Rael & Letson ARPA Summary

On March 11, 2021, President Biden signed into law the American Rescue Plan Act ("ARPA") of 2021. While it mostly targets pandemic relief, ARPA also contains pension plan relief for both multiemployer and single employer plans. *This summary addresses the ARPA provisions affecting multiemployer pension plans.*

The most significant ARPA relief is critical **financial assistance** for the most severely underfunded multiemployer plans including plans with approved benefit suspensions under the Multiemployer Pension Reform Act of 2014 (MPRA). ARPA also offers **timing relief** for multiemployer plans that have been negatively impacted by the COVID-19 pandemic and **increases PBGC multiemployer insurance premiums** for all plans.

Here is a brief summary of the key multiemployer pension plan provisions of the new law followed by some Rael & Letson observations about application for plans in various funded positions.

Special Financial Assistance for Eligible Plans

Under ARPA, the PBGC will receive special funding from the Treasury Department to be disbursed to Eligible Plans that complete the required application process. For Eligible Plans, the amount of financial assistance granted from the PBGC is the amount necessary to enable the plan to pay benefits to participants, without reduction, through the plan year ending in 2051. Plans that receive assistance must reinstate any benefits that were suspended pursuant to MPRA and repay past amounts resulting from the suspension.

The amount of assistance will generally be determined by the plan actuary using the 2020 certification assumptions except that the interest rate must be no greater than a defined bond rate plus 2% (about 5.6% in February 2021). The PBGC may also authorize requested changes to other 2020 assumptions that are no longer reasonable at the time of the application.

Plans are not required to repay the financial assistance they receive from the PBGC. Any financial assistance received by a plan and any earnings on the assistance must only be used to pay benefit payments and plan expenses. The PBGC financial assistance and earnings must be segregated from other plan assets and invested in investment-grade bonds or other investments allowed by the PBGC.

Eligible Plans & Priority

Eligible Plans include those that satisfy any of the following criteria (using the 2020 PPA certification interest rate and other reasonable assumptions):

1. Plans in Critical & Declining Status in any plan year beginning in 2020 through 2022,

2. Plans that were previously in Critical & Declining Status that were approved for a benefit suspension pursuant to the MPRA application process,

3. Plans certified in Critical Status in any plan year beginning in 2020 through 2022 with a current liability funded percentage of less than 40%, and with an active to inactive ratio of less than ⅔, or

4. Plans that became insolvent after December 16, 2014 that remain insolvent but have not yet terminated.

Regulations or guidance will be provided by the PBGC within 120 days of enactment (by mid-July) setting forth the requirements for special financial assistance applications. These regulations or guidance may specify that, during the first two years of enactment, the most financially troubled plans are given priority over other Eligible Plans such that applications may not be filed by an eligible multiemployer plan unless the plan:

- Is insolvent or is likely to become insolvent within 5 years of the date of enactment,
- Has a present value of over $1 billion in unfunded vested benefits,
- Has previously implemented benefit suspensions pursuant to MPRA, **or**
- Has been determined by the PBGC to be a priority based on other similar circumstances.

Timing
Applications for special financial assistance must be submitted to the PBGC no later than December 31, 2025. Revisions requested by the PBGC must be submitted by December 31, 2026. The PBGC has 120 days to determine if any application is incomplete or ineligible. If neither occurs an application is deemed approved at the end of any 120-day PBGC review period. PBGC funding is required to be provided in one lump sum within one year of application approval and all funding must be transferred from the PBGC to Eligible Plans by September 30, 2030.

Additional Restrictions
Any plan that receives special financial assistance will be considered to be in Critical Status until the plan year ending in 2051 and cannot use the assistance to satisfy minimum funding requirements. An application that includes a suspension reversal will no longer be eligible to suspend benefits under MPRA. There may also be further conditions imposed by the PBGC in certain areas.

Temporary Timing Relief

There are a number of temporary timing relief provisions that are included in ARPA. These relief provisions are similar to those that were made available in 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) following the 2008 Global Financial Crisis. The three main ARPA relief provisions are:

1. Carry forward the pre-March 1, 2020 certification status to the next one or two certification dates,

2. Extend the funding improvement or rehabilitation period for five years for plans in Endangered or Critical Status (after consideration of any status carryforward) in any plan year beginning during March 1, 2020 through February 29, 2022,

3. Smooth investment and COVID-19 related losses over an extended period of time for plans that are projected to be solvent for at least 30 years, as follows:

    a. Investment losses for the two plan years ending after February 29, 2020 can be smoothed over a 10-year period for purposes of calculating the actuarial value of assets. Actuarial value of assets can be up to 130% of the market value of assets.

    b. The amortization period for ERISA minimum funding applicable to investment losses and other losses related to COVID-19 for the one or two plan years ending after February 29, 2020 can be extended from 15 years to a period of 29 years.

Plans that elect smoothing relief will be restricted from improving benefits for two years unless the cost of the improvement is funded by new money. In addition, plans that receive special financial assistance cannot also apply this smoothing relief.

Multiemployer Plan PBGC Premiums

Under the American Rescue Plan, PBGC premium levels will significantly increase starting in 2031. Currently, PBGC premiums are paid annually at a rate of $31 per participant. Under the new law, the PBGC premium rate will increase to $52 per participant for plan years beginning after December 31, 2030. This change in PBGC premiums amounts to an increase of 68% over current premium levels and is estimated to be an increase of 20%-30% over expected premium levels in 2030 under the current law.

Rael & Letson Observations About ARPA for Multiemployer Pension Plans

All Plans
Assuming annual inflation between 2.5% and 3.5%, PBGC premiums will likely jump an additional $9 to $12 per participant in 2031 versus the amount that is expected to be paid in 2030. This increase will be most challenging for newer plans and plans in industries with lower contribution rates (such as Retail Food and Hospitality). It is recommended that plan sponsors estimate the effects on their plans so that funding effects can be managed.

All plans should also consider the timing relief. For plans that have experienced investment and/or COVID-19 related losses, extending the asset smoothing and amortization periods will allow plans more time to recover from the COVID-19 downturn. This relief provision will temporarily elevate the plan's funded ratio and credit balance, potentially avoiding an undesirable PPA zone status. In addition, for plans in Endangered or Critical Status, this relief provision will lower the funding targets required under existing funding improvement or rehabilitation plans.

Green Zone Plans
Because the investment downturn driven by the pandemic thus far was largely isolated to March through June of 2020, most Green Zone plans are unlikely to initially adopt any temporary asset recognition or minimum funding relief in order to buy more time to address funding improvement. Plans that do initially adopt relief are likely to be April 1 – July 1 plans and/or plans in industries more severely affected during the last year (such as Hospitality). Should further investment market challenges arise in the next year, Green Zone plans may consider adopting the temporary relief to buy more time to recover.

Endangered Status Plans and Critical Status Plans Not Eligible for Financial Assistance
Once regulations become available (by mid-July), many Endangered and Critical Status plans will want to adopt asset and/or minimum funding relief to buy more time to address their funding situations. This temporary time relief will allow many plans to avoid changing statuses and come up with new recovery plans. Those most eager to adopt this relief will likely be plans that suffered investment losses for plan years ending in March through June of 2020 and/or other COVID economic or demographic losses. Some Endangered and Critical plans that have stronger recovery trajectories based on prior actions, may find that the temporary relief is not material enough to pursue. Regardless, Rael & Letson recommends analysis of the potential temporary relief effects during 2021 for all Endangered and Critical Status plans.

The Most Troubled Critical Plans and Critical and Declining Plans
The new law is most significant for plans that are eligible for Special Financial Assistance. These plans will be in position to receive grants from the PBGC to pay benefits and plan expenses through the 2051 plan year and restore MPRA suspended benefits. Prior to 2023, this assistance is likely to be focused on the most troubled Critical and Declining plans (including 18 that had applications approved to implement MPRA benefit suspensions) based on 2020 certifications, and some larger severely unfunded Critical plans. With PBGC regulations due by mid-July, these plans should start preparing now for filings that they will likely want to make in the latter half of 2021. Other eligible Critical plans should use 2021 to examine plan solvency through 2051 to determine the amount of any potential PBGC grant. Healthier Critical plans may find that despite being eligible, the available grant is $0 or an amount that is not worth pursuing.