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Policy Options for Multiemployer Defined Benefit Pension Plans

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SUMMARY

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John J. Topoleski
Specialist in Income Security

Elizabeth A. Myers
Analyst in Income Security

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 its FY2018 Projections Report, PBGC indicated that the multiemployer insurance program is highly likely to become insolvent by 2025 and will be unable to pay 100% of participants' benefits at the guaranteed level.

As a result of a variety of factors—such as the recessions in 2001, from 2007 to 2009, and in 2020—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 economic effects of COVID-19 are likely to negatively impact multiemployer plan funding, but plans have not reported data at this point.

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 concluded without issuing a report or legislative language. In the 116th Congress, two proposals to address multiemployer plan insolvencies are the Multiemployer Pension Recapitalization and Reform Plan (sometimes referred to as the Grassley-Alexander Plan) and multiemployer provisions in H.R. 8406 (The HEROES Act).

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 2018, there were an estimated 10.6 million participants in 1,373 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 pensions benefits up to $12,870 per year for an individual with 30 years of

[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), *2017 Pension Insurance Data Tables*, Table M-5 and Table M-6, https://www.pbgc.gov/sites/default/files/2017_pension_data_tables.pdf. The 2017 data tables contain some data for 2018.

[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)*.

service in the 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 FY2019, PBGC reported a deficit of $65.2 billion in the multiemployer insurance program.[9] The Congressional Budget Office (CBO) in 2016 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 estimated 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 indicated 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 $310 million in FY2019.[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 remain.[14] Some experts refer to a multiemployer plan "death spiral" as an increasing number of

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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] See PBGC, *FY2019 Annual Report*, p. 26.

[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.

[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,

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' benefits 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.

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 had 16 Members of the House and Senate—four chosen by each of the chambers' party leaders—and was 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 held a number of hearings but did not release a report containing recommendations and policy proposals. The co-chairs released a statement indicating that while they "made significant

[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*.

progress and a bipartisan solution is attainable, more time is needed."[17] In the 116th Congress, H.Con.Res. 54 would establish a Joint Select Committee on Solvency of Multiemployer Pension Plans with nearly identical rules to the committee in the 115th Congress.

Possible Effects of Inaction

Some Members of Congress have said that doing nothing is not an option.[18] 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.[19] At the end of FY2019, PBGC's multiemployer program had $2.9 billion in assets and received $310 million in premium income in that fiscal year.[20] 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.[21] 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.[22]

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."[23] Others, for example Representative Marcy Kaptur, have

[17] Joint Select Committee on Solvency of Multiemployer Pension Plans, "Hatch, Brown Commit to Continued Work on Pension Crisis Past Nov. 30," press release, November 29, 2019, https://www.pensions.senate.gov/content/hatch-brown-commit-continued-work-pension-crisis-past-nov-30.

[18] See for example, Representative Frederica Wilsons, ranking member, Subcommittee on Health, Employment, Labor, and Pensions, *The Cost of Inaction: Why Congress Must Address the Multiemployer Pension Crisis*, hearing, March 7, 2019, https://www.govinfo.gov/content/pkg/CHRG-116hhrg35661/html/CHRG-116hhrg35661.htm.

[19] 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.

[20] See Pension Benefit Guaranty Corporation, *2019 Annual Report*, November 15, 2019, https://www.pbgc.gov/sites/default/files/pbgc-fy-2019-annual-report.pdf.

[21] 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.

[22] 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.

[23] 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/

called for a "shared sacrifice" approach.[24] The considerable size and nature of the problem likely 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 finding a solution that is acceptable to these stakeholders.

Some stakeholders argue against providing loans or financial assistance to multiemployer plans.[25] 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.[26]

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, Southeast And Southwest Areas Pension Fund (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.[27] 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.[28]

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 2019 Annual Report that its obligation could be about $4.8 billion.[29] Kroger announced the agreement in December 2017 and has not indicated the amount of its potential financial responsibility.[30]

Hatch%20Statement.pdf.

[24] See, for example, Marcy Kaptur, "Introduction [O]f the 'Keep Our Pension Promises Act'," Extension of Remarks, *Congressional Record*, vol. 163, part 82 (May 11, 2017), p. E626.

[25] 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.

[26] 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 an insurance program that was established in federal law.

[27] 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.

[28] 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.

[29] See *United Parcel Service 2019 Annual Report*, Note 5, http://www.investors.ups.com/static-files/e4d06ff9-8dcd-45a7-a8f5-b400c944455e/.

[30] See The Kroger Co., "Kroger and International Brotherhood of Teamsters Protect Pensions: Associates Approve

Policy Option: Assist Financially Troubled Plans

Policy options to assist financially troubled plans include (1) loans subsidized by the federal government and financial assistance and (2) partitions, which would remove a portion of liabilities from financially-troubled plans.

Loans and Financial Assistance to Financially Troubled Plans

Legislation introduced in the 116th Congress would direct the U.S. Treasury to provide loans to financially troubled plans. The effectiveness of the loan program might depend on the extent to which plans that receive loans will be able to accumulate sufficient funds to repay the loan principal when it is due. Stakeholders have offered two additional loan proposals. 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. 2254, the Butch-Lewis Act of 2019, and H.R. 397, the Rehabilitation for Multiemployer Pensions Act

In the 116th Congress, S. 2254, the Butch Lewis Act of 2019, introduced on July 24, 2019, by Senator Sherrod Brown, and H.R. 397, the Rehabilitation for Multiemployer Pensions Act, introduced on January 9, 2019, 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.[31] 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.[32] The plan would pay interest for 29 years and repay the loan principal in year 30.

S. 2254 and H.R. 397 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 benefits reduced under MPRA would be restored in such plans that received loans.[33]

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

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.

[31] Under current law, PBGC financial assistance to multiemployer plans is in the form of 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.

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

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

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. 397 would not require any changes to the funding rules for multiemployer plans. H.R. 397 passed the House on July 24, 2019, and was included in H.R. 6379, the Take Responsibility for Workers and Families Act, introduced on March 23, 2020, by Representative Nita Lowey. CBO's cost estimate of the budgetary effects of H.R. 397 indicated that it would increase the deficit by $45.8 billion over FY2019 through FY2029.[34] The CBO cost estimate discussed significant areas of uncertainty that could cause the cost estimate to increase or decrease. These areas include estimates of the future financial condition of plans, the PRA's actions regarding loan forgiveness, and the assumptions that plans use in their applications for loans under the bill.[35]

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.[36] 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.[37]

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.[38]

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

[34] See Congressional Budget Office, H.R. 397, *Rehabilitation for Multiemployer Pensions Act of 2019*, As published in Rules Committee Print 116-24 on July 19, 2019, July 23, 2019, https://www.cbo.gov/system/files/2019-07/hr397_2.pdf.

[35] See Congressional Budget Office, H.R. 397, *Rehabilitation for Multiemployer Pensions Act of 2019*, As published in Rules Committee Print 116-24 on July 19, 2019, July 23, 2019, https://www.cbo.gov/system/files/2019-07/hr397_2.pdf.

[36] The proposal had not been introduced as legislation as of September 10, 2020. Draft legislative language is available at http://nccmp.org/wp-content/uploads/2017/11/MPP-leg-draft-03-19-18-discussion-draft.pdf.

[37] 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)*.

[38] The proposal had not been introduced as legislation as of September 10, 2020. 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.

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.[39]

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 for participants in both the original plan and the successor plan are reduced to the maximum allowed under the 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 unreduced 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.

[39] Multiemployer plans pay an annual PBGC premium of $30 per participant. The premium is increased annually based on increases in the National Average Wage Index.

[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.

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 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.

Proposals to Expand Partitions

In the 116th Congress, provisions in H.R. 6800, the HEROES Act, introduced on May 20, 2020, by Representative Nita Lowey, and in The Multiemployer Pension Recapitalization and Reform Plan released on November 20, 2019, by Senators Chuck Grassley and Lamar Alexander, would, among other provisions, expand eligibility requirements for multiemployer DB partitions and provide funding to PBGC to support expanded partitions. These proposals are discussed later in the report.[46]

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[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.

[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] The press release announcing the release of the proposal by Senators Grassley and Alexander is available at https://www.finance.senate.gov/chairmans-news/grassley-alexander-release-plan-to-shore-up-failing-multiemployer-pension-system. A White Paper with background information and a summary of the proposal and a technical explanation of the proposal are available at https://www.finance.senate.gov/chairmans-news/grassley-alexander-release-plan-to-shore-up-failing-multiemployer-pension-system.

In the 115th Congress, S. 1076, the Keep Our Pension Promises Act, introduced on May 9, 2017, by Senator Bernie Sanders, 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.[47] 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.[48]

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.[49] 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 in 2020 is about $70,000 per year for individuals who receive their benefits as single-life annuities beginning at the age of 65.[50]

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.[51] 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.[52] Among ongoing plans (neither receiving PBGC financial assistance nor terminated and expected

[47] For example, the bills would increase required distributions for retirement accounts with very large account balances.

[48] 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.

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

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

[51] 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.

[52] 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).

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.[53]

Some policymakers have indicated that the multiemployer maximum benefit is too low.[54] 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."[55] The effect on household incomes imposed by solvency-driven benefit reductions could be partly offset by increases in the PBGC maximum benefit guarantee. Both of the proposals in the 116th Congress (Grassley-Alexander and the multiemployer provisions in the Heroes Act) would increase the maximum benefit to more than $20,000 per year for a worker with 30 years of service in a multiemployer plan.

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.[56]

Multiemployer plans currently pay a flat-rate premium to PBGC of $30 per participant per year.[57] 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, $28.00/participant in 2017 and 2018, and $29.00/participant in 2019.[58] In FY2019, PBGC received $310 million in premium revenue.[59]

Proposals for changes to PBGC premiums would require authorizing legislation and 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

[53] 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.

[54] 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.

[55] 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.

[56] 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, https://www.cbo.gov/publication/51536.

[57] 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.

[58] 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.

[59] See Pension Benefit Guaranty Corporation, *FY2019 Annual Report*, November 15, 2019, p. 26, https://www.pbgc.gov/sites/default/files/pbgc-fy-2019-annual-report.pdf.

premium based on the riskiness of a pension plans' investment portfolio.[60] Although increasing 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 FY2021 budget proposed a new variable-rate premium based on the amount of underfunding in a multiemployer plan.[61] The budget does not indicate the amount of the premium.[62] The amount of the premium would be capped, though the budget does not specify the amount of the cap.

Exit Premium

The FY2021 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.[63] 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 the FY2021 budget did not specify the amounts of the variable and exit premiums, it noted that the premiums would raise $26.0 billion of the budget window and ensure the solvency of the multiemployer program for 20 years.[64]

Risk-Based Premium

Some policymakers have suggested a premium based on the riskiness of a multiemployer pension plan's investment portfolio.[65] The rationale behind this premium is the lower the risk of a plan's investments, the lower the likelihood that the plan would become insolvent and require PBGC financial assistance.[66]

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[60] As of September 23, 2020, no legislation has been introduced to change PBGC's premium structure.

[61] See Pension Benefit Guaranty Corporation, *FY2021 Congressional Budget Justification*, p. 13, https://www.dol.gov/sites/dolgov/files/general/budget/2021/CBJ-2021-V2-02.pdf.

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

[63] See Pension Benefit Guaranty Corporation, *FY2021 Congressional Budget Justification*, p. 13, https://www.dol.gov/sites/dolgov/files/general/budget/2021/CBJ-2021-V2-02.pdf.

[64] See Pension Benefit Guaranty Corporation, *FY2021 Congressional Budget Justification*, p. 14, https://www.dol.gov/sites/dolgov/files/general/budget/2021/CBJ-2021-V2-02.pdf.

[65] 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 a 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.

[66] 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

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.[67] The accompanying stock market downturn resulted in large losses to plan investments.[68] In addition, the number of employers participating in multiemployer plans likely decreased as a result of business bankruptcies, leaving larger amounts of orphan liabilities.

It is too soon to determine the possible effects of the economic downturn associated with the COVID-19 pandemic on multiemployer DB pensions. Some of the effects might be associated with the bankruptcy of the employers participating in plans, leading to lower contributions or unpaid withdrawal liability, and with lower or negative investment returns affecting the funds available to pay participants' benefits. One study estimated the aggregate funded percentage for multiemployer plans to be 82% as of June 30, 2020, which was slightly down from 85% as of December 31, 2019.[69]

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.[70] Some stakeholders might find these

benefit pension risk measurement methodology," *Insurance: Mathematics and Economics*, vol. 63 (July 2015), pp. 40-51.

[67] 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.

[68] 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 676 March 9, 2009. Data retrieved from Yahoo! Finance at https://finance.yahoo.com/quote/%5EGSPC/history?period1=1191196800&period2=1238544000&interval=1d&filter=history&frequency=1d.

[69] See Milliman, *Multiemployer Pension Funding Study: June 2020*, August 10, 2020, https://www.milliman.com/en/insight/Multiemployer-Pension-Funding-Study-June-2020.

[70] For a discussion of possible negative effects see Michael Scott, Submission by the National Coordinating Committee

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.[71] 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.[72] 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.[73]

Pension policy experts have several viewpoints on the appropriate discount rate that pension plans should use to value plan liabilities.[74] 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.[75]

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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. Stricter funding rules might also improve plan funding. For example, the Minority Views in the H.R. 397 committee report noted that "[I]f multiemployer plans were subject to stricter funding rules from the outset, they would be much less likely to become underfunded that they claim required contributions are unaffordable." See in U.S. Congress, House Committee on Ways and Means, *Rehabilitation For Multiemployer Pensions Act of 2019*, 116th Cong., 1st sess., July 18, 2019, H.Rept. 116-159, p. 130.

[71] 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*.

[72] See 26 U.S.C. §431.

[73] 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*.

[74] 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.

[75] 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

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 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.[76] Some Members of Congress have also suggested that the rate that multiemployer plans use to discount their benefits may be too high.[77]

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.[78] For example, one plan design has a conservative assumed investment return (called a *hurdle* rate).[79] 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[80] (and is referred to as a variable annuity benefit plan), it is not common among DB plans.[81]

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.[82] The composite plan would be a type of plan that provides plan sponsors with options,

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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.

[76] 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. Some argue that lower discount rates would more realistically value pension plan liabilities. See in U.S. Congress, House Committee on Ways and Means, Rehabilitation For Multiemployer Pensions Act of 2019, 116th Cong., 1st sess., July 18, 2019, H.Rept. 116-159, p. 128.

[77] 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 and Measuring Pension Liabilities in U.S. Congress, House Committee on Ways and Means, *Rehabilitation For Multiemployer Pensions Act of 2019*, 116th Cong., 1st sess., July 18, 2019, H.Rept. 116-159, p. 132.

[78] 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.

[79] 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.

[80] 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.

[81] 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/.

[82] 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.

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.

Composite plans were included in a number of legislative proposals in the 115th and 116th Congresses. In the 115th Congress, H.R. 4997, the Giving Retirement Options to Workers Act of 2018 (or GROW Act), would have allowed multiemployer DB plan sponsors to add a composite plan to their pension plan.[83] In the 116th Congress, the GROW Act was included in H.R. 6379, the Take Responsibility for Workers and Families Act; H.R. 6800, the HEROES Act; and in the Multiemployer Pension Recapitalization and Reform Plan.

The appeal of these alternative plan structures is that they provide plan sponsors with certainty regarding the amount of their annual contributions. In addition, composite plans 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.[84] 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.[85]

Two Proposals in the 116th Congress

Two recent proposals have been released to address multiemployer DB pension plan solvency issues. These proposals address a number of multiemployer plan policy areas, unlike the proposals mentioned earlier in the report that would change a single area of policy, such as allowing for loans to financially troubled multiemployer plans.

The first proposal, the Multiemployer Pension Recapitalization and Reform Plan (sometimes referred to as the Grassley-Alexander Plan), was issued by Senators Chuck Grassley, chair of the Senate Finance Committee, and Lamar Alexander, chair of the Senate Health, Education, Labor, and Pensions Committee, was released on November 20, 2019.[86] The other proposal was included

[83] 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*.

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

[85] 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.

[86] As of September 23, 2010, the proposal has not been introduced as legislation. The press release announcing the release of the proposal is available at https://www.finance.senate.gov/chairmans-news/grassley-alexander-release-plan-to-shore-up-failing-multiemployer-pension-system. A White Paper with background information and a summary of the proposal and a technical explanation of the proposal are available at https://www.finance.senate.gov/chairmans-news/grassley-alexander-release-plan-to-shore-up-failing-multiemployer-pension-system.

in H.R. 8406, The HEROES Act, introduced by Representative Nita Lowey on September 29, 2020.[87]

Table 2. Major Provisions in Selected Multiemployer Proposals

	Grassley-Alexander Proposal	Provisions in HEROES Act
Criteria for plans eligible for expanded partition assistance	In critical and declining status prior to November 8, 2019 (the date the proposal was released); Previously in critical and declining status and implemented MPRA benefit suspensions; In critical status, had a funded ratio on a current liability basis of less than 40%, and had a ratio of active participants to inactive participants of less than 40%; or One of the following plans: Central States, Road Carriers Local 707 Pension Plan, or the UMWA 1974 Plan.	In critical and declining status in any year from 2020 through 2024; Had an application to suspend benefits under MPRA approved; Was in critical status, had a modified funded percentage of less than 40%, and the percentage of active participants in the plan was less than 40%; or Became insolvent after December 14, 2014, and was not terminated by the date of enactment.
Changes to PBGC premiums	Would increase existing premiums and authorize a premium based on the amount of plan underfunding.	No changes to PBGC premiums.
Funding for expanded partition assistance	Funded by increased PBGC premium revenue and envisions some limited taxpayer funding.	Would appropriate such sums as necessary from general revenues.
Increase to PBGC maximum benefit	Would increase to $20,160 for participants with 30 years in a plan.	Would increase to $24,300 for participants with 30 years in a plan.
Changes to MPRA Benefit suspensions	Would make changes to process and procedures.	Would repeal provision in MPRA that allows for benefit suspensions. Participants in plans that had been approved for benefit suspensions would not receive benefits retroactively.

Source: Congressional Research Service.

The Multiemployer Pension Recapitalization and Reform Plan

The Multiemployer Pension Recapitalization and Reform Plan (Grassley-Alexander) includes partition assistance for financially troubled plans and makes changes to multiemployer plan funding rules. The plan also includes a proposal for composite plans.

Special Election Partition Program

Grassley-Alexander would establish a special partition program for which multiemployer plans that meet specified criteria could apply. For a plan that is partitioned, a successor plan would be established that the plan sponsor of the original plan would administer. A portion of plan liabilities (i.e., benefit obligations) from the original plan would be transferred to the successor

[87] A previous of the version of the HEROS Act, H.R. 6800 which contained these multiemployer pension provisions, passed the House of Representatives on May 15, 2020.

plan, which would enable the original plan to remain solvent. Because no assets would be transferred from the original plan, PBGC would provide financial assistance to the successor plan.

Plans would be eligible for partition if they were

- in critical and declining status prior to November 8, 2019 (the date the proposal was released),
- previously in critical and declining status and implemented MPRA benefit suspensions, or
- in critical status, had a funded ratio on a current liability basis of less than 40%, and had a ratio of active participants to inactive participants of less than 40%.

Three plans would be eligible for the partition program without regard to meeting other criteria: Central States, Road Carriers Local 707 Pension Plan, and the UMWA 1974 Plan.

To be approved for a special partition, a plan must have adopted all reasonable measures to avoid insolvency, including benefit suspensions no greater than 10%.[88] Other reasonable actions a plan could take would include contribution increases and reductions in or elimination of early retirement subsidies. In addition, PBGC could require a plan merger as condition of a partition. Once a plan has been partitioned, it would not be able to increase benefits at a rate of more than 1% of annual contributions.

PBGC would pay participants' benefits in the successor plan up to an increased PBGC maximum benefit. The original plan would pay participants' benefits in the successor plan in excess of (1) the benefit as calculated under the plan (factoring in any benefit reductions approved as part of the partitioning process) less (2) what the successor plan (using PBGC financial assistance) pays.

PBGC Financial Assistance

Grassley-Alexander contains provisions that would implement the expanded partition assistance.

PBGC would provide the successor plan with sufficient funds to pay participants' benefits up to the increased maximum benefit. The financial assistance would not be repayable.[89]

Special Provisions for Two Plans: The proposal contains provisions that apply only to the Central States and the Road Carriers Local 707 plans. The benefit liabilities of the Central States Plan would be partitioned whether or not they exceed the guarantee level. For the Road Carriers Local 707 Pension plan, PBGC would provide financial assistance to the successor plan sufficient to pay participants' full benefits as calculated in the original plan.

PBGC Premiums: The original plan would continue to pay PBGC premiums for participants in both the original plan and the successor plan.

Transfer of Liabilities: As part of the partition order, PBGC would provide for a transfer of liabilities from the original plan to the successor plan. The amount transferred would be an amount necessary for the original plan to remain solvent indefinitely and would be based on

[88] Benefits of disabled participants and those 80 years and older would be excluded from the suspensions. Participants aged 75-80 would be subject to partial benefit suspensions.

[89] The assistance would be financed through increased premium and stakeholder revenue and federal payments to PBGC. A White Paper accompanying the release of the proposal envisioned, "limited federal taxpayer resources still will be necessary for the proposed reforms to be implemented in the near term and to succeed over the long term." See U.S. Senate Committee on Finance, *Multiemployer Pension Recapitalization and Reform Plan: White Paper*, p. 8, https://www.finance.senate.gov/download/white-paper_-multiemployer-pension-recapitalization-and-reform-plan.

projections of plan assets and plan liabilities. The projection of plan assets would be based on fair market value. The projection of plan liabilities would be based on the plan's most recent actuarial value or Form 5500 disclosure.

PBGC Guidance: The proposal would require PBGC to issue guidance on partition applications within 180 days of enactment. PBGC guidance would include rules for determining which participants would be transferred to the successor plan (such as prioritizing by whether a participant is an active participant, inactive-vested participant, or in pay status). PBGC would be required to issue additional guidance on the assumptions plans may use in their applications.

Approval of Applications: A plan's partition application would be automatically approved if the plan meets the eligibility requirements. PBGC would work with the plan sponsor to determine the amount of plan liabilities to be transferred.

Plan Projections and Assumptions: The plan would provide projections of plan funding of the original plan and the successor plan. The plan could use assumptions provided in PBGC guidance. The plan would have to document any actuarial assumptions that differ from those in the PBGC guidance.

Adjustments to Assistance: PBGC could increase or decrease the amount of plan liabilities transferred to the successor plan after a post-partition review. Adjustments would require that the original plan be projected to remain solvent.

Plans that Implement MPRA Benefit Suspensions: A plan that has implemented benefit suspensions and received partition assistance under MPRA would be able to undo the benefits suspensions and apply for a special partition. The application would have to be received within one year of enactment of the proposal. Benefits would be restored to 90% of their pre-suspension level and participants whose benefits would be restored would receive a special payment equal to 90% of the benefits previously reduced.

Fiduciary Duty: To alleviate stakeholders' concerns, plan fiduciaries would be presumed to be acting in the sole interest of plan participants in applying for partitions and transferring liabilities to PBGC.

Withdrawal Liability: To encourage employers to remain in plans, the liability transfers would be taken into account for withdrawal liability for employers that remained in the original plan for 15 years. If an employer were to withdraw from a partitioned plan for one of several specified reasons (such as bargaining out of plan or a substantial decline in contributions), then the transfer of liabilities would be disregarded for calculating withdrawal liability and increased by 25%. This restriction would not apply if the withdrawal is a result of specified circumstances, such as a decertification of the union or a change in bargaining representatives.

Benefit Improvements: If a plan improved benefits after a partition, it must make compensating payments to PBGC for the following 20 years.

Annual Disclosures: A plan that received approval for a special partition order would be required to file annual disclosures with PBGC that, among other information, would include information about the plan's funded status, investment performance for the year, and any material changes to the plan's benefit provisions, accrual rates, or contribution rates.

Changes to PBGC Premiums and Guarantees

Grassley-Alexander would make several changes to PBGC guarantees and the premium structure. The proposal would raise the maximum benefit guarantee, increase existing premiums, and create new premiums.

Maximum Guarantee: The PBGC maximum benefit would increase from $12,870 per year to $20,160 for a participant with 30 years in a plan.[90]

Insurable Event: PBGC would be obligated to provide financial assistance to a multiemployer plan in the first plan year in which a plan is expected to be insolvent within next five years.[91] Participants in such plans would cease to earn benefits and these plans would be required to reduce benefits to guaranteed levels.

Flat-Rate Premium Increase: The proposal would increase the flat-rate premium from $30 to $80 per participant per year.

New Variable-Rate Premium: The proposal would create a new premium based on a plan's underfunding. The amount of the annual premium would be 1% of a plan's current unfunded liability. The maximum variable-rate premium that a plan could pay would be $250 per participant per year.

New Stakeholder Premium: A new premium would be a monthly payment equal to $2.50 per active participant per month imposed on each union and participating employer.[92]

New Retiree Copayments: Plans would withhold and pay to PBGC a percentage of benefit payments from retirees. The percentage would be based on a plan's zone status. The percentage withheld for participants in endangered plans would be 3%, in critical plans 5%, in declining plans 7%, and in partitioned plans 10%.

Certification of PBGC's Solvency: In its annual report, PBGC would be required to certify the solvency of the multiemployer insurance program for the following 10 years. If PBGC projects insolvency for the program, then it would have to suggest an amount of premium increases and guarantee reductions to ensure solvency for 20 years. Without Congressional action, the recommendations in the annual report would go into effect.

Changes to Funding Rules

Grassley-Alexander would make a number of changes to the funding rules including changing the discount rate that plans use to value future benefit obligations and the zone status that describes plans' financial condition.

Discount Rate: The proposal would change how multiemployer plan liabilities—the value of future benefit obligations—are calculated.[93] Future benefit obligations would be discounted at the lower of the expected return of plan investments or the lower of (1) the 24-month average of the third segment of the yield curve plus 2% or (2) 6%.[94]

Changes to plan liabilities as a result of the new discount rate could be amortized over 30 years.

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[90] The maximum annual guarantee would be 100% of the first $56 in plan benefits x 12 months x number of years in the plan.

[91] This is referred to as an *insurable event*: the situation which triggers PBGC's obligation to provide financial assistance. Currently, the insurable event for multiemployer plans is plan insolvency. See *PBGC's Two Pension Insurance Programs: Single-Employer and Multiemployer* at https://www.pbgc.gov/about-pbgc/who-we-are/retirement-matters/pbgcs-two-pension-insurance-programs-single-employer-and.

[92] It is unclear whether a union and employer would each pay $30 per participant per year or it would be a total of $30 paid per participant.

[93] CRS analysis of Form 5500 data indicated that in 2017 the median discount rate used by multiemployer plans was 7.25%. See CRS Report R45187, *Data on Multiemployer Defined Benefit (DB) Pension Plans*

[94] The third segment of the yield curve refers to the discount rate that single-employer pension plans use to value benefit obligations that are payable after 20 years.

Zone Status Reforms: The proposal would create new zones and redefine existing zone statuses. The zones would be, from best to worst financial condition, *unrestricted*, *stable*, *endangered*, *critical*, and *declining*.

Unrestricted: A plan would be in unrestricted status if it is not in endangered, critical, or declining status, and it meets one of the following: the plan's funded status on the first day of the 15th succeeding plan year was projected to be at least 115% or its current liability was 80%.

Stable: A plan would be in stable status if it was not in endangered, critical, or declining status

Plans in stable or unrestricted status could implement benefit increases. In addition, any benefit increases could not cause a plan to exit unrestricted status. Benefit increases would be allowed for plans not in critical or in declining status if the additional benefits are paid out of additional contributions. In addition, contribution increases required by law would be allowed.

Endangered: A plan would be in endangered status if it was not in critical or declining status and if the plan's actuarial funded status was less than 80% or it had projected accumulated funding deficiency in the current or in the next nine years.[95]

A plan in endangered status would be required to adopt a Funding Improvement Plan, which would enable the plan to emerge from endangered status within 10 years. A plan in endangered status could not be amended in a way that is inconsistent with the Funding Improvement Plan.

Critical: A plan would be in critical status if it is not in declining status and if any of the following conditions apply: It is funded less than 65%; it has a projected accumulated funding deficiency in the current year or in next six years; or the plan's funded status on the first day of the 15th succeeding plan year was projected to be less than 80%.

A plan in critical status would be required to adopt a rehabilitation plan that would allow the plan to emerge from critical status within 10 years. If emerging from critical status would not be possible within 10 years, the plan must adopt a plan that would allow for either emergence from critical status at a later date or forestall possible insolvency.

Declining: A plan would be in declining status if it (1) was projected to become insolvent within 30 years or (2) was in critical status the preceding plan year, the rehabilitation plan was based on forestalling insolvency (as opposed to emerging from critical status), and the plan's projected actuarial liability funded status on the first day of the 15th succeeding plan year was less than the funded status on the first day of the current plan year.

Plans in declining status would have to adopt a solvency plan that uses reasonable measures to avoid the projected insolvency.

Changes to Withdrawal Liability Rules

Grassley-Alexander would make a number of changes to withdrawal liability rules.

The annual payment for an employer who withdraws from a plan would be calculated as (1) 100% of that year in the past 20 years with the highest number of contribution base units (such as total hours worked by employees in a year)[96] times (2) the highest contribution rate in the past 10 years (such as $10 per hour worked per employee). The payment would not be less than the highest annual amount the employer has contributed in the past 20 years.

[95] The proposal would eliminate the *seriously endangered* status.

[96] For example, if a plan's contribution rate is $10 per hour worked, then the total number of hours worked by employees in the plan would be the contribution base units.

Liabilities for calculating withdrawal liability would be measured in the same way as under the proposed minimum funding standards.

The number of years for which an employer would pay withdrawal liability would depend on the plan's funded status. If a plan was

- 140% funded or greater, employers would not face withdrawal liability;
- 100% to 139% funded, there would be no withdrawal liability if the plan was to protect the employer's share of participants' benefits;[97]
- 90% to 139% funded, employers would owe five years of payments based on the employer's five-year contribution history; and
- less than 90%, then withdrawing employers would owe five years of withdrawal liability payments plus an additional year of payments for every two percentage points the plan is funded below 90%.[98]

For employers in plans that were in declining status or were terminated, withdrawing employers would owe 25 years of withdrawal liability payments.

The proposal would eliminate special withdrawal rules that apply if most or all of the employers leave a plan (referred to as a *mass withdrawal*).

If an employer was to pay its withdrawal liability as a lump sum, the benefit obligations would have to be discounted at a rate no higher than the discount rate the plan used to measure liabilities for withdrawal liability payments.[99]

The proposal would retain exceptions to withdrawal liability rules for employers in the building and construction industry.[100]

The proposal would provide for increased disclosure requirements that would provide employers with more information to evaluate withdrawal liability amounts. Plans would have to provide withdrawal liability estimates to employers every three years.

Incentives for Mergers

Grassley-Alexander would provide incentives for multiemployer plans to merge by eliminating a requirement for plans to restore MPRA benefit suspensions before a merger between a plan in unrestricted or stable status and plan in critical status. The proposal would extend PBGC's authority to exempt trustees from prohibited transaction violations if a merger between a plan in unrestricted or stable status and a plan in declining status satisfies certain safe harbors.[101]

[97] The plan could protect benefits either by purchasing annuities or by investing in such a way that guards against changes in interest rates (referred to as immunization).

[98] For example, if a plan was 80% funded, the plan would make withdrawal liability payments for an additional five years (90% - 80% / 2 = 5 years).

[99] This provision would not apply in the case of settlements made by the trustees of the plan that are based on the financial health of an employer.

[100] Employers in these industries are exempt from withdrawal liability provided they meet conditions specified in 29 U.S.C. §1383(b).

[101] Trustees of well-funded plans might have concerns that merging with a weaker plan might not be in the best interests of plan participants.

Governance and Disclosure in Partitioned Plans

Grassley-Alexander contains a number of provisions that would provide for greater oversight of partitioned plans.

PBGC would appoint an independent trustee to the board of any plan approved for partition and be able to replace the board of trustees pursuant to a court order demonstrating mismanagement of plan assets by the trustees.

Trustees in plans approved for partitioning cannot serve for more than a 10-year term. The executive director of a plan approved for a partition may not serve more than 12 years. Existing directors would be able to serve the longer of five years or the number of years remaining to complete a 12-year term.

PBGC would be

- able to request authority from court to terminate a plan in critical or declining status;
- authorized to investigate any facts, conditions, or practices to aid in the enforcement of ERISA, enable the agency to review risks facing distressed plans, and evaluate PBGC's exposure to financial distress;
- able to impose equitable distribution requirements on payment of financial assistance in mergers (along the lines of MPRA);
- able to force mergers of plans with fewer than 5,000 participants for purposes of appointing a common trustee or administrator; and
- authorized to facilitate liability transfer requests by a dominant employer in a near-insolvent plan.

The proposal would impose a 21% excise tax on remuneration greater than $500,000 for the five highest paid employees in partitioned plans if the original or successor plan were to remain in Endangered or lower funded status.

Reportable Events

Under Grassley-Alexander, PBGC would be required to establish a program for multiemployer plans to report certain events that might indicate problems for a plan. These events include notice of plan amendments that would exclude newly hired employees or that would substantially reduce future accrual or contribution rates, and notice of any new retirement plan that substantially overlaps with the active participants in a plan.

Funding Notices

The proposal would make modifications to plans' Annual Funding Notices (AFNs) and the Zone Status Notices (ZFNs). AFNs would be modified to provide information that is relevant to participants in better funded plans. ZSNs would be modified to provide more information to participants in financially distressed plans. Penalties would be established or increased for failure to provide required information in the notices. The Secretary of Treasury would provide model AFNs and the Secretary of Labor would provide model ZFNs.

Report with Zone Certification Notices

A plan's ZFN would be accompanied by a report that includes information that was prepared in connection with the zone certification.

Criminal Penalties

Penalties for making false statements in ERISA required documents and for theft or embezzlement would be increased from 5 years to 10 years in prison. The penalty for offering, accepting, or soliciting to influence the operations of an employee benefit plan would be increased from 3 years to 10 years in prison.

MPRA Reforms

Grassley-Alexamder would make a number of reforms to the process of applying for benefit suspensions under MPRA.

When participants vote to approve or reject approved benefit suspensions, only returned ballots would be counted in voting.

The Department of Treasury would

- establish safe harbors regarding certain assumptions plans use in applying for benefit suspensions, including safe harbors on investment rates of return, contribution base units, and mortality tables;
- not have to issue additional notice and comment when changes to a plan's application have *de minimus* effect on the benefit suspension;
- develop a plain language, single-page model notice that participants receive when Treasury approves an application for benefit suspensions; and
- establish a safe harbor for flat, across-the-board benefit suspensions.

The proposal would clarify that trustees, including the retiree representative, remain subject to fiduciary standards.

Composite Plan Proposal

Grassley-Alexander includes the proposal for composite plans. For more information, see CRS Report R44722, *Proposed Multiemployer Composite Plans: Background and Analysis*.

Relief for Multiemployer Pension Plans in the HEROES Act

The HEROES Act (H.R. 8406) contains provisions that would expand partitions for multiemployer plans and make a number of other changes to multiemployer DB funding rules.

Expanded Partition Assistance

The following are those provisions that relate to plan partitions.

The provisions would establish a fund within the PBGC and appropriate amounts as necessary to provide partition assistance. Eligibility for plan partitions would be expanded to include plans that met any of four conditions. A plan would be eligible for partition assistance if the plan

- was in critical and declining status in any year from 2020 through 2024;
- had an application to suspend benefits under MRPA approved;
- was in critical status, had a modified funded percentage of less than 40%, and the percentage of active participants in the plan was less than 40%;[102] or

[102] The modified funded percentage using current value of plan assets divided by present value plan liabilities

- became insolvent after December 14, 2014, and was not terminated by the date of enactment.

In a partition, a second plan (called a successor plan) is created alongside the original plan. The successor plan is administered by the original plan. To improve the financial condition of the original plan, a certain amount of the original plan's liabilities (which are the plan's benefit obligations) are be transferred from the original plan to the successor plan. Because no assets are transferred to the successor plan, PBGC would provide financial assistance for the successor plan to pay participants' benefits.

Under the proposal, the amount of liabilities transferred to the successor plan would enable the original plan to (1) remain solvent for 30 years with no reduction in benefits and (2) have a funded percentage of 80% after 30 years.

A plan that had previously received approval for benefit suspensions under MPRA would be required to (1) reinstate the benefits and (2) provide payments (either as a lump sum or in equal installments over five years) for benefits that participants and beneficiaries had not received because of the benefit suspensions.

Every five years, the partition assistance would be adjusted so the original plan would be able to achieve the funding goals of remaining solvent for 30 years and having a funded percentage of 80% after 30 years.

The financial assistance provided to a successor plan would not need to be repaid. The assistance would end if the original plan became 80% funded and the projected funded percentage for each of the next 10 years were at least 80%.

PBGC would permanently assume liability for the payment of any benefits transferred to the successor plan if the original plan became at least 80% funded and the plan's projected funded percentage for each of the 10 years following the partition is at least 80%.

PBGC may impose reasonable restrictions on plans receiving partition assistance. The allowable restrictions relate to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions to, and allocation of, expenses to other retirement plans, and withdrawal liability. There cannot be any restrictions that require reductions in plan benefits, relate to certain plan governance issues and to plan funding rules.

Partition assistance would end if a plan were to become insolvent.

Reporting and Transparency Requirements

The bill contains a number of reporting and transparency requirements.

PBGC would be required to submit a report to Congress after the first year of the expanded partition program and biannually after that.

GAO would be required to submit an annual report on the PBGC's implementation of the partition assistance program.

calculated using a discount rate that is not more than 5% above, and not more than 10% below, the weighted average of the rates of interest on 30-year Treasury securities during the 4-year period ending on the last day before the beginning of the plan year.

PBGC would be required to create a special partition relief website with key information for multiemployer plan administrators and trustees, plan participants, beneficiaries, participating employers, other stakeholders, and the public.

Other Provisions

Other provisions in the HEROES Act that would affect multiemployer DB plans include

- a repeal of the provisions in MPRA that allowed plans in critical and declining status to apply to the U.S. Treasury to reduce participants' benefits. The repeal would not be applied retroactively;
- a delay of zone certification for one year;
- a lengthening of the funding improvement period for plans in endangered status from 10 years to 15 years; and
- a lengthening of the funding improvement period for plans in seriously endangered status from 15 years to 20 years.

Plans would be able to amortize two years of experience losses (such as investment losses) over 30 years instead of the currently required 15 years.

The formula for determining the PBGC maximum benefit would be 100% of the accrual rate up to $15, plus 75% of the lesser of (1) $70 or (2) the accrual rate, if any, in excess of $15. This would increase the maximum benefit from $12,870 for an individual with 30 years in a plan to $24,300 for an individual with 30 years in the plan.

The HEROES Act includes the proposal for composite plans. For more information, see CRS Report R44722, *Proposed Multiemployer Composite Plans: Background and Analysis*.

Appendix. MPRA Benefit Reductions

Table A-1 lists the status of applications to the U.S. Treasury for benefit reductions under MPRA. Only the most recent application (as of September 25, 2020) is listed, as a plan may have submitted additional applications after previous applications were denied or withdrawn.

Table A-1. Applications for Benefit Reductions

Plan Name	Application Date	Plan Participants in 2017	Number of Contributing Employers in 2017
Applications Approved			
Alaska Ironworkers Pension Plan	March 05, 2018	791	24
Bricklayers & Allied Craftsmen Local 7 Pension Fund	July 23, 2020	439	32
Composition Roofers 42 Pension Plan	September 09, 2019	485	9
International Brotherhood of Electrical Workers Local 237 Pension Fund	September 09, 2019	400	56
International Association of Machinists Motor City Pension Fund	June 12, 2017	1,144	8
Iron Workers Local 17 Pension Fund	October 14, 2016	1,920	122
Ironworkers Local 16 Pension Fund	March 12, 2018	1,066	69
Local 805 Pension & Retirement Plan Second Application	May 07, 2018	2,027	7
Mid-Jersey Trucking Industry and Local 701 Pension Fund	September 10, 2018	1,932	10
New York State Teamsters Conference Pension & Retirement Fund	July 17, 2017	34,038	174
Plasterers & Cement Masons Local 94 & Pension Fund	June 18, 2018	111	8
Plasterers Local #82 Pension Plan	June 11, 2018	317	17
Sheet Metal Workers Local Pension Fund (OH)	June 13, 2019	1,563	75
Southwest Ohio Regional Council of Carpenters	September 10, 2018	5,501	186
Toledo Roofers Local No 134 Pension Plan	September 10, 2018	473	13
United Furniture Workers Pension Fund A	June 20, 2017	9,683	26
Western Pa Teamsters & Employers Pension Plan	December 10, 2018	22,589	115
Western States Office & Professional Employees Pension Fund	July 27, 2018	7,481	185
Applications Denied			
American Federation Of Musicians And Employers Pension Fund	March 02, 2020	50,029	5,690
Automotive Industries Pension Fund	December 12, 2016	25,701	144
Central States, Southeast And Southwest Areas Pension Plan	February 01, 2016	384,921	1,325

Plan Name	Application Date	Plan Participants in 2017	Number of Contributing Employers in 2017
Local 807 Labor Management Pension Fund (Second Application)	March 02, 2020	4,440	79
Road Carriers Local 707 Pension Fund	April 29, 2016	4,511	10
Teamsters Local 469 Pension Plan	June 22, 2016	1,758	35
Application In Review			
Building Material Drivers Local 436 Pension Fund	September 11, 2020	1,693	38
Applications Withdrawn			
Bricklayers And Allied Craftworkers Local 5 Pension Plan	October 14, 2016	1,396	210
Carpenters Pension Trust Fund - Detroit & Vicinity	September 23, 2019	18,987	413
Laborers No. 265 Pension Plan	October 11, 2018	1,328	60
Pressroom Unions Pension Trust Fund	May 31, 2018	1,680	6

Source: Collected from U.S. Department of the Treasury, MPRA Benefit Applications, https://home.treasury.gov/services/the-multiemployer-pension-reform-act-of-2014/applications-for-benefit-suspension.

Notes: Only the status for a plan's most recent application is shown. Some plans have resubmitted applications after previous applications for benefit reductions were denied or withdrawn.

Author Information

John J. Topoleski
Specialist in Income Security

Elizabeth A. Myers
Analyst in Income Security

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