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Topic: Passage of the American Rescue Plan

Executive Summary: NCCMP is pleased to report that today President Biden signed into law *The American Rescue Plan of 2021* (American Rescue Plan). The American Rescue Plan is a $1.9 trillion package that was passed under the incredible leadership of U.S. House Speaker Nancy Pelosi and U.S. Senate Majority Leader Chuck Schumer, and their leadership teams of Chairman Richard Neal, Chairman Robert C. "Bobby" Scott, Chairwoman Patty Murray and Chairman Ron Wyden. It contains a number of provisions that provide substantial relief to multiemployer pension and health plans from the impacts of the COVID-19 pandemic.

The pension provisions of the American Rescue Plan provide two main forms of relief for multiemployer plans impacted by the COVID-19 pandemic.

First, the legislation creates a new program at the PBGC to provide special financial assistance to deeply troubled multiemployer plans in the amount needed to enable those plans to pay full, unreduced participant benefits for 30 years.

Second, the legislation allows all multiemployer plans, except those who receive special financial, extended time to recover from the COVID-19 pandemic. Similar to the relief provisions of the Worker Retiree, and Employer Recovery Act of 2008 (WRERA) and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), plans may elect to smooth investment losses over an extended period of time in the development of the funding standard account and the actuarial value of assets. The American Rescue Plan adds a new option to smooth losses related to COVID-19 over an extended period, as well. Plans may also elect to freeze their zone status to allow plan trustees and bargaining parties an extended time to develop a plan to address the impact of COVID-19. Finally, plan's funding improvement or rehabilitation plans may be extended by 5 years to allow plans an extended time to recover and reduce the need to negotiate substantial contribution increases or reductions in benefits.

Finally, the legislation increases PBGC premiums to $52 in 2031 to improve the funding of the PBGC. It should be noted that The current premium is $31 and includes an annual escalator based on the National Wage Index, which would result in year-10 premium of between $43 and $45, so the actual net increase is likely to be between $7 and $9.

On the heathcare side, similar to the assistance provided under the American Recovery and Reinvestment Act (ARRA) passed in 2009 following the 2008 Great Recession, the American Rescue Plan provides for COBRA premium subsidies so that participants who would have otherwise lost coverage because of the pandemic may remain covered by their health plan. In a significant expansion from ARRA, however, the American Recovery Plan provides full COBRA subsidies at 100% of the cost of COBRA premiums.

NCCMP is now beginning the next necessary and equally important work of coordinating with the PBGC, Treasury and other regulatory agencies to ensure that the implementing guidance is clear, helpful, and true to Congressional intent. We also look forward to continuing to work with Congress to enact the reforms needed to protect and improve the funding of the multiemployer system that were not permitted under the reconciliation process, but applaud Congress and President Biden on this enormous step toward protecting the pensions and health care of all multiemployer participants.

PURPOSE:	INFORMATIONAL
CATEGORY:	LEGISLATION
ISSUER:	NCCMP
TARGET AUDIENCE:	TRUSTEES OF AND PLAN ADVISORS TO MULTIEMPLOYER PENSION AND HEALTH PLANS
FOR MORE INFORMATION	Final Text of the American Rescue Plan
SEND COMMENTS TO:	*nccmp@nccmp.org*
REFERENCE:	VOL. XXI, ISSUE 2

NCCMP is pleased to report that today President Biden signed into law *The American Rescue Plan of 2021* (American Rescue Plan). The American Rescue Plan is a $1.9 trillion package that was passed under the incredible leadership of U.S. House Speaker Nancy Pelosi and U.S. Senate Majority Leader Chuck Schumer, and their leadership teams of Chairman Richard Neal, Chairman Robert C. "Bobby" Scott, Chairwoman Patty Murray and Chairman Ron Wyden. It contains a number of provisions that provide substantial relief to multiemployer pension and health plans from the impacts of the COVID-19 pandemic.

Overview

In our work to support Congress in enacting this legislation, NCCMP estimated that absent this Congressional action, approximately 1.3 million Americans will lose between 94% to 98% of their pension income and be forced onto the federal government's poverty safety net programs by the insolvency of multiemployer pension plans and the federal government's Pension Benefit Guaranty Corporation ("PBGC"). This will also force thousands of businesses into bankruptcy or liquidation, costing tens of thousands of active workers their jobs. Over the next decade, this would result in between $46 billion and $138 billion in lost tax revenue for the U.S. government and approximately $138 billion in new mandatory safety net spending.

Prior to the pandemic, a small but important group of multiemployer pension plans were heading toward inevitable insolvency. But multiemployer pension plans have also been substantially harmed by the COVID-19 pandemic, including through lost man-hours, lost plan contributions, and employer bankruptcies as a result of government mandated shutdowns, as well as by the direct actions of the Federal Reserve that, while necessary to support the economy in the face of a global pandemic, have a detrimental effect on plan investment portfolios and pension liabilities.

At the same time, the COVID-19 pandemic's profound economic impact has also resulted in substantial reductions in contributions to multiemployer health plans. NCCMP has advocated for federal COBRA subsidies to allow plans to bridge the gap, so that they can continue to provide quality health coverage that provides stability for contributing employers and their employees alike, both as the nation continues to work though the current crises and into the future.

We are pleased that Congress has passed, and on Friday President Biden will sign into law the American Rescue Plan that incorporates a special financial assistance program to provide relief for deeply troubled multiemployer pension plans, smoothing and extended recovery time for all multiemployer plans, and full COBRA subsidies at 100%, and takes an enormous step toward protecting the pensions and health care of all multiemployer participants.

The Budget Reconciliation Process

The American Rescue Plan was passed through the budget reconciliation process. This process allowed an expedited process in the Senate under which debate is limited and only requires a simple majority of 50 votes, plus Vice President Harris's vote if needed. The reconciliation process imposes a number of constraints on the types of legislative issues that can be addressed, so a number of policy related concerns that we must address legislatively remain unresolved.

Legislation that is considered under the budget reconciliation process is subject to review by the Senate Parliamentarian to determine whether it has a significant impact on federal spending or revenue. Legislation or sections of legislation that are primarily related to policy and do not have a significant impact on spending or revenue or that involve discretionary spending cannot be passed through the reconciliation process. As a result, the multiemployer relief provisions of the bill for deeply troubled plans had to be structured as an upfront grant program run by the PBGC (in consultation with Department of the Treasury) rather than as loans or partition assistance. Broader reforms to improve the ability of multiemployer trustees to proactively manage their funds to become and remain well funded, new plan designs, and governance reforms were likewise not allowed under the reconciliation process. We look forward to continuing to work with Congress to enact the reforms needed to protect and improve the funding of the multiemployer system during the rest of 2021.

Summary of the Multiemployer Provisions of the American Rescue Plan—Pension Provisions

The pension provisions of the American Rescue Plan provide two main forms of relief for multiemployer plans impacted by the COVID-19 pandemic.

First, the legislation creates a new program at the PBGC to provide special financial assistance to deeply troubled multiemployer plans in the amount needed to enable those plans to pay full, unreduced participant benefits for 30 years.

Second, the legislation allows all multiemployer plans, except those who receive special financial, extended time to recover from the COVID-19 pandemic. Similar to the relief provisions of the Worker Retiree, and Employer Recovery Act of 2008 (WRERA) and the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), plans may elect to smooth investment losses over an extended period of time in the development of the funding standard account and the actuarial value of assets. The American Rescue Plan adds a new option to smooth losses related to COVID-19 over an extended period, as well. Plans may also elect to freeze their zone status to allow plan trustees and bargaining parties an extended time to develop a plan to address the impact of COVID-19. Finally, plan's funding improvement or rehabilitation plans may be extended by 5 years to allow plans an extended time to recover and reduce the need to negotiate substantial contribution increases or reductions in benefits.

Finally, the legislation increases PBGC premiums to $52 in 2031 to improve the funding of the PBGC. It should be noted that the current premium is $31 and includes an annual escalator based on the National Wage Index, which would result in year-10 premium of $43/$44/$45, so the actual net increase is likely to be between $7 and $9.

Section 9701—Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical, or Critical and Declining Status

Multiemployer trustees may elect to freeze a plan's zone status for the plan year beginning on or after March 1, 2020 or for the next succeeding plan year to be the same status as for the prior plan year.

If the plan was in endangered or critical status for the prior plan year, the trustees are not required to update the plan's funding improvement plan, rehabilitation plan or schedules until the following plan year.

Section 9702—Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 or 2021

Trustees of plans in endangered or critical status for a plan year beginning in 2020 or 2021 (determined after the zone freeze permitted in Section 9701 above) may elect to extend their funding improvement or rehabilitation period by 5 years.

Section 9703—Adjustments to Funding Standard Account Rules

Multiemployer trustees may elect to smooth investment and COVID-19 losses as follows:

1. Smooth investment losses in one or both of the two plan years ending after February 29, 2020 over a period of up to 10 years in determining the actuarial value of assets,
2. Allow the actuarial value of assets to be up to 130% of the market value of assets, and
3. Amortize losses attributable to investment losses and other losses related to the pandemic (including experience losses related to reduction in contributions, reductions in employment and deviations from anticipated retirement rates) in one or both of the two plan years ending after February 29, 2020 over a period of up to 30 years in the development of the funding standard account.

In order to take advantage of the smoothing relief above, the plan must be projected to have sufficient assets to pay expected benefits and anticipated expenditures over the amortization period as of February 29, 2020, taking into account changes in the funding standard account described above.

Multiemployer plans that receive assistance from the special financial assistance program may not use these smoothing tools.

Treasury must rely on plan sponsors' calculations of losses unless the calculations are clearly erroneous.

If the smoothing relief provisions above are elected, benefits may not be increased unless the plan actuary certifies that the increase is paid for out of new contributions not previously allocated to the plan and that the plan's funded percentage and projected credit balance for the two years immediately following the year in which benefits are increased are reasonably expected to be at least as high as they would have been had the benefit increase not occurred.

Section 9704—Special Financial Assistance Program for Financially Troubled Multiemployer Plans

Appropriation of Federal Funds

An eighth fund is established a the PBGC, separate from the multiemployer insurance fund and the single employer insurance fund, to provide special financial assistance to deeply troubled multiemployer plans. Funding is appropriated from the general fund of the Treasury in the amounts needed to pay for the special financial assistance and the administrative and operating expenses of the PBGC related to the assistance. All funding must be transferred before September 30, 2030.

Operation of the Special Financial Assistance Program

PBGC is provided with a new authority to provide special financial assistance to eligible multiemployer plans. The special financial assistance is not a "loan" subject to the repayment requirements that generally apply to PBGC assistance to failing multiemployer plans. Instead, the special financial assistance is a grant that is not subject to the repayment requirements and does not need to be paid back.

Eligible multiemployer plans are those that satisfy any one of four requirements:

1. The plan is certified to be in critical and declining status in any plan year beginning in 2020 through 2022;
2. The plan had an approved suspension of benefits under the Multiemployer Pension Reform Act of 2014 (MPRA) as of the date of enactment of the American Rescue Plan;
3. The plan is certified to be in critical status in any plan year beginning in 2020 through 2022 AND the plan has a current liability funded percentage of less than 40% AND the plan has an active to inactive ratio that is worse than 2 actives for each 3 inactive participants; or
4. The plan became insolvent after December 16, 2014, has remained insolvent, and has not been terminated as of the date of enactment of the American Rescue Plan.

PBGC is required to issue guidance or regulations within 120 days of enactment to describe how plans may apply for the special financial assistance program, describe the effective dates for transfers of funds following an approved application, describe an alternate application process for plans that had previously been approved for a partition, and limit the materials required for an application to the minimum necessary to make a determination.

PBGC may also provide guidance or regulation that limits the plans that may apply for special financial assistance within the first two years of the program to plans that:

1. Are insolvent or likely to become insolvent within 5 years of the date of enactment of the American Rescue Plan;
2. Are expected to need in excess of $1 billion in regular PBGC assistance provided to failing plans absent the special financial assistance program;
3. Have implemented benefit suspensions under MPRA; or

4. Satisfy other circumstances as determined by the PBGC.

Amount of Special Financial Assistance

Eligible plans whose applications are approved by the PBGC (and Treasury in the case of a plan that is eligible as a result of benefit suspensions under MPRA) will receive special financial assistance in the amount that is needed for the plan to be able to pay all benefits due to participants without reduction (except those changes to adjustable benefits previously adopted under a plan's rehabilitation plan) for the 30-year period through the plan year ending in 2051. The amount of special financial assistance is not limited to the PBGC guaranteed benefit level.

For a plan that is eligible as a result of a benefit suspension under MPRA, the amount of financial assistance will be calculated to reinstate any benefits that were suspended effective as of the first month in which assistance is provided, and to repay the amount of benefits previously suspended either as a lump sum or in equal monthly installments over a period of 5 years with no adjustment for interest. The Treasury will provide guidance on the calculations needed and the manner of repayment.

Restriction on the Use of Special Financial Assistance

The special financial assistance a plan receives and any earnings on the assistance may only be used to provide benefit payments to participants and to pay plan expenses. The special financial assistance and earnings must be segregated from other plan assets, and must be invested in investment-grade bonds or other investments permitted by the PBGC.

PBGC's Review of Applications—Actuarial Assumptions

PBGC must accept the assumptions used by a plan's actuary to determine that the plan is in critical or critical and declining status for certifications completed before January 1, 2021, unless the assumptions are clearly erroneous. For zone certifications completed after December 31, 2020, a plan's actuary must determine whether the plan is in critical or critical and declining status using the assumptions that were used in the most recently completed zone certification before January 1, 2021, unless the assumptions other than the interest rate (discussed further below) are unreasonable.

In determining the amount of special financial assistance needed, an eligible plan's actuary must use the interest rate and other assumptions used in the plan's most recent zone certification completed before January 1, 2021, except that the interest rate used cannot be higher than the 3rd segment bond rate of the 24-month average yield curve defined in Section 303(h)(2)(C)(iii), ignoring the 25-year corridor, for the month in which the application is filed or the preceding 3 months, plus 200 basis points. The projections of the amount of special financial assistance must be done on a deterministic basis.

If a plan actuary determines that one or more of the assumptions used in the zone certification completed prior to January 1, 2021 is unreasonable, the plan may propose a change to those assumptions in the application provided that the actuary provides why the assumptions are no longer reasonable. The PBGC and Treasury will review the proposed changes in assumptions, but must accept the changes unless they determine that the assumptions are unreasonable either individually or in the aggregate. Plans may not propose changes to the interest rate used to determine eligibility or amount of financial assistance.

These restriction on the actuarial assumptions that may be used in determining whether a plan is eligible for the special financial assistance program and the amount of assistance that a plan may receive serve as guardrails for the program to ensure that federal assistance is provide only to plans that need it and only in the amount necessary to ensure benefits are paid.

PBGC's Review of Applications—Deadlines and Timing

Applications for special financial assistance must be submitted to the PBGC (and to the Treasury in the case of a plan that is eligible as a result of a benefit suspension under MRPA) no later than December 31, 2025. If revisions to the application are needed, the revised application must be submitted no later than December 31, 2026.

PBGC must notify the plan with 120 days that the plan's application is incomplete, any proposed change or assumption is unreasonable, or that the plan is not eligible or else the application will be deemed to be approved. If the plan is denied assistance for any of these reasons, the plan may submit a revised application, which the PBGC must also review within 120 days.

Once approved, the special financial assistance will be provided in a single lump sum payment as soon as practicable after the plan's application is approved, but no later than 1 year after approval. No financial assistance will be provided after September 30, 2030.

PBGC's Review of Applications—Restrictions on Plans that Receive Special Financial Assistance

PBGC may impose reasonable conditions via regulations or guidance on plans that receive special financial assistance with regard to increases in future accrual rates or retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions or allocation of expenses to other benefit plans, or withdrawal liability. In developing the regulations or guidance, PBGC must consult with the Treasury. PBGC may not require prospective reductions in benefits, including adjustable benefits, changes to plan governance including selection of or removal of plan trustees, actuaries, investment managers or other service providers, or any changes to plan funding rules.

Plans must continue to pay PBGC premiums.

Plans that receive special financial assistance are considered to be in critical status until the last plan year ending in 2051. In addition, the special financial assistance is not taken into account for determining minimum required contributions.

If a plan that has received assistance later becomes insolvent, the plan remains subject to the current rules and guarantees for insolvent plans and may not seek a suspension of benefits under MPRA.

PBGC Premium Rate Increase

The flat-rate premium is increased to $52 per participant for plan years beginning after December 31, 2030. As currently, the flat-rate premium will be indexed by the national average wage index for each year after 2031. It should be noted that the current premium is $31 and would, based on the national wage index inflator, be between $43 and $45 in year-10, so the actual net increase is likely to be between $7 and $9.

Summary of the Multiemployer Provisions of the American Rescue Plan—Healthcare Provisions

Section 9501—Preserving Health Benefits for Workers

Similar to the assistance provided under the American Recovery and Reinvestment Act (ARRA) passed in 2009 following the 2008 Great Recession, the American Rescue Plan provides for COBRA premium subsidies so that participants who would have otherwise lost coverage because of the pandemic may remain covered by their health plan. In a significant expansion from ARRA, however, the American Recovery Plan provides full COBRA subsidies at 100% of the cost of COBRA premiums.

Eligibility for the COBRA subsidy

Participants who lose or have already lost their health coverage as a result of job loss or reduction in hours would be eligible for the subsidy, as are family members who lose (or have lost) coverage with the employee. The subsidy would not be available if the participant voluntarily terminated employment.

The temporary subsidy would be available to any participant or family member who:

1. Is enrolled in COBRA or becomes eligible for COBRA on or after April 1, 2021, and before the subsidy ends on September 30, 2021, or
2. Became eligible for COBRA prior to April 1, 2021, and the 18-month period of COBRA coverage to which they would be entitled includes any month between April and September of 2021, even if the individual did not elect COBRA when it was initially offered or elected COBRA but discontinued it before April 1, 2021.

Amount of the COBRA Subsidy

The federal government will pay 100% of the monthly COBRA premium during the six-month period from April through September of 2021.

Duration of the COBRA Subsidy

The subsidy would last for at most six months and would end earlier if the participant would have lost coverage early in the pandemic and the maximum period of COBRA coverage (generally, 18 months) ends earlier than September 2021. The subsidy would also end if the participant becomes eligible for coverage under another group health plan or Medicare. Participants will be required to notify their plan if they become eligible for other coverage and would be subject to a penalty if they fail to do so.

Eligibility for excepted benefits, such as limited-scope dental or vision coverage or a health flexible spending arrangement, would not terminate subsidy eligibility.

New Notice Requirements

The legislation would require health plans to provide a notice about the availability of the new COBRA subsidy to any participant who becomes eligible to elect COBRA between April 1, 2021 and September 30, 2021. Plans would also have to provide the notice to participants who would be eligible for the subsidy due to job loss or reduction of hours followed by a loss of coverage occurring before April 1, 2021. Participants would have the normal 60 days to elect COBRA coverage unless the pandemic-related extended deadlines continue to apply. The Department of Labor (DOL), in consultation with Treasury and the Department of Health and Human Services (HHS), would be required to issue model notices within 30 days of enactment of the American Rescue Plan.

Plans would also be required to notify participants if their subsidy will end before September 30, 2021. This notice would not be required if the subsidy will end as a result of the participant's eligibility for other coverage. The DOL, in consultation with Treasury and HHS, would be required to issue a model for this notice within 45 days of enactment of the American Rescue Plan.

Payment of the COBRA Subsidy

The COBRA subsidy would be paid to the plan or plan sponsor as a credit against quarterly payroll taxes. Multiemployer plans are explicitly eligible to receive the credit and would receive the credit as an offset to the plan's payroll taxes. If the credit exceeds the amount of payroll taxes due, which may be the case for many multiemployer health plans with small staffs, the credit would be fully refundable to the plan. The tax credit could also be advanced under guidance to be issues by Treasury.

Summary of the Multiemployer Provisions of the American Rescue Plan—Other Provisions

Sections 3131 and 3132—Credit for Paid Sick and Family Leave

In addition to 100% of the qualified sick or family leave wages paid by an employer, employers with fewer than 500 employees may also claim as a tax credit the amounts paid to the participant's group health plan as well as the portion of the employer's collectively bargained contributions to a defined benefit pension plan and to a registered apprenticeship program that are allocable to the qualified sick leave wages or qualified family leave wages, subject to certain daily and aggregate limitations. Qualified sick or family leave wages are wages or compensation paid to an employee who is unable to work or telework for certain specified reasons related to the COVID-19 public health emergency.