ELIZABETH THOMAS DOLD and **DAVID N. LEVINE** are Principals and **MARK CAROLAN** is of Counsel at Groom Law Group, Chartered in Washington, D.C.

Employee Benefits Corner

American Rescue Plan Act Brings Retirement Plan Relief

By Elizabeth Thomas Dold, David N. Levine, and Mark Carolan

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The American Rescue Plan Act (the "Act") was signed into law on March 11, 2021.[1] The Act, which is largely focused on COVID-19 relief, brings with it a few notable retirement plan relief provisions (and one executive compensation change to help foot the bill). These provisions can be broken down into (1) single-employer pension funding relief, (2) expansion of Code Sec. 162(m) that limits deductions on executive compensation, (3) multiemployer pension funding relief, and (4) increase in PBGC premiums for multiemployer plans. We take a brief look at each of these provisions below and what plan sponsors should be doing to take advantage of the relief. Notably, for 401(k) and other defined contribution plans, there is nothing in the Act that applies to them.

Single-Employer Pension Funding Relief

What relief was provided? Two key funding provisions for defined benefit plans were changed to help increase the funding status of single employer plans. These changes help to avoid funding restrictions under Code Sec. 436, and also help facilitate paying lump sums for the top-25 paid group. These changes are briefly summarized below (for those that enjoy the actuarial details) and importantly will impact your annual funding certification ("AFTAP"). Therefore, talk to your plan actuary regarding these changes and the impact to your particular plan.

First, there is an extension of the amortization period used for unfunded liability for purposes of the minimum funding requirements. Specifically, the Act provides that, in the 2022 plan year, the minimum funding requirements for single-employer pension plans will be calculated by amortizing the entire unfunded liability over 15 years. This re-amortizing of the unfunded liability is often called a "fresh start." Also, a 15-year amortization period replaced the current seven-year period for future changes in the unfunded liability.

Second, the Act extends and enhances the interest rate stabilization provisions that were first introduced with the Pension Protection Act (in MAP-21), and which were due to begin to phased-out in 2021. Specifically, the Act (1) provides an updated corridor for the 25-year average interest rate (increases

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current interest rate stabilization corridor from 90% to 95% for plan years beginning in 2020 to 2025, and delays the start of 5%/year corridor expansion by five years from plan years beginning in 2021 to plan years beginning in 2026), and (2) sets a 5% minimum for the 25-year average.

Table 1 summarizes the changes to the stabilization corridor. A narrower corridor has a larger impact on the interest rate used to determine the plan liabilities.

For example, if the 25-year average of the third segment rate for 2020 were to be 4%, then under old law the lower boundary of this segment rate for minimum funding purposes would be 90% of 4%, or 3.6%. Now, a 5% floor applies to the 25-year average rate and the lower boundary is 95% of that rate, resulting in a rate of 4.75% for minimum funding purposes.

There is also special relief for "community newspaper employers," which the Act expanded the definition to permit more plan sponsors to fall within this category (and therefore making more plans eligible for special relief under the SECURE Act). This special relief allows them to elect to amortize their pension underfunding over 30 years and calculate plan liabilities using an 8% interest rate.

PBGC is required to publish regulations within 120 days of enactment, so we will stay tuned for the details. But all that said, multiemployer plans should take a close look at the various relief to see how best to protect participant benefits.

Is it optional or mandatory? These funding changes are required beginning in the 2022 plan year. But importantly, they are optional for the 2019–2021 plan years (2020–2021 plan years for interest rate change). For those plans not needing this relief, that saves the actuaries from preparing a new annual funding certification for such years, and other additional complexities for implementing retroactive changes. Notably, a plan sponsor can also elect to apply the interest rate retroactive relief only for

TABLE 1.

Year	Old Corridor		New Corridor	
	Minimum (%)	Maximum (%)	Minimum (%)	Maximum (%)
2020	90	110	95	105
2021	85	115	95	105
2022	80	120	95	105
2023	75	125	95	105
2024	70	130	95	105
2025	70	130	95	105
2026	70	130	90	110
2027	70	130	85	115
2028	70	130	80	120
2029	70	130	75	125
2030+	70	130	70	130

benefit restrictions under Code Sec. 436 and not for all plan purposes.

Code Sec. 162(m) Expansion

What change was made? The Act expands on the definition of "covered employee." Under existing law, Code Sec. 162(m) prohibits publicly traded employers from taking a tax deduction for executive compensation in excess of $1 million paid to "covered employees." These "covered employees" are currently limited to (1) the chief executive officer, (2) chief financial officer, and (3) the next three highest compensated employees. There is also a rule that says once a covered employee, always a covered employee for this purpose. The Act changes this definition to (1) the chief executive officer, (2) chief financial officer, and (3) the next eight highest compensated employees. Notably, these five additional employees are not subject to the "once in, always in" rule.

Is the change mandatory? Yes, this expansion is mandatory.

When is the change effective? We have some time. The change is not effective until 2027.

Is there a grandfathered provision? No, the Act does not contain a grandfather provision with respect to its changes to Code Sec. 162(m). However, the "grandfather rule" under the Tax Cuts and Jobs Act of 2017 (the "2017 Tax Act") may be useful with respect to all of the covered employees. This grandfather rule preserves the pre-2017 Tax Act rules under Code Sec. 162(m) for compensation payable pursuant to certain written binding contracts in effect on November 2, 2017.

Multiemployer Pension Provisions

What relief was provided? For multiemployer pension plans, there are two important forms of relief: (1) special COVID-19 related funding relief for all multiemployer plans, and (2) long-needed financial assistance for certain highly distressed multiemployer plans.

First, all multiemployer plans are eligible for the following relief, which is designed to delay when plans need to take into account COVID-19 losses:

- For one plan year that begins on or after March 1, 2020 and before March 1, 2022, an election to maintain the same funding zone status that was certified for the preceding plan year.
- Plans are not required to update their funding improvement or rehabilitation plans for this one plan year.
- Plans in critical or endangered status may elect to extend their funding improvement or rehabilitation plans by five years, providing much needed time to help achieve their funding targets.

The following additional relief is available for plans that pass a solvency test and are subject to restrictions on improving benefits:

- Plans may amortize their investment and other COVID-19 related losses incurred in either or both of the first two plan years ending after February 29, 2020 over a 30-year period (rather than the typical 15-year period that normally applies), and
- For these same two plan years, plans may change their asset valuation methods to spread investment losses over 10 years (rather than five years) and may allow the smoothed actuarial value of assets to exceed the fair market value by 30% (rather than 20%). Plans electing this relief must pass a solvency test and are subject to restrictions on improving benefits.

Lastly, the Act provides that the PBGC will provide special financial assistance (in the form of lump sum payments to plans) to certain highly distressed multiemployer pension plans. These plans generally must satisfy one or more of the following criteria:

- Is in critical and declining status for any plan year from 2020 through 2022, generally indicating that the plan is expected to exhaust its assets in 20 years or less.
- Has previously reduced benefits under the provisions of the Multiemployer Pension Reform Act of 2014 ("MPRA").
- Is in critical status for any plan year from 2020 through 2022, with a ratio of assets to liabilities (determined on a very conservative basis) of 40% or less, and a ratio of active to inactive participants of less than 2 to 3.
- Became insolvent after December 14, 2014 but is not terminated (*e.g.*, fully frozen).

The intent of this relief is to help ensure that these plans remain solvent through the 2051 plan year. A few items to note: (1) the amount of payment is determined without regard to whether benefits are above or below the PBGC maximum guarantee level, (2) there is no obligation to repay the payment, (3) the payment is supported by the general fund of the U.S. Treasury (not PBGC premiums), and will be paid through a new fund within the PBGC, (4) the payment is subject to certain investment restrictions (e.g., investment grade bonds), (5) the relief retroactively restores benefits that were otherwise reduced under MPRA, (6) the PBGC has authority to prioritize certain applications based on various factors, and the deadline for applying for the relief is generally December 31, 2025, and (7) the PBGC may impose certain conditions for plans that take the relief, and the relief is disregarded when determining plans' minimum funding requirements.

PBGC is required to publish regulations within 120 days of enactment, so we will stay tuned for the details. But all that said, multiemployer plans should take a close look at the various relief to see how best to protect participant benefits.

Increased PBGC Premiums

What is the new rate? The Act only increases the PBGC premium rate for multiemployer pension plans (not single employer plans). The new rate is $52 per participant (indexed after 2031).

When is it effective? Thankfully, not until the 2031 plan year.

ENDNOTE

[1] The American Rescue Plan Act of 2021 (P.L. 117-2).

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