The GROW Act

(Giving Retirement Options to Workers)

Sponsored by Congressman Phil Roe (R-TN) and Congressman Donald Norcross (D-NJ)

SECTION BY SECTION SUMMARY

Section 1: Short Title

- "Giving Retirement Options to Workers Act of 2018" or the "GROW Act"

Section 2: Composite Plans

Multiemployer Composite Plan Definition. Adds Section 801 to the Employee Retirement Income Security Act (ERISA) and Section 437 to the Internal Revenue Code (IRC) to:

- Establish the "composite plan" as a new kind of multiemployer pension plan that has certain attributes of a defined benefit plan and certain attributes of a defined contribution plan but is neither of those types of plan.

- Require that only one multiemployer defined benefit plan is treated as a legacy plan with respect to a composite plan except if there is more than one legacy plan following a merger or transfer.

- Require that benefits under a composite plan be:
  - Objectively calculated under a plan formula determined by the plan's trustees, and
  - Provided in the form of a life annuity (except for small cash outs).

- Require that plan contributions for the first year be at least 120 percent of the normal cost for the plan year and that there be:
  - An annual valuation of the plan's liabilities;
  - An annual actuarial certification of the plan's current and projected funded ratio;
  - Corrective action taken in the current year if the plan's projected funded ratio is below 120 percent; and
  - An annual notice to participants describing the participant's benefits and explaining that benefits are subject to reduction based on the plan's funded status.

- Require that the board of trustees of a composite plan include at least one retiree or beneficiary in pay status during each plan year after the first plan year in which at least 5% of the participants are retirees or beneficiaries in pay status.

- Allow a composite plan to be a stand-alone plan or a component of an existing multiemployer defined benefit plan provided that the defined benefit plan is not, and will not be in the current or any of the succeeding five years, in critical status

- Provide that, for an existing multiemployer defined benefit plan to adopt a composite plan as a component, the composite plan must apply to all collective bargaining agreements and participants, and

no additional benefits under the defined benefit plan can accrue on or after the effective date of the composite plan component. The effective date is:
  - A single date for all adopting collective bargaining agreements that is the first day of a specified plan year; or
  - Separate dates for each collective bargaining agreement, where each such date is based on the particular agreement's termination or reopening, or on an earlier agreed-to date; and
  - In either case, no later than the first day of the fifth plan year after the plan year in which the composite plan component was adopted.

- Require that, for a multiemployer plan that has a composite plan component and a defined benefit plan component:
  - The applicable provisions of ERISA and the IRC shall apply to each component as if each was a separate plan; and
  - The assets of both components will be held in a single trust, with the assets of each component accounted for separately and held and managed for the exclusive benefit of that component's participants and beneficiaries. The assets of one component cannot be used to pay benefits under the other component.

- Require that the plan sponsor notify the Secretary of Labor of its intent to establish a composite plan or component 30 days in advance of the effective date of such action.

- Provide that the minimum funding and insolvency rules do not apply to a composite plan and that a composite plan is treated as a defined benefit plan unless a different treatment is provided.

Funding Requirements. Adds Section 802 to ERISA and Section 438 to the IRC to:

- Require actuarial certification each year of the composite plan's current funded ratio (the current value of the plan's assets and liabilities) and projected funded ratio (a projection of the plan's assets and liabilities in 15 years).
  - Projections may consider reasonable contribution increases beyond terms of collective bargaining agreements up to 2.5% per year unless it would be unreasonable to assume contributions would increase by that amount.
  - Actuarial assumptions and methods must each be reasonable and in combination offer the actuary's best estimate of anticipated experience, with any changes certified and explained in the annual report (Form 5500).
  - The value of the plan's assets shall be the fair market value; normal cost and plan liabilities shall be based on most recent actuarial valuation and unit credit funding method.

Realignment Programs. Adds Section 803 to ERISA and Section 439 to the IRC to:

- Require the trustees to take remedial action in a plan year if the projected funded ratio for the plan year is below 120% by adopting a realignment program intended to return the projected funded ratio to 120%. The program must be updated every year until the projected funded ratio is at least 120%.
  - The realignment program consists of several levels of options, graded in severity, to be undertaken by the trustees or proposed to the bargaining parties to enable the plan to achieve a 120% projected funded ratio.
  - The least severe (first level) options include proposed contribution increases, reductions in rate of future accruals (but not below 1% of contributions on which benefits are based), and

modification or elimination of adjustable benefits such as early retirement subsidies or recent benefit increases.
    - If the first level options are not sufficient, the trustees may consider adding reductions in accrued benefits for participants not yet in pay status or reductions of non-core benefits (e.g., cost of living adjustments) for participants in pay status. Core benefits are defined as accrued benefits payable in the normal form of annuity commencing at normal retirement age and determined without regard to any early retirement benefit, subsidies, or other rights or features, and any cost-of-living increases effective after the date of retirement.
    - If the first and second level options together are not sufficient, additional reductions may include reducing rate of future accruals (without regard to the 1% limitation), or reduction of retiree benefits (including core benefits) until the plan's projected funded ratio is at least 120% or, at the Trustees' election, the plan's projected ratio is at least 100% for the following year and the current funded ratio is at least 90%.

- Require a notice to participants, beneficiaries, bargaining parties and the Secretary of Labor no later than 30 days after the certification that the projected funded ratio is below 120% and that remedial steps, including contribution increases or benefit reductions may be necessary.

- Require a notice to participants, beneficiaries, and bargaining parties about reductions to future benefit accruals or to adjustable benefits or core benefits at least 180 days before the general effective date for all participants and beneficiaries

- Require the Secretary of Labor to issue model notices and permit electronic delivery.

Limitation on Increasing Benefits. Adds Section 804 to ERISA and Section 440 to the IRC to:

- Allow trustees to increase benefits by 3%, subject to limitations including:
    - The plan's current funded ratio must be at least 110% (not including increases);
    - The current funded ratio is at least 100% and projected funded ratio is at least 120% (including increases); and
    - Expected contributions for the current plan year cover at least 120% of benefits earned that year

    - The 3% cap is lifted if, after taking benefit increases or new benefits into account, the current funded ratio is at least 140% and the projected funded ratio is at least 140%.

    - In the event of a benefit increase, the trustees must determine an equitable distribution of benefit increases (as applied to future payments) across the participant and beneficiaries taking into account benefits previously reduced for retirees.

Composite Plan Restrictions to Preserve Legacy Plan Funding. Adds Section 805 to ERISA and Section 440A to the IRC to:

- Specify that a defined benefit plan will be a legacy plan with respect to the composite plan under which the employees who were eligible to accrue benefits under the defined benefit plan become eligible to accrue a benefit under such composite plan.

- Specify that an employee is eligible to accrue a benefit under a composite plan as of the first day on which the employee completes an hour of service under a collective bargaining agreement that provides for contributions to and accruals under the composite plan in lieu of accruals to the legacy plan.

- Prohibit the trustees of a composite plan from accepting a collective bargaining agreement:
  - With a defined benefit plan that has been certified to be in critical status for the current year or any of the five succeeding years; or
  - That does not require all employers to make transition contributions to the legacy plan, regardless of whether employees of that employer previously accrued benefits under the legacy plan.

- Prohibit employees of an employer that enters into a collective bargaining agreement after February 5, 2018, that provides for the cessation of contributions to a multiemployer plan from earning benefits under a composite plan for a 5-year period beginning on the date the employer entered into the collective bargaining agreement
- Provide for transition contributions to the legacy plan, at the rate or rates, determined by the legacy plan's actuary that:
  - Fund the normal cost for the plan year;
  - Amortize the plan's initial unfunded liabilities in level installments over 25 years;
  - Amortize subsequent changes in plan's unfunded liability due to experience gains or losses including those due contributions greater or less than those made under the prior transition rate, changes in actuarial assumptions, changes in the legacy plan's benefits, or changes in funding method over 15 years.

- Provide that if the legacy plan is certified to be in endangered or critical status, 25% of the sum of contributions is reserved for future accruals in the composite plan component.

- Provide that employers may make supplemental contributions in addition to transition contributions.

- Provide that transition contributions cease when the legacy plan is fully funded (using PBGC assumptions except for plan's assumptions on benefit start date), has been fully funded for at least 3 of the immediately preceding 5 plan years, and is projected to remain fully funded for at least the following 4 plan years.

Mergers and Asset Transfers of Composite Plans. Adds Section 806 to ERISA and Section 440B to the IRC to:

- Provide that composite plans may engage in mergers or transfers only with other composite plans, provided that accrued benefits are not lower immediately after the transaction than before and that, in the case of a transfer, the value of assets transferred reasonably reflects the value of amounts contributed with respect to benefits transferred.

- Provide that after a merger or transfer, the legacy plan(s) that the employer contributed to immediately before a merger or transfer is the legacy plan(s) to which it remains obligated to contribute.

ERISA Penalties. Adds language to Section 502. Civil Enforcement of ERISA to:

- Provide that if the trustees of the composite plan fail to adopt a realignment program or to update or comply with the program, the Secretary of Labor, contributing employers, or the union can bring a civil action for an order compelling the trustees to comply.

- Provide that the Secretary of Labor may asses a civil penalty of $1,100 per day against the trustees if the composite plan's actuary fails to timely certify the current or projected funded ratio or in the event the trustees fail to adopt a realignment program.
- Provide that the Secretary of Labor may assess a civil penalty of $100 per day against the trustees for failing to comply with certain required notice provisions related to the composite plan's realignment program.

- Provide that the Secretary of Labor may asses a civil penalty of $100 per day against the trustees for failing to comply with certain required notice provisions related to the intent to establish or adopt a composite plan or component, as applicable, or related to failures in collective bargaining agreements.

Section 3: Application of Certain Requirements to Composite Plans

Adds language to Title I, Subtitle B Part 1 – Reporting and Disclosure of ERISA to:

- Provide that annual funding notices, annual reports, and pension benefit statements apply to composite plans to the extent provided in Department of Labor regulations.

Section 4: Treatment of Composite Plans Under ERISA Title IV

Adds language to Title IV, Subtitles A, B and E of ERISA to:

- Specify that a composite plan component is not subject to PBGC premium requirements or the PBGC guarantee.

- Specify that contributions to the composite plan component and the legacy plan are not taken into account for purposes of withdrawal liability.

- Specify that a legacy plan has no unfunded vested benefits if the plan:
  - Is fully funded (using PBGC's assumptions, except as otherwise provided);
  - Had no unfunded vested benefits for at least 3 of the last 5 plan years; and
  - Is projected to be fully funded for the next 5 plan years.

Section 5: Conforming Changes

Adds language to various sections of ERISA and the IRC, or both, as applicable, to:

- Provide a special funding rule for a legacy plan that is available when all future accruals under the defined benefit component have ceased and that allows the trustees to combine the outstanding balance of all charge and credit bases and amortize that combined base in level installments over 25 plan years beginning the plan year following the date all defined benefit accruals ceased.

- To permit tax-deductible contributions to the composite plan to the extent the plan's current funded ratio does not exceed 160%.

- To provide that years of service determined under each of the legacy and composite components are treated as years of service under the other, for employees that satisfy certain requirements.

<u>Section 6: Effective Date</u>

- Provides that amendments made by the GROW Act shall apply to plan years beginning after the date of enactment.