

Client Alert

American Rescue Plan Act of 2021 (ARPA)

ARPA provides funding relief for single employer and multiemployer defined benefit pension plans. This Client Alert provides a high-level review of the changes for multiemployer pension plans. Important details on how the Act will be interpreted and implemented are, as yet, not available, and we expect initial guidance to be released in July of this year.

ARPA provides funding relief for multiemployer pension plans in three areas:

- Direct financial assistance to troubled plans
- Relief from some of the requirements of the Pension Protection Act of 2006 (PPA)
- Relief from some of the statutory minimum funding requirements

ARPA also includes future increases in Pension Benefit Guarantee Corporation (PBGC) premiums.

Direct Financial Assistance

ARPA, for the first time, authorizes the Treasury to provide direct financial assistance to financially troubled multiemployer plans that meet certain eligibility requirements.

Financial assistance is:

- Provided from general Treasury revenues
- Administered by the PBGC
- Calculated to be the amount that is required to pay benefits and expenses through 2051
- Made by the PBGC to the plan as a single lump sum payment
- Required to be invested in investment-grade corporate bonds or other investments as permitted by the PBGC
- Does not need to be repaid

To be eligible for assistance the plan must meet at least one of the following:

- Certified under PPA in critical and declining status for 2020, 2021 or 2022
- Certified under PPA in critical status for 2020, 2021 or 2022 with a current liability funded percentage less than 40% and an inactive to active ratio greater than 1.5
- Had benefits suspended under the Multiemployer Pension Reform Act of 2014 (MPRA)
- Is insolvent but has not yet terminated

The PBGC has sole authority to grant priority to plans being considered for assistance. Consideration for priority may include:

- Insolvency projected in the next 5 years
- Assistance required is greater than \$1 billion
- Has prior MPRA benefit suspensions
- Other similar circumstances

Note that changes in actuarial assumptions used to determine critical or critical and declining status will not be allowed unless the assumptions are determined to be erroneous or unreasonable. Benefit suspensions are retroactively restored for plans with prior benefit suspensions under MPRA. As conditions for receiving assistance, the PBGC may set restrictions on future benefit and contribution changes, withdrawal liability and asset allocation.

PPA Relief

The Act provides temporary relief from certain requirements under PPA:

- Allows freezing the prior-year zone status for either the 1st or 2nd plan year beginning on or after March 1, 2020.
- Delays requiring an update to a plan's funding improvement or rehabilitation plan
- Funding improvement or rehabilitation plan improvement periods can be extended by 5 years

Minimum Funding Relief

For either or both of the two plan years starting on or after March 1, 2020, plans that meet a solvency test may elect to recognize 2020 investment or other related losses from COVID-19 over a longer period of time:

- 29-year recognition instead of 15 years
- 10-year smoothing of assets rather than the typical 5 years
- Actuarial value of assets may be capped at 130% of market value, up from 120%

Benefit increases are limited while the funding relief is in place.

PBGC Premiums

PBGC premiums, \$31 per participant per year in 2021, will increase to \$52 (indexed for inflation) in 2031. This is significantly less than what had been previously discussed.

Areas of Future Guidance

It is unclear how the law will be interpreted in many areas. Important among these are:

- To what extent are current plan assets considered in the amount of financial assistance and how much financial assistance will be provided to struggling plans
- How are participants counted for the 1.5 ratio
- What will be the impact on withdrawal liability calculations

Initial guidance on many of these questions is expected from the PBGC by July 2021.

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This is intended to provide a high-level summary of the Act. We would welcome the opportunity to discuss in more detail the possible impact ARPA would have on your plan. If you have any questions, please contact our office.