.

One proposal would allow any plan in critical and declining status to receive loans and the other would provide loans only to the United Mine Workers of America (UMWA) 1974 Plan, a multiemployer pension plan covering members of the UMWA. The National Coordinating Committee for Multiemployer Plans and UPS have each offered loan program solutions; these have been discussed by policymakers, but are not currently in legislative form.

S. 2147, the Butch-Lewis Act of 2017, and H.R. 4444, the Rehabilitation for Multiemployer Pensions Act

S. 2147, the Butch Lewis Act of 2017, introduced on November 16, 2017, by Senator Sherrod Brown and H.R. 4444, the Rehabilitation for Multiemployer Pensions Act, introduced on November 16, 2017, by Representative Richard Neal are related bills containing nearly identical provisions that would establish the Pension Rehabilitation Authority (PRA) in the U.S. Treasury. The PRA would provide loans to multiemployer plans. The loan amount would be equal to the total lifetime amount of benefits for participants who are receiving plan benefits at the time of the loan (referred to as participants in *pay status*). If the loan amount were insufficient to prevent the plan from becoming insolvent, the plan could also receive financial assistance from PBGC, although it is uncertain whether the PBGC financial assistance would be repaid.[30] The bills would require the plan to (1) use the loan proceeds to either purchase annuities for participants in pay status or (2) keep the loan proceeds in a portfolio that would be unlikely to lose value.[31] The plan would pay interest for 29 years and repay the loan principal in year 30.

S. 2147 and H.R. 4444 would not reduce participants' benefits from the amount earned by the participants in the plan, including benefits in plans that receive PBGC financial assistance in addition to a PRA loan. Plans that received approval for benefit suspensions under the Multiemployer Pension Reform Act of 2014 (MPRA; passed as part of P.L. 113-235) would be required to apply for loans and those benefit reductions would be restored in such plans that received loans.[32]

[30] Under current law, PBGC financial assistance to multiemployer plans are loans. However, because PBGC currently provides financial assistance to multiemployer pension plans only when a plan is insolvent, the financial assistance is almost never repaid; only one multiemployer DB plan has repaid PBGC financial assistance.

[31] Such a portfolio would likely consist of U.S. Treasury securities and investment grade corporate bonds.

[32] For details on MPRA, see CRS Report R43305, *Multiemployer Defined Benefit (DB) Pension Plans: A Primer*.

Plans could accumulate funds to repay the loan principal from the investment proceeds of plan assets. Plans that receive loans would have larger amounts of plan assets from which to invest because in the first years of the loan term, benefit payments would be paid mostly from loan proceeds, which would free up plan assets to be invested. This would allow any investment earnings on invested plan assets to be used toward loan repayment.

S. 2147 and H.R. 4444 would not require any changes to the funding rules for multiemployer plans. CBO prepared a preliminary analysis of S. 2147 and estimated that the bill "would probably increase [federal] deficits by more than $100 billion over the 2019-2028 period."[33] However, the estimate noted that it is possible that few plans would qualify for loans, which would substantially lower the cost estimate. In addition, CBO noted several uncertainties around key elements of the bill (such as when financial assistance payments would be made) and that the formal cost estimate could differ substantially.

S. 1911 and H.R. 3913, the American Miners Pension Act of 2017

S. 1911 and H.R. 3913, the American Miners Pension Act of 2017, introduced on October 3, 2017, by Senator Joe Manchin and Representative David McKinley, would, among other provisions, provide financial assistance to the United Mine Workers of American (UMWA) 1974 Pension Plan from two U.S. Treasury sources: (1) direct financial assistance from the General Fund and (2) loans.[34]

The amount to be transferred from the Treasury to the UMWA 1974 Plan would be any amount remaining within an annual cap of $490 million after funds are first transferred from the General Fund to three UMWA multiemployer health plans and to certified states and tribes that have reclaimed their priority abandoned coal mining.[35]

In addition to the Treasury transfers, S. 1911 and H.R. 3913 would require, beginning in FY2018, the Secretary of the Treasury to make an annual loan to the 1974 Plan to prevent the plan's insolvency. The terms of the loans would be as follows:

- Each annual loan would be for the amount that the 1974 Plan trustees determine "to be necessary to prevent the insolvency of" the plan in that year.[36]
- The maximum amount of each annual loan would be $600 million.
- The interest rate charged to the plan would be 1% per year.
- The term of each loan would be 30 years with interest-only payments for the first 10 years.

[33] See Congressional Budget Office, *Preliminary Analysis of* S. 2147, *the Butch-Lewis Act of 2017, as introduced: Letter to the Honorable Orrin G. Hatch*, July 16, 2018, https://www.cbo.gov/system/files?file=2018-07/s2147_HatchLtr.pdf.

[34] The UMWA 1974 Pension Plan is the third largest multiemployer plan (ranked by number of participants) in critical and declining status. In 2016, the plan had about 100,000 participants and unfunded liabilities of $6.3 billion. See the Form 5500, Schedule B, United Mine Workers of America 1974 Pension Plan, available for download from https://www.efast.dol.gov/portal/app/disseminate?execution=e1s1.

[35] More information on UMWA pension benefits is available in CRS In Focus IF10617, *Pension Benefits for United Mine Workers of America Retirees*. More information on priorities in the Abandoned Mine Land Reclamation Program is available at https://revenuedata.doi.gov/how-it-works/aml-reclamation-program.

[36] Section 2(a) of S. 1911 / H.R. 3913 in the 115th Congress.

National Coordinating Committee for Multiemployer Plans Loan Proposal

The National Coordinating Committee for Multiemployer Plans (NCCMP), a nonpartisan advocacy group representing multiemployer plans, proposes a loan program that would provide plans loans at 1% interest.[37] The repayment would be over 30 years, with interest only payments for the first 15 years. NCCMP stated that, "the entire premise of the loan program is to allow a Plan to borrow enough money at 1% and invest at a higher rate that will allow the Plan to earn their way through the funding problems that they face…" The proposal presents three alternatives, which vary to the extent, if any, benefit reductions are used to offset the credit subsidy cost.[38]

Curing Troubled Multiemployer Pension Plans Loan Proposal

A UPS proposal would provide loans to multiemployer plans in critical and declining status and whose actuary certifies that the loan would correct the plan's funding issues and can be repaid.[39]

The loan would be for an amount equal to five times what the proposal calls the *shortfall*: (1) the total amount of contributions in the year prior to the loan plus (2) the amount of projected earnings on plan investments in the year immediately following the loan, minus (a) projected benefit payments and (b) reasonable administrative expenses. The interest rate on the loan would be 1% and would be repayable over 30 years, with interest only payments for the first five years. After five years, a plan could apply for a second loan if the plan remains in critical and declining status. Ten years after the initial loan, a plan could apply for a third, and final, loan if it were still in critical and declining status. Benefit payments would be reduced by 20% for all participants.

The proposal includes a risk reserve pool, which is a sum of money set aside from contributions by employers, participants, and unions in the event a plan cannot repay its loan in full. If a plan were unable to make 100% of its yearly loan repayment, it could request funds from the pool to make the payment in full.

The risk reserve pool would be drawn from all multiemployer plans, regardless of zone status, and would be funded by the following annual payments:

- a $7 increase in the per participant PBGC premiums paid by the pension plan,
- an employer payment of $2 per month ($24 per year) per active participant,
- a participant payment of $2 per month ($24 per year), and
- a union payment of $2 per month ($24 per year) per active participant.

[37] The proposal had not been introduced as legislation as of September 5, 2018. Draft legislative language is available at http://nccmp.org/wp-content/uploads/2017/11/MPP-leg-draft-03-19-18-discussion-draft.pdf.

[38] The credit subsidy cost is the estimated long-term cost of a direct federal loan or loan guarantee. Credit subsidy costs are incurred, for example, by charging a lower interest rate than would occur for a loan from the private market. For more information, see CRS Report R44193, *Federal Credit Programs: Comparing Fair Value and the Federal Credit Reform Act (FCRA)*.

[39] The proposal had not been introduced as legislation as of September 5, 2018. The analysis is based on the loan proposal dated April 14, 2017, and is available at http://src.bna.com/qLf. A version dated March 13, 2017, is available at https://nysteamstersfundretireerep.com/wp-content/uploads/2017/04/NYS-Teamsters-PRF-Retiree-Rep-UPS-Legislative-Proposal.pdf.

Plan Partitions

Multiemployer plans can apply to PBGC to be partitioned.[40] A plan partition involves creating a second plan (called a successor plan) and transferring some amount of the original plan's benefit obligations to the successor plan. Benefits are reduced to the maximum allowed under Multiemployer Pension Reform Act of 2014 (MPRA).[41] The successor plan receives PBGC financial assistance to pay participants' benefits up to the PBGC maximum guarantee levels. The original plan pays (1) the benefits to participants remaining in the original plan and (2) the amount of participants' benefits above the PBGC maximum guarantee up to the amount of the reduced benefit.

For PBGC to approve a plan partition, the following conditions must be met:

- the plan is in critical and declining status;
- PBGC determines that the plan sponsor has taken (or is taking) all reasonable measures to avoid insolvency;
- PBGC determines that a partition will reduce PBGC's expected long-term loss and is necessary for the plan to remain solvent;
- PBGC certifies to Congress that PBGC's ability to meet existing financial assistance obligations to other plans will not be impaired by the partition; and,
- the cost of the partition is paid exclusively from PBGC's multiemployer fund.

Given the expected insolvency of PBGC's multiemployer insurance program, the condition that a partition will not impair PBGC's ability to meet existing financial assistance obligations likely limits the use of partitions. However, if PBGC were given sufficient resources, partitioning plans could allow PBGC to intervene in troubled plans prior to the point of plan insolvency. Under current law, PBGC provides financial assistance to multiemployer plans once they exhaust assets and become insolvent. For comparison, in PBGC's single-employer program, PBGC can initiate termination proceedings for an involuntary termination if for example, the long-run loss to the PBGC "may reasonably be expected to increase unreasonably if the plan is not terminated."[42]

Some policy analysts have suggested that PBGC's partitioning authority should be expanded to preserve the portion of a financially-troubled multiemployer plan that contains participants with employers active in the plan, which could result in a financially-sound original plan.[43]

One of the benefits of allowing PBGC to partition plans prior to insolvency could include possibly saving PBGC money, because plans could be required to reduce benefits prior to plan insolvency (as in the current practice). Under current law, benefits are transferred to the successor

[40] See 29 U.S.C. §1413 and https://www.pbgc.gov/prac/pg/mpra/partition-faqs-for-practitioners. PBGC has authorized a limited number of partitions. For example, a January 31, 2014, press release indicated that PBGC had used its partition authority three times to that point. See PBGC Acts to Help Save Multiemployer Pension Fund, https://www.pbgc.gov/news/press/releases/pr14-02.

[41] Under MPRA, a plan can reduce benefits to a level of 110% of the PBGC maximum guarantee (for an annual benefit of $14,157 (or 1.1*$12,870) for an individual with 30 years of service in a plan). Disabled individuals and retirees aged 80 or older may not have their benefits reduced. Individuals between the ages of 75 and 80 do not receive the maximum benefit reduction.

[42] See 29 U.S.C. 2342(a)(4). For more information on PBGC terminations in the single-employer program see CRS Report RS22624, *The Pension Benefit Guaranty Corporation and Single-Employer Plan Terminations*.

[43] Expanded partitioning authority was an option suggested by experts in a 2010 Government Accountability Office (GAO) report. See U.S. Government Accountability Office, *Changes Needed to Better Protect Multiemployer Pension Benefits*, 11-79, November 16, 2016, p. 38, https://www.gao.gov/assets/320/311510.pdf.

plan so that the original plan is projected to remain solvent. The original plan might still have participants whose employer no longer participates in the plan (called *orphan* participants).[44] However, if the benefits of orphan participants were to be transferred to the successor plan, then all participants in the original plan would have an employer that was contributing that plan.[45] If needed, a combination of benefit reductions or increased employer contributions could make the original plan well-funded. Once the original plan was well-funded, then changes to funding rules could be applied so that the original plan does not become financially-troubled in the future.

S. 1076, the Keep Our Pension Promises Act, introduced by Senator Bernie Sanders on May 9, 2017, and H.R. 2412, also the Keep Our Pension Promises Act, introduced on May 11, 2017 by Representative Marcy Kaptur, are identical bills that would, among other provisions, allow for the partitioning of plans in critical and declining status and create a legacy fund within PBGC to cover the administrative and benefit costs of the partitions. The legacy fund would be financed by changes to the tax code.[46] The bills do not specify which benefits would be transferred to the partitioned plan or which benefits would remain in the original plan.

The bills would not require any benefit reductions: participants would receive their full benefits as promised by the plan. In addition, plans that were approved for benefit reductions under MPRA would be required to apply for partitioning and restore the benefits that had been reduced.[47]

Policy Option: Change PBGC Maximum Benefit

A multiemployer plan that receives financial assistance from PBGC must reduce participants' benefits according to a formula based on the number of years of service in the plan.[48] The formula is for each of service in the plan 100% of the first $11 of the participant's monthly benefit plus 75% of next $33 of the monthly benefit rate. For example, a participant with 30 years of plan participation could receive up to (30*(100% * $11 + 75% * $33)) per month or $12,870 per year. Participants with more (or fewer) years of service in the plan would receive a larger (or smaller) maximum benefit. For comparison, the multiemployer maximum benefit is lower than that for the single-employer program: the single-employer maximum benefit is about $65,000 per year for individuals who receive their benefits as single-life annuities beginning at the age of 65.[49]

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[44] Participants with vested benefits who worked for an employer that no longer participates in the plan are sometimes called orphan participants because they do not have an employer that will make additional contributions to the plan for their unfunded benefits. The existence of orphan plan participants can result in a worsening funding situation for the multiemployer plan, because DB plan assets are comingled in a trust and are not assigned to a particular employer's contributions or participant's benefit. Thus, benefit payments for all participants draw down general plan assets.

[45] Alternatively, benefit reductions to participants could be minimized by first transferring the benefits of participants that are below the maximum guarantee amount and then transferring an amount of orphan benefits to the successor plan to make the original plan well-funded. However, orphan benefits would potentially remain in the original plan.

[46] For example, the bills would modify like-kind exchange rules and increase required distributions for retirement accounts with very large account balances.

[47] In the 111th Congress, S. 3157, the Create Jobs and Save Benefits Act of 2010, introduced by Senator Robert Casey on March 23, 2010, and H.R. 3936, the Preserve Benefits and Jobs Act of 2009, introduced by Representative Earl Pomeroy on October 27, 2009, would have, among other provisions, partitioned certain financially-troubled multiemployer plans and transferred the plans' orphan liabilities to PBGC. S. 3157 and H.R. 3936 would have made the obligations of the partitioned plans obligations of the United States.

[48] More information is available at Pension Benefit Guaranty Corporation, Multiemployer Benefit Guarantees, https://www.pbgc.gov/prac/multiemployer/multiemployer-benefit-guarantees.

[49] The maximum benefit in the single-employer program is adjusted for changes in the annual average wage. It is also

The multiemployer guarantee is not indexed to inflation and was last increased in the Consolidated Appropriations Act, 2001 (P.L. 106-554). As the dollar amount of participants' benefits have increased, an increasing number of participants are likely to see their benefits reduced as a result of the maximum guarantee. Using 2013 data, PBGC estimated that 79% of participants in multiemployer plans that were receiving financial assistance receive their full benefit as earned in the plan.[50] Among participants in plans that were terminated and likely to need financial assistance in the future, 49% of participants have a benefit below the PBGC maximum guarantee, and 51% have a benefit larger than the PBGC maximum guarantee.[51] Among ongoing plans (neither receiving PBGC financial assistance nor terminated and expected to receive financial assistance), the average benefit is almost twice as large as the average benefit in terminated plans. This suggests that a larger percentage of participants in plans that receive PBGC financial assistance in the future are likely to see benefit reductions as a result of the PBGC maximum guarantee level.[52]

Although there are currently no proposals to increase PBGC maximum benefit, some policymakers have indicated that it is too low.[53] For example, Senator Sherrod Brown called the multiemployer guarantee "miniscule" and a Government Accountability Office (GAO) report cited experts who described the guarantee level as low and that the "significant increase in premiums since 2005 did not coincide with a comparable rise in the benefit guaranty."[54] The effect on household incomes imposed by solvency-driven benefit reductions could be partly offset by increases in the PBGC maximum benefit guarantee.

Policy Option: Change PBGC Premium Structure

Because of PBGC's role as the insurer of multiemployer DB benefits, it has been a focus of discussions regarding the solvency of multiemployer plans.[55]

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reduced if a participant receives the benefit as a joint-and-survivor annuity (which pays the benefit for the lifetime of the participant or spouse, whichever is longer). The maximum benefit is also reduced (or increased) if a participant begins receiving their benefit before (or after) age 65. See https://www.pbgc.gov/about/factsheets/page/guar-facts.

[50] See Pension Benefit Guaranty Study, *PBGC's Multiemployer Guarantee*, March 2015, https://www.pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf. The study considered only reductions in benefits because of the maximum guarantee and did not consider the effect of the likely insolvency of PBGC.

[51] A multiemployer plan terminates when (1) the plan adopts an amendment that participants will no longer earn benefits in the plan, (2) every employer withdrawals from the plan, or (3) the plan adopts an amendment to become an individual account plan. See 29 U.S.C. §1341a(a).

[52] The average monthly benefit in terminated plans that are likely to receive PBGC financial assistance was $383.33; in plans that were projected to become insolvent within 10 years it was $546.17; and in remaining, ongoing plans it was $1,010.44. See Pension Benefit Guaranty Corporation, *PBGC's Multiemployer Guarantee*, March 2015, Figure 4, https://www.pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf.

[53] In the 111th Congress, S. 3157 and H.R. 3936 would have, among other provisions, increased the PBGC maximum benefit to $20,070 for an individual with 30 years of service in a plan.

[54] See Brown Opening Statement At Joint Pension Committee Hearing, U.S. Congress, Senate Joint Select Committee on Solvency of Multiemployer Pension Plans, *Employer Perspectives on Multiemployer Pension Plans*, 115th Cong., 2nd sess., June 13, 2018, https://www.pensions.senate.gov/sites/default/files/Sen.%20Brown%20Hearing%20Opening%20Statement%2006.13.2018%20-%20As%20Prepared%20For%20Delivery.pdf and U.S. Government Accountability Office, *Changes Needed to Better Protect Multiemployer Pension Benefits*, 11-79, November 16, 2016, p. 42, https://www.gao.gov/assets/320/311510.pdf.

[55] For more information on the options available to PBGC, see Congressional Budget Office, *Options to Improve the Financial Condition of the Pension Benefit Guaranty Corporation's Multiemployer Program*, August 2, 2016,

Multiemployer plans currently pay a flat-rate premium to PBGC of $28 per participant per year.[56] The PBGC multiemployer premium was $2.60/participant from 1988 to 2005, $8.00/participant in 2006 and 2007, $9.00/participant from 2008 to 2012, $12.00/participant in 2013 and 2014, $26.00/participant in 2015, $27.00/participant in 2016, and $28.00/participant in 2017 and 2018.[57] In FY2017, PBGC received $291 million in premium revenue.[58]

Proposals for changes to PBGC premiums include the following new premiums: (1) a variable-rate premium based on the amount of underfunding in a plan, (2) an exit premium when an employer leaves a multiemployer plan, and (3) a risk-based premium based on the riskiness of a pension plans' investment portfolio. Although increased PBGC's premium revenue could delay its projected insolvency, employers' concerns mean that it is likely not feasible for premiums to rise to a level sufficient to ensure the multiemployer program's long-term solvency.

Variable-Rate Premium

The FY2019 budget proposed a new variable-rate premium based on the amount of underfunding in a multiemployer plan.[59] The budget does indicate the amount of the premium.[60] The amount of the premium would be capped, though the budget does not specify the amount of the cap.

Exit Premium

The FY2019 federal budget also proposed an exit premium that would be paid by employers that leave a multiemployer plan. The purpose of the exit premium is to compensate PBGC for the additional risk imposed on it when employers exit a plan.[61] The exit premium would be equal to 10 times the amount of the variable-rate premium cap. The budget does not specify the amounts of the exit premium, although it noted that the new variable-rate and exit premiums would ensure the solvency of the multiemployer program for 10 years.

Risk-Based Premium

Some policymakers have suggested a premium based on the riskiness of a multiemployer pension plan's investment portfolio.[62] The rationale behind this premium is the lower the risk of a plan's

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https://www.cbo.gov/publication/51536.

[56] MPRA contained a provision for an annual increase in the multiemployer premium for increases in the National Average Wage Index. The first increase occurred in 2016.

[57] The multiemployer premiums have been generally lower than the single-employer premium rates. See Pension Benefit Guaranty Corporation, *2016 Pension Insurance Data Tables*, Table S-29 and Table M-16, https://www.pbgc.gov/sites/default/files/2016_pension_data_tables.pdf.

[58] See Pension Benefit Guaranty Corporation, *FY2017 Annual Report*, November 15, 2017, p. 32, https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2017.pdf.

[59] See https://www.pbgc.gov/sites/default/files/pres-fy2019-pbgc-budget.pdf.

[60] The single-employer program has a variable-rate premium of $38 per $1,000 of a plan's unfunded vested benefits.

[61] See https://www.pbgc.gov/sites/default/files/pres-fy2019-pbgc-budget.pdf.

[62] See, for example, comments by Representative Bobby Scott at U.S. Congress, House Committee on Education and the Workforce, *Financial Challenges Facing the Pension Benefit Guaranty Corporation: Implications for Pension Plans, Workers, and Retirees*, 114th Cong., 1st sess., November 29, 2017, beginning at 54:10 at https://youtu.be/ZWHcPPpsr9M. Premiums based on the financial health of the plan sponsor have been suggested for PBGC's single-employer program, as the pension plan of sponsor in poor financial condition is a greater risk to PBGC than is the pension plan of a sponsor in good financial condition. See the description of PBGC in GAO's high risk report, available at https://www.gao.gov/highrisk/pension_benefit/why_did_study#t=1.

investments, the lower the likelihood that the plan would become insolvent and require PBGC financial assistance.[63]

Premiums based on the amount of plan underfunding and the riskiness of a plan's investment portfolio could incentivize multiemployer plans to become well-funded and conservatively invested: a plan that is 100% funded and invested in low-risk assets is of little risk of becoming insolvent and needing PBGC financial assistance. Even if employers left the plan, the benefits of orphan participants would likely not become underfunded because of the low-risk investments. Variable-rate and risk-based premiums would likely be a relatively low dollar amount for plans with such finance structures.

Policy Option: Prevent Future Insolvencies

A major contributor to the current multiemployer problem was the December 2007 to June 2009 economic recession. A survey of 392 multiemployer plans indicated that in 2007 they had 56.7% of their assets invested in equities.[64] The accompanying stock market downturn resulted in large losses to plan investments.[65] In addition, the number of employers participating in multiemployer plans likely decreased as a result of business bankruptcies, leaving larger amounts of orphan liabilities.

Strengthen Funding Rules

In the absence of changes to plan design (such as variable benefit or composite plans, discussed below) two factors would need to be present to ensure that DB pension plans do not have large amounts of unfunded liabilities and are not at risk of becoming insolvent. Plans would need to be (1) 100% funded and (2) invested in relatively safe assets. A plan that is 100% funded would have sufficient funds from which to pay 100% of the promised benefits. A plan that is invested in relatively safe assets (e.g., investing in investment grade or better corporate debt and avoiding equities) would probably never face a situation where its investment portfolio incurred anything other than minor losses.

The effects of stricter funding requirements would likely include some combination of (1) increased required employer contributions to plans to provide benefits similar to today's promised benefits or (2) decreased promised benefits to participants.[66] Some stakeholders might find these

[63] The riskiness of a DB pension plan's portfolio can potentially be measured in several ways. See, for example, Raimond Maurer, *Integrated Risk Management for Defined Benefit Pensions: Models and Metrics*, Pension Research Council, WP2013-10, September 2013, http://pensionresearchcouncil.wharton.upenn.edu/wp-content/uploads/2015/09/WP2013-10-Maurer.pdf; Dorothee Franzen, *Managing Investment Risk In Defined Benefit Pension Funds*, OECD Publishing, OECD Working Papers on Insurance and Private Pensions No. 38, March 2010, https://www.oecd.org/finance/private-pensions/44899253.pdf; and Jing Ai, Patrick L. Brockett, and Allen F. Jacobson, "A new defined benefit pension risk measurement methodology," *Insurance: Mathematics and Economics*, vol. 63 (July 2015), pp. 40-51.

[64] See Randy G. DeFrehn and Joshua Shapiro, *Multiemployer Pension Plans: Main Street's Invisible Victims of the Great Recession of 2008*, National Coordinating Committee for Multiemployer Plans, April 2010, Chart 8, https://nccmp.org/wp-content/uploads/2017/07/59101_NCCMP_SurveyRpt.pdf.

[65] The S&P 500 index decreased by 56.8% from its highest prerecession close of 1565 on October 9, 2007, to its lowest close since 1998 of 687 March 9, 2009.

[66] For a discussion of possible negative effects see Michael Scott, Submission By The National Coordinating Committee For Multiemployer Plans To The Joint Select Committee On Solvency Of Multiemployer Pension Plans, National Coordinating Committee for Multiemployer Plans, May 24, 2018, pp. 9-11, https://nccmp.org/wp-content/uploads/2018/05/NCCMP-Response-to-April-18th-Hearing-Full-Response.pdf.

tradeoffs worthwhile, as some participants currently face a less than 100% chance of receiving their full benefit as earned in a plan. Other stakeholders might find these requirements onerous, too costly to impose on employers and plans, and too large a loss for plan participants.

Discount Rate to Value Plan Benefit Obligations

A pension plan's benefits are a plan's liabilities spread out over many years in the future.[67] These future benefits are calculated and reported as current dollar values (also called present value). The discount rate is a key assumption in determining the present value. The Internal Revenue Code (IRC) does not require multiemployer pension plans to use a specific discount rate to value their future benefit obligation.[68] The assumptions a plan uses must be reasonable and offer the best estimate of the plan's expected experience and, in practice, multiemployer plans generally discount plan liabilities using the expected rate of return on the plan's assets.[69]

Pension policy experts have several viewpoints on the appropriate discount rate that pension plans should use to value plan liabilities.[70] The higher the discount rate a plan uses the lower the present value of those benefit obligations. Using a lower discount rate would likely result in either increases in required employer contributions to plans or lower benefits that could be promised in the future.[71]

These discussions, generally speaking, have been between actuaries and economists. Broadly speaking, some actuaries recommend that pension plans discount future benefits using the expected rate of return on plan investments (which is the current practice for multiemployer DB

[67] For more information on how pension plans calculate present values, see Appendix A in CRS Report R43305, *Multiemployer Defined Benefit (DB) Pension Plans: A Primer*.

[68] See 26 U.S.C. §431.

[69] The Internal Revenue Code (IRC) specifies the discount rates that single-employer plans must use. These rates are based on corporate bond yields and are adjusted based on the average of 25-year corporate bond rates. See 26 U.S.C. §430. Schedule MB of the Form 5500 (a pension plan's annual disclosure report) requires that liabilities be reported as an "accrued liability," which discounts liabilities using the expected return on investments and as a "current liability," which discounts liabilities using the "RPA '94" rate (for the Retirement Protection Act of 1994), which is generally the lower of the two rates. Among plans that filed Schedule MB in 2015, the median RPA '94 rate was 3.51%, and the median rate used to calculate the actuarial value of liabilities was 7.5%. See CRS Report R45187, *Data on Multiemployer Defined Benefit (DB) Pension Plans*.

[70] The context for much of the recent policy discussions on the appropriate rate for discounting pensions has been in the area of pension plans for state and local government employees. Although there are many differences between state and local government pension plans and multiemployer DB pension plans (such as, state and local government plans are much less likely to become insolvent), many aspects of the discount rate discussion apply to all DB pension plans, including multiemployer plans. For example, for funding purposes, multiemployer plans discount future benefit obligations using the expected rate of return on plan assets. For more information, see Milliman, *Setting the Discount Rate for Pension Liabilities*, July 2012, http://publications.milliman.com/periodicals/peri/pdfs/PERi-07-17-2012.pdf; Douglas Elliot, *State and Local Pension Funding Deficits: A Primer*, Brookings Institution, December 2010, https://www.brookings.edu/wp-content/uploads/2016/06/1206_state_local_funding_elliott.pdf; The American Academy of Actuaries and the Society of Actuaries, *Pension Actuary's Guide to Financial Economics*, 2006, http://www.soa.org/Files/Sections/actuary-journal-final.pdf; and Congressional Budget Office, *The Underfunding of State and Local Pension Plans*, May 2011, http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/120xx/doc12084/05-04-pensions.pdf.

[71] Lower discount rates applied to benefits already earned would have to be funded by (potentially large) increased employer contributions. With regards to lower discount rates applied to future benefits accruals, plan sponsors would be able to choose how much is funded by employer contributions and how much is funded by reduced benefits. For a discussion of these issues in the context of multiemployer DB plans, see Horizon Actuarial Service, LLC, *The Impact of Alternative Discount Rates on Multiemployer Pension Plan Funding*, June 2018, http://www.horizonactuarial.com/uploads/3/0/4/9/30499196/horizon_actuarial_discount_rate_report.pdf.

pension plans). Some financial economists, by contrast, recommend that plans discount the liabilities using a discount rate that reflects the likelihood that the benefit obligation will be paid; in general, this would be a lower rate than currently used.[72] Some Members of Congress have also suggested that the rate that multiemployer plans use to discount their benefits may be too high.[73]

Alternative Plan Designs: Variable Benefit and Composite Plans

As an alternative to stricter funding requirements, plans would not become underfunded if participants' benefits fluctuated with the plan's investment performance.[74] For example, one plan design has a conservative assumed investment return (called a *hurdle* rate).[75] Benefits are adjusted upwards if the investment returns are above the hurdle rate and benefits are reduced if the plan's investment returns are below the hurdle rate. Employer contributions could be unchanged in either scenario.

Although this plan structure is available under current law[76] (and is referred to as a variable annuity benefit plan) they are not common among DB plans.[77]

In addition, legislation has been introduced to allow for *composite* pension plans, which, like variable annuity plans, combine features of defined benefit and defined contribution pension plans.[78]

H.R. 4997, the Giving Retirement Options to Workers Act of 2018 (or GROW Act), would allow multiemployer DB plan sponsors to add a composite plan to their pension plan[79] The composite plan would be a type of plan that provides plan sponsors with options, such as reductions in benefits or negotiated employer contributions, which would keep the plan funded at 120% if the plan's funding ratio fell below that level.

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[72] For a criticism of using lower discount rates to value multiemployer liabilities, see Michael Scott, Submission By The National Coordinating Committee For Multiemployer Plans To The Joint Select Committee On Solvency Of Multiemployer Pension Plans, National Coordinating Committee For Multiemployer Plans, May 24, 2018, http://nccmp.org/wp-content/uploads/2018/05/NCCMP-Response-to-April-18th-Hearing-Full-Response.pdf.

[73] See, for example, one of questions asked by Senator Rob Portman and Representative David Schweikert at U.S. Congress, Senate Joint Select Committee on Solvency of Multiemployer Pension Plans, *The History and Structure of the Multiemployer Pension System*, 115th Cong., 2nd sess., April 18, 2018, https://www.pensions.senate.gov/content/history-and-structure-multiemployer-pension-system.

[74] The funding ratio measures the adequacy of a DB pension plan's ability to pay for promised benefits. The funding ratio is calculated as the value of plan assets divided by the present value of plan liabilities.

[75] Mark Olleman and Kelly Coffing, "Variable Annuity Plans: an Emerging Plan Design," *Benefits Magazine*, April 2014, http://us.milliman.com/uploadedFiles/insight/2014/variable-annuity-pension-plans.pdf.

[76] See, for example, Pension Committee of the American Academy of Actuaries, *Exposure Draft: Variable Annuity Plans*, A Public Policy Practice Note, December 2015, https://www.actuary.org/files/Variable_Annuity_PN_Exposure_Draft121115_0.pdf.

[77] One actuary estimated that there were less than 100 of these plans in 2016. See Lee Barney, *Actuary Makes the Case for Variable Benefit Plans*, Plan Adviser, October 19, 2016, https://www.planadviser.com/actuary-makes-the-case-for-variable-benefit-plans/. Milliman, a consulting firm, refers to their plan design as a Sustainable Income Plan. For more information, see http://www.milliman.com/Solutions/Services/Resources/SIP/Multiemployer-plans/.

[78] For more information on variable annuity and composite plans, see U.S. Government Accountability Office, *Present Law, Data, And Selected Proposals Relating To Multiemployer Defined Benefit Plans*, JCX-9-16, February 26, 2016, https://www.jct.gov/publications.html?func=startdown&id=4872.

[79] For more information on composite plans, including an analysis of a previous version of a discussion of a composite bill proposal, see CRS Report R44722, *Proposed Multiemployer Composite Plans: Background and Analysis*.

The appeal of these alternative plan structures is that they provide plan sponsors with certainty regarding the amount of their annual contributions. In addition, the composite plan proposal would not be covered by PBGC (and the plan would not pay PBGC premiums) and employers would not be subject to any withdrawal liability.

Participants in variable annuity benefit and composite plans would be protected against longevity risk: they would have the certainty that they would receive benefit payments for life, although the dollar amount of the benefit payments would not be certain.[80] Because benefits in composite plans are not guaranteed, some might suggest that a composite plan's investment strategy (e.g., the amounts and types of plan investments) should be more conservative than in a traditional DB pension plan. One concern is that participants could be subject to potentially large benefit reductions, particularly if the stock market were to experience a steep decline. This concern could be alleviated by requiring plans to invest some or all of their portfolios in conservative investments to try to ensure a specified level of benefit.[81]

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[80] For comparison, a participant in a 401(k) plan runs the risk that the account could run out of assets before the participant dies.

[81] For example, composite plans could invest less in equities (like company stock) and more in debt instruments (such as U.S. Treasury and corporate bonds). However, the tradeoff for a more conservative investment policy would be lower promised benefits. More conservative investments such as bonds generally have lower investment returns than riskier investments such as company stock. However, riskier investments are also more likely have negative investment returns than conservative investments. For a discussion in the context of Canadian target benefit plans, see Aon Hewitt, Investments for the Target Benefit Plan, 2015, at https://retirementandinvestmentblog.aon.com/getattachment/242ef259-eac2-4d4d-8f6d-77e2b652b555/TargetBenefitPlan-Guide4-Jan2015-EN.pdf.aspx.