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Committee Update

**American Academy of Actuaries¹ Multiemployer Plans Committee Update
Meeting with Federal Agency Representatives Regarding Implementation of
Multiemployer Pension Relief under the
American Rescue Plan Act of 2021**

April 2021

On March 11, 2021, the American Rescue Plan Act of 2021 (ARPA) was signed into law. Among other things, ARPA establishes a new program under which the Pension Benefit Guaranty Corporation (PBGC) will provide special financial assistance to eligible multiemployer pension plans with solvency issues. PBGC must issue regulations or guidance on the special financial assistance program within 120 days of enactment. Guidance from PBGC could clarify a number of provisions related to this program that are ambiguous or open to interpretation. ARPA also provides temporary funding relief for multiemployer plans not facing projected insolvency.

On March 17, 2021, the Multiemployer Plans Committee of the American Academy of Actuaries met with representatives from PBGC, the Department of the Treasury, and the Department of Labor to share the committee's initial observations regarding the multiemployer pension provisions under ARPA, with a focus on areas where clarification may be needed. The representatives from the agencies were in "listen-only" mode during the meeting; they asked questions only to clarify observations provided by committee members.

The list of topics discussed during the March 17 meeting is included below. The Academy's Multiemployer Plans Committee is publishing this outline to inform multiemployer pension stakeholders, including Academy members, of issues of concern with the implementation of the multiemployer provisions of ARPA and different interpretations of those provisions under ARPA. Please note that this outline is not comprehensive and served only as a discussion framework used by the committee.

¹ The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

The committee thanks the representatives from the agencies for the opportunity to provide them with its initial observations and look forward to further discussions as needed and appropriate.

Topics from March 17, 2021, meeting:

1. Amount of Financial Assistance—Key Interpretations

- Intent of assistance
 - High Bookend: Present value of all benefits for 30 years (no consideration of current assets and future contributions).
 - Low Bookend: Amount necessary to keep plan solvent only through PYE 2051.
 - Somewhere in-between: Good policy would balance the long-term sustainability of plans between being significantly overfunded and running out of money. Could solve for increasing assets at the end of 30 years (like under the Multiemployer Pension Reform Act of 2014, MPRA) or a reasonable funded percentage.
- Deterministic projection versus present value calculation
- Interest rate
 - “Interest rate” used as investment return for projecting plan assets in determination of amount of assistance.
 - Limited to the valuation rate or the 3rd segment rate + 200 bps. Confirm whether “interest rate” means the rate used for funding standard account projections in last status certification, or alternatively investment return on plan assets for solvency projections (if different).
 - This “interest rate” should apply only to the earnings on current plan assets; the actuary should use bond rates when discounting the special financial assistance that is needed. (Failure to follow this approach will cause the plan to fall well short of the intended target, however defined.)

2. Amount of Financial Assistance—Other Interpretations

- Confirm “all benefits due” includes future benefit accruals, including those for future new entrants.
- Consider the engagement of active participants, especially if the interpretation is insolvent in 30 years. Compounded contribution rate increases with no changes to benefits will be significant after 30 years.
- Depending on the interpretation of the amount of financial assistance, we see some plans being eligible but not receiving any assistance.
- MPRA plans will need to understand the “goal” before making a decision to apply.
- “Do no harm”?
- Plans receiving special financial assistance are ineligible for a new suspension of benefits under MPRA. Does this leave open a future partition?
- Plans receiving special financial assistance that subsequently become insolvent will be subject to the “current” rules and guarantee for insolvent plans. Clarify “current” as of the enactment or insolvency?

3. Eligibility

- Priority consideration
 - We interpret that PBGC will identify (and notify?) plans meeting > \$1 billion; consider simplified metric to save time and expense.
 - We recommend PBGC focus first on plans approaching insolvency.
 - We understand the priority period may be up to 2 years. Consider how other plans will be notified to apply.
- Plans not eligible for priority consideration
 - “Avalanche” of plans applying at once.
 - Ensure PBGC/Treasury will have sufficient resources to meet the 120-day review requirement.
 - Staggered process to space out plans applying.
 - Potential political changes could put relief availability at risk.
- Critical Plans with < 40% CL funded and < 2:3 active to inactive participant ratio
 - Do all three criteria need to be met in the same plan year?
 - Current liability discount rate is typically not part of the annual zone status certification, so we assume that can vary by plan year (vs. fixed as of 2020). Is there also flexibility to change the rate within the permissible range?
 - For the Modified Funded Percentage, recommend using assets on line 1(b)(1) of the Form 5500 Schedule MB and not line 2a which may include withdrawal liability receivables.
 - Recommend a consistent method for counting participants—e.g. tied to Form 5500 filing.

4. Other Actuarial Assumptions

- Suggest regulations identify 2020 PPA Certification assumptions are safe harbor.
- Confirm industry activity assumptions are not actuarial assumptions. What was used in the 2020 certification was pre-COVID and may have significantly changed.
- Depending on the how assistance is calculated could affect the new entrant assumptions.
- Define “clearly erroneous”.
- Expect plans to have assumption changes (2019 assumptions may no longer be appropriate and experience studies persist). Consider safe harbor mortality tables as used in MPRA applications. Specifically address changes in actuary. Again, PBGC/Treasury should have enough resources to review in a timely manner and not automatically deny.
- Clarify whether one assumption change opens up all assumptions for review or just the assumption that changed.
- “Clearly erroneous” in Eligibility section, but only “unreasonable” in Amount section.
- Special financial assistance is disregarded for determining minimum required contributions, but how will this work once segregated assets are used to pay benefit and expenses since this will create a gain in the funding standard account? Amortize gain over 15 years or through the year ending 2051?

5. Conditions That Can Be Imposed

- Withdrawal liability
 - Will conditions be universal or vary by plan?
 - If the conditions allow employers to leave that could affect industry activity assumptions and affect the amount of assistance in the application.
 - Conditions should be consistent for a given plan year and not encourage employer withdrawals.
 - Does not affect withdrawals before you receive the assistance.
- Reductions in contribution rates & increases in future accruals
 - Plans have varied in the amount at which they have increased contribution rates, reduced future benefit accruals, and/or removed adjustable benefits.
 - Participants and employers may remain engaged with the plan longer if the contribution rate burden can be lessened, maybe normal cost + expenses + margin for adverse experience.
- Allocation of plan assets
 - Plans may change their investment structure if they decide to use the financial assistance for cash outflow in the near-term.
 - Some plans may even consider making the financial assistance a portion or all of their total corporate bond investments so as to minimize the impact to the overall assumed return.
- Mergers after receiving assistance

6. PPA/Minimum Funding Relief

- Election deadline is determined by Treasury. Will regulations or guidance be issued, and if so by when? The 120-day requirement was only for regulations on financial assistance.
- For a plan moving from Endangered to Critical that does not elect to remain Endangered, can they elect the temporary extension and have a 15-year RP?
- How does the 5-year extension coordinate with the 3-year extension under the Worker, Retiree, and Employer Recovery Act? New 5 years or only 2 year extension?
- These provisions are not eligible for plans that received financial assistance—need to clarify whether to seek this relief now and retroactively remove it if approved.
- Implement COVID loss recognition without a reconciliation account. Good policy to issue regulations here so there's a uniform industry approach.
- When freezing the PPA Zone status, the Trustees are not required to update their rehabilitation plan for year elected. How does this impact potential excise taxes if a plan is certified as not making scheduled progress in meeting its rehabilitation plan for three years in a row? Are they allowed to have 4 years in a row of no scheduled progress?