

CARES Act Leaves Out Bailout of Private Union, Multiemployer Pension Plans

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April 2, 2020

Omitted from the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was a proposed bailout of private union or multiemployer pension plans in significant financial jeopardy. Although it was in the House version of the bill (House Bill) sent to the Senate, it was not in the version signed into law by President Donald Trump on March 27, 2020.

Third Time Not the Charm

The House Bill was a recycled version of the Rehabilitation for Multiemployer Pensions Act of 2019 (RMPA 2019), sponsored by House Ways and Means Committee Chairman Richard Neal. In December 2019, Neal criticized an unrelated spending bill that failed to include the union pension plan bailout as an “egregious omission.” The next year, the House tried again with RMPA 2020 — demonstrating its belief the bailout is needed.

The House Bill was the third time in two years that the House introduced a bailout for distressed union pension funds that would come with a very hefty price tag. There is every reason to expect that the House will continue to push the bailout proposal.

Key Provisions in House Bill

RMPA 2019, RMPA 2020, and the House Bill propose establishing a new office within the Treasury, the Pension Rehabilitation Administration (PRA). The PRA would administer a new trust fund financed by proceeds from bonds and other debt that would bail out failing multiemployer pension plans.

To be eligible for a loan under the House Bill, the pension plan must be insolvent or close to it, but not yet terminated. To be approved for a loan, employers that participate in failing pension plans would be prohibited from negotiating a reduction to their pension plan contributions. The loans would have “as low an interest rate as is feasible” and loan repayments would be interest-only for 29 years, with a balloon payment of the full principal in year 30. Even after being approved for a loan from the PRA, failing multiemployer pension plans would still be eligible to apply to the Pension Benefit Guaranty Corporation (PBGC) for financial assistance.

Under the House Bill, employers withdrawing from the failing pension plans during the 30-year loan period could face substantial liability associated with the pension plan’s unfunded vested liabilities. Withdrawal liability would be calculated as if the plan were terminating by the withdrawal of every contributing employer, as in the case of a mass withdrawal.

Further, the payment of benefits under annuity contracts, purchased with loans approved by the PRA, would not be considered plan assets for purposes of calculating withdrawal liability. However, the greater of the benefits paid under such contracts or obligation for the repayment of loans approved by PRA would be treated as unfunded vested liabilities for purposes of determining employer withdrawal liability.

Together, these measures would make a withdrawal cost prohibitive for most employers and the overall cost of this proposal is estimated at more than \$30 billion.

Congressional Budget Office (CBO) Analysis

The CBO’s analysis of RMPA 2019 estimated that loans disbursed in 2020 alone would likely total \$43.3 billion. Further, the CBO estimated that the present value of the loan repayments would total only \$7.9 billion, which would result in a net cost to the taxpayers \$31.8 billion.

The CBO projected that even with these favorable loan terms, approximately one in four of the pension plans receiving assistance under the House Bill would nevertheless become insolvent and never repay their loans. But RMPA 2019, RMPA 2020, and the House Bill would kick that \$31-billion taxpayer funded bailout down the road with interest-only payments for 29 years and a balloon payment in year 30 that likely would

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be refinanced and kicked again. Nevertheless, based on its three appearances in two years, the union pension plan bailout proposal is likely to make a reappearance.

Jackson Lewis attorneys will continue to monitor and provide updates on this proposed legislation. Please contact a Jackson Lewis attorney with any questions.

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