Update on Recent Multiemployer Pension Reform Developments

PUBLISHED: February 9, 2021

In recent months, two competing visions for multiemployer pension reform legislation have been introduced in Congress.

- On December 17, Republican Senators Charles Grassley and Lamar Alexander – who at the time were the chairpersons of the Senate committees with jurisdiction over pensions – introduced the *Chris Allen Multiemployer Pension Recapitalization and Reform Act* (the "Grassley-Alexander Act").
- On January 21, Democratic Congressmen Bobby Scott and Richard Neal – the chairpersons of the House committees with jurisdiction over pensions – introduced the *Emergency Pension Plan Relief Act* (the "Scott-Neal Act").

These bills have some common characteristics, but also many differences. Both proposals use a partition framework to provide relief to failing plans and both proposals would increase the PBGC guarantee level for multiemployer plans. The Scott-Neal Act does not permit any reductions to the benefits of participants in severely underfunded plans, and it relies entirely on revenues from the general fund of the U.S. Treasury to provide relief to these plans. The Grassley-Alexander Act would allow for some benefit reductions through a new form of PBGC premiums deducted from participant benefits, while looking to a combination of higher PBGC premiums and general Treasury revenues to support the relief.

The Scott-Neal Act contains several temporary funding relief measures that all multiemployer plans could use to offset the adverse impacts of the COVID-19 crisis, which are not included in the Grassley-Alexander Act. The Grassley-Alexander Act, on the other hand, includes a wide range of changes to many of the rules regulating multiemployer pension plans, including minimum

If you have any questions, please do not hesitate to contact your regular Groom attorney or the authors listed below:

Michael Kreps
mkreps@groom.com
(202) 861-5415

Joshua Shapiro
jshapiro@groom.com
(202) 861-2613

Brigen Winters
bwinters@groom.com
(202) 861-6618

funding standards, withdrawal liability assessments, and plan governance provisions.

The primary impetus for both proposals is the impending insolvency of over 100 multiemployer pension plans covering more than a million participants and the projected insolvency of the multiemployer insurance program administered by the Pension Benefit Guaranty Corporation ("PBGC").

It is possible that a revised version of the recent bills, and in particular the Scott-Neal Act, could be included in COVID-related stimulus legislation currently being negotiated in Congress.

Background

The Form 5500 filings for 2018 show 120 multiemployer pension plans that are in critical and declining status, which means they are projected to fully exhausts their assets within the coming 20 years. Additional plans have either already exhausted their resources, or are likely to fail over a longer timeframe. In total, these plans represent over 10% of the entire multiemployer system, and they cover more than a million active, inactive, and retired workers.

When a multiemployer plan becomes insolvent, PBGC provides the plan with financial assistance to allow it to continue to pay benefits up to the statutory guarantee level. Under current law the guarantee level is relatively low, covering at most approximately $1,100 per month for an employee with 30 years of service. Plans pay an annual per-participant premium to PBGC ($31 in 2021) to support this guarantee. The PBGC multiemployer insurance program itself is seriously underfunded, and is projected to exhaust its resources in the 2026 fiscal year.[1]

Employers contribute to multiemployer plans based on rates set through collective bargaining, which typically require a specified amount to be paid into the plan per hour (or other unit of employment) of covered work. Federal law generally requires that the bargaining parties negotiate contribution rates that will be sufficient to fully fund plans over a period of 15 years, though there are exceptions for plans that cannot reasonably meet this standard. The actuarial assumptions used to measure the plan liabilities for minimum funding purposes are based on the actuary's best estimate of future experience. The actuarial assumptions include an expected rate of future investment return. There is a significant amount of variation on a plan-by-plan basis in the expected rate of future investment return, but many actuaries assume approximately 7.5% per year.

When an employer ceases contributing to a plan that is less than fully funded, it is generally assessed withdrawal liability, which is a proportional share of the plan's underfunding. The employer generally is not obligated to pay the withdrawal liability assessment as a single sum; rather, it has the option of making payments under a statutory payment schedule. The amount of the annual withdrawal liability payment depends on the employer's contribution history and is independent of the amount of liability allocated to the employer. Withdrawal liability payments continue until the earlier of (a) when the assessment is fully paid off, or (b) 20 years. In the event substantially all employers withdraw from a plan, the 20-year cap may be lifted.

Key Provisions of the Scott-Neal Act

Partition of Insolvent Multiemployer Pension Plans

The Scott-Neal Act provides assistance to failing multiemployer plans by transferring a portion of their liabilities to new plans that are supported by PBGC in a process known as partitioning. Partitions exist under current law, but the circumstances in which they can occur are narrow, and they have not been used extensively.

A plan is generally eligible for a special partition under the Scott-Neal Act if it satisfies any of the following criteria:

a) Is in critical and declining status for any plan year beginning in 2020 through 2022[2]

b) Implemented a suspension of benefits under the Multiemployer Pension Relief Act ("MPRA") prior to enactment

c) Is in critical status with a funded ratio below 40% on a current liability basis and a ratio of active to inactive participants of 2 to 3 or lower for any plan year beginning in 2020 through 2022[2]

d) Became insolvent on or after December 14, 2014 and prior to enactment, and is not terminated as of enactment

Under the Scott-Neal Act, the amount of liability assumed by PBGC is determined such that after the special partition, the plan is projected to avoid insolvency and to reach an 80% funded ratio over a 30-year period. PBGC has discretion regarding the liabilities that are partitioned, and partitioned benefits are not subject to the PBGC maximum guaranteed benefit limitation. Participants continue to receive their full benefits, regardless of whether those benefits remain in the original plan or are transferred under a partition.

Plans must submit initial applications for special partitions by the end of 2024, with any revised applications due by the end of 2025 (extended to 2026 and 2027 respectively under the Neal version of the legislation). If PBGC does not act on a partition application within 120 days of submission, the application is deemed to be approved. PBGC has the authority to impose conditions on plans that receive partitions, though it may not require benefit cuts, mandate new funding rules, or interfere with the selection of plan trustees or service providers. After a partition goes into effect, the amount of liability partitioned is periodically reviewed and potentially adjusted based on the experience of the plan.

If a plan that has previously implemented benefit suspensions under MPRA receives a partition, it must reinstate all suspended benefits, including retroactive payments for past periods. Additionally, the Scott-Neal Act repeals the benefit suspension provisions of MPRA prospectively. This repeal does not affect benefit suspensions approved prior to enactment, though those suspensions would likely be undone as part of the partition process. Special partitions are disregarded for withdrawal liability purposes for 15 years following the effective dates of the partitions.

The special partition assistance is provided through a new fund within the PBGC, which receives appropriations from the general fund of the U.S. Treasury (unlike the current PBGC insurance funds, which are funded through insurance premiums, recoveries from terminated plans, and investment returns only). Plans receiving partitions are protected from excise taxes associated with minimum funding requirements. In contrast with the Grassley-Alexander Act, the Scott-Neal Act does not provide for any increases in PBGC premium levels.

PBGC Guarantee Level

The Scott-Neal Act increases the PBGC guarantee formula to 100% of the first $15 of monthly benefit accrual, plus 75% of the next $70 of the accrual rate. Taking into account this increase, a participant with 30 years of service has a maximum guaranteed benefit of $2,025 per month, or $24,300 per year. These figures compare to $1,072.50 per month under current law ($12,780 per year) and $1,680 per month under the Grassley Alexander Act ($20,160 per year).

Temporary Funding Relief for All Multiemployer Plans

For plan years beginning on or after March 1, 2020 and before March 1, 2021, the Scott-Neal Act permits the sponsors of multiemployer pension plans to elect to maintain the same zone status as was certified for the prior plan year. Sponsors may alternatively choose to apply this relief to the following plan year. Plan sponsors making this election are also not required to update their funding improvement or rehabilitation plans from the prior year. The Scott-Neal Act also permits plan sponsors to elect to extend their funding improvement or rehabilitation periods by five years. This relief is similar to what was provided in the Worker, Retiree, and Employer Recovery Act of 2008.

The Scott-Neal Act also provides that for minimum funding purposes, multiemployer pension plans may amortize their investment losses (and in the version of the legislation introduced by Congressman Scott, 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. Additionally, plans may change their asset valuation methods to spread those investment losses over a 10-year period, and for those two plan years the smoothed actuarial value of assets may exceed the fair market value by 30% (as opposed to the 20% limit that normally applies). This relief is similar to what was provided in the Pension Relief Act of 2010.

Key Provisions of the Grassley-Alexander Act

Partition of Insolvent Multiemployer Pension Plans

Similar to the Scott-Neal Act, the Grassley-Alexander Act provides assistance to failing multiemployer plans by transferring a portion of their liabilities to new plans that are supported by PBGC through partitions. The special partition provisions in the Grassley-Alexander Act are temporary, although PBGC is authorized to specify the exact application due date in its regulations.

In order to be eligible for a special partition, a plan must meet one or more of the following criteria:

a) Became insolvent on or after December 14, 2014 and prior to enactment

b) Was in critical and declining status as of the most recent actuarial certification preceding enactment

c) Implemented a suspension of benefits under MPRA prior to enactment

d) Was in critical status as of the most recent actuarial certification prior to enactment with a funded ratio below 40% on a current liability basis and a ratio of active to inactive participants of 40% or lower

e) Was in critical status in the most recent actuarial certification prior to enactment with a ratio of active to inactive participants of 20% or lower and 100,000 or more participants

Plans that terminated prior to the enactment of the Grassley-Alexander Act are not eligible for special partitions. Eligible plans are generally required to apply for special partitions, with the exception of plans that have implemented MPRA benefit suspensions, which may choose between maintaining the suspensions or revoking the suspensions and following the special partition rules. In order to receive a special partition, the rate of monthly benefit accrual must be no more than 1% of annual contributions and all early retirement subsidies applicable to participants not in payment status must be eliminated. Any benefit improvement adopted within 15 years following a special partition triggers an obligation to make payments to the PBGC based on the size of the benefit improvement.

A special partition transfers the amount of liability that is necessary for the original plan to remain solvent indefinitely. The Grassley-Alexander Act specifies that the investment return assumption for this purpose must be consistent with the minimum funding rules for multiemployer plans, subject to the restriction that the assumption cannot be less than 5.5%. After a partition goes into effect, the amount of liability partitioned is periodically reviewed and potentially adjusted based on the experience of the plan.

The new plan created by the partition receives funding from PBGC in an amount necessary to support the benefit payments from this plan. The Grassley-Alexander Act appears to allow the partitioning of benefits in excess of the PBGC guarantee level. In the event an employer withdraws from a plan within 15 years of a special partition, the withdrawal liability calculation generally disregards the impact of the partition, and a 10% surcharge applies to the annual withdrawal liability payment amount.

PBGC Guarantee Level

Currently the PBGC multiemployer plan guarantee covers 100% of the first $11 of a participant's monthly benefit accrual rate, plus 75% of the next $33 dollars of the accrual rate. For a participant with 30 years of service, this formula results in a maximum guaranteed benefit of $1,072.50 per month, or $12,870 per year.

The Grassley-Alexander Act increases the PBGC guarantee formula to 100% of the first $15 of monthly benefit accrual, plus 75% of the next $54.67 of the accrual rate. Taking into account this increase, a participant with 30 years of service has a maximum guaranteed benefit of $1,680 per month, or $20,160 per year. For such a participant, the new maximum guarantee amount represents a 57% increase over the amount payable under current law.

PBGC Insurable Event

Under current law, PBGC generally only provides financial assistance to multiemployer plans upon the exhaustion of their assets, and benefits are reduced to the PBGC guarantee level at that time. Under the Grassley-Alexander Act, once a plan is projected to be insolvent within five years, it is required to terminate by freezing all benefit accruals and eligibility criteria, and to reduce participants' accrued benefits to the PBGC guarantee level. The Grassley-Alexander Act also requires that plans terminated for reasons other than insolvency reduce accrued benefits to the amounts guaranteed by the PBGC.

PBGC Premiums and other Funding Sources

The only premium that multiemployer plans currently pay to PBGC is a fixed-dollar premium based on the number of participants in the plan, including active, inactive, and retired participants. The premium rate is indexed to inflation, and is $31 per participant in 2021. The Grassley-Alexander Act changes the fixed-dollar premium paid by multiemployer plans to be equal to the fixed-dollar premium paid by single-employer plans, which results in a rate of $86 per participant for 2021. Separately, and beginning in 2025, an additional fixed-dollar premium of $15 dollar per participant applies to composite plan participants (as defined elsewhere in the proposal) who are not also participants in a legacy defined benefit plan.

The Grassley-Alexander Act implements a new type of PBGC premium that is payable by both the employers that contribute to the plan and by the unions that represent the covered employees. This framework is a deviation from current law, under which all PBGC premiums are exclusively paid by the plans themselves. This premium is generally equal to $2.50 per month (i.e., $30 per year) per active employee covered by the plan, with reduced rates applying to plans that are not in endangered, critical, or declining status.

The Grassley-Alexander Act introduces a new variable rate premium paid by multiemployer plans. This premium is equal to 1% of the unfunded vested liability of the plan, measured on a current liability basis. Current liability is determined based on the yields on 30-year U.S. Treasury bonds, and is typically a higher liability measurement than is used for other purposes. The per-participant variable rate premium is capped so that it cannot exceed the lesser of a measure of the average historic contributions to the plan, or $250 per plan participant. Plans in unrestricted status, as defined in the proposal, are exempt from the variable rate premium, and beginning in 2025 this exemption also includes plans in stable status.

The Grassley-Alexander Act also introduces a new premium that is withheld from retiree benefit payments. The amount withheld and paid to PBGC as a premium depends on the financial condition of the plan. The largest premiums are withheld from the benefits of retirees in plans that have received special partitions, where a 10% premium applies. Retirees in plans that are in declining status, are insolvent, or have terminated are subject to 7% premiums. Retirees in critical status plans are subject to 5% premiums, and retirees in endangered plans are subject to 3% premiums. Plans not in any of these conditions are not required to withhold any amounts from retiree benefit payments. These premiums are phased-out for retirees age 75 and older, and disabled retirees are exempt.

Beginning in 2025, if the PBGC projects that the multiemployer insurance program will be insolvent within 10 years, it must recommend a balanced combination of premium increases and guaranteed benefit decreases that will automatically go into effect if Congress takes no action. If the assets of the PBGC multiemployer program drop below $500 million, the Grassley-Alexander Act authorizes the PBGC to borrow money from the U.S. Treasury in order to continue to pay guaranteed benefits and expenses. These loans are interest-free, with repayments made over a 20-year period that begins 20 years after a loan is made. If the total outstanding loan balance exceeds $2 billion, the multiemployer fixed-dollar premiums automatically increase by 20%.

Valuation of Pension Liabilities for Minimum Funding Purposes

For purposes of determining minimum funding requirements, federal law currently requires that plan actuaries measure multiemployer pension liabilities using discount rates that represent their best estimates of anticipated plan experience. The most commonly chosen assumption for this purpose is 7.5% per year, and more than 80% of plans have an assumption that is greater than 6.5%.

Under the Grassley-Alexander Act, the discount rate used to determine the accrued liability is the lesser of the actuary's best estimate or a statutory cap that depends on the plan year. The cap starts at 7.5% in 2021, and gradually phases down to 6.5% for 2036 and thereafter. A separate discount rate cap applies to the normal cost calculated by the plan actuary. Specifically, the discount rate used to determine the normal cost equals the least of (a) the rate used to determine the accrued liability, (b) the third segment rate from the single-employer funding rules (without regard to the corridor based on the 25-year average rate) plus 2%, or (c) 5.5%.

Zone Status Definitions

Federal law currently classifies multiemployer plans as either being in critical status or endangered status, with a default category of plans that do not meet the criteria for either critical or endangered status. The Grassley-Alexander Act revises the zone status framework to include the following statuses:

- *Unrestricted Status* – Funded ratio projected 15 years into the future is at least 115% and current liability funded percentage is at least 70% for the current plan year, or current liability funded percentage is at least 80% for the current plan year
- *Stable Status* – Plan does not meet the requirements for any other zone status

- *Endangered Status* – Funded ratio is below 80%, the plan is projected to fail to satisfy the minimum funding requirements in 9 years, or the funded ratio projected 15 years into the future is less than 100%
- *Critical Status* – Funded ratio is below 65%, the plan is projected to fail to satisfy the minimum funding requirements in 6 years, or the funded ratio projected 15 years into the future is less than 80%
- *Declining Status* – Plan is projected to fully exhaust its assets over a 30-year period, is not projected to emerge from critical status within the coming 30 years, or has a funded ratio that is projected to decline over a 15-year period (unless the current funded ratio is over 100% and the projected funded ratio is under 100%)

Zone Status Rules

Other than continuing to comply with the underlying minimum funding rules, the Grassley-Alexander Act does not require plans in unrestricted status to take any additional steps to improve their funding levels. These plans are permitted to improve benefits, provided the improvement does not cause the plan to exit unrestricted status. Plans in stable status are similarly not required to take any action outside of complying with the minimum funding rules, but these plans can only improve benefits (other than *de minimis* improvements or improvements required by law) if the improvement is funded by additional contributions not required by the current collective bargaining agreement.

Under the Grassley-Alexander Act, endangered status plans are required to develop and implement funding improvement plans designed to achieve emergence from endangered status over a 10-year timeframe, while also avoiding a funding deficiency. These plans are permitted to adopt benefit improvements, provided the improvement is funded by additional contributions that are not contemplated by the funding improvement plan.

Critical status plans must adopt rehabilitation plans designed to achieve emergence from critical status over a 10-year period, and also increase the 15-year projected funded ratio to 100% or greater. If the plan is not projected to meet this standard after exhausting all reasonable measures, then it must adopt reasonable measures to emerge from critical status at a later date or to forestall insolvency. A plan that is not projected to emerge from critical status by the end of the 10-year period is may not have a monthly accrual rate that exceeds 1% of annual contributions. Critical status plans are not permitted to adopt benefit improvements unless the impact of the improvement is *de minimis*, or is required by law.

Under the Grassley-Alexander Act, declining status plans are subject to the same benefit improvement restrictions as critical plans. These plans must adopt a solvency plan, which is similar to a rehabilitation plan that avoids or forestalls insolvency. Declining status plans are not able to have a monthly accrual rate in excess of 1% of annual contributions based on the contribution rate in effect when the plan enters declining status, and any subsequent contribution rate or compensation increases must be excluded from benefit formulas that are based on contributions or compensation. Similar to current law, declining status plans are able to apply for benefit suspensions, as provided under MPRA.

Plans in unrestricted status are permitted to accept collective bargaining agreements that provide for decreases in contribution rates, provided the decreased rates do not cause the plan to exit unrestricted status. Other plans are only permitted to accept reduced contribution rates if they are accompanied by a comparable reduction in benefit accruals, or if the trustees determine that accepting the lower rates serves the best interests of plan participants.

The Grassley-Alexander Act largely maintains the current rules regarding adjustable benefits, with two significant changes. First, plans in endangered status are permitted to reduce adjustable benefits, instead of only critical status plans as under current law. Second, benefit improvements that have been in effect for less than 10 years are considered to be adjustable benefits, as opposed to 5 years under current law. It also provides guidance on the selection and documentation of the actuarial assumptions used in the various projections required by the zone status rules.

Withdrawal Liability

Under the Grassley-Alexander Act, the annual amount that a withdrawn employer is obligated to pay to a plan is the product of (a) the highest average level of employment (most often measured in hours of work) the employer had in the plan over a 5-year period out of the 20 years preceding withdrawal, and (b) the highest contribution rate under which the employer has contributed over the prior 10 years. Under current law, the lookback period for the employment level is 10 years, as opposed to 20 years under this proposal. For employers with relatively stable employment level histories the impact of this change will be small. However, for employers that have experienced sustained declines in their employment levels in a plan over an extended period of time, the Grassley-Alexander Act will result in a significant increase in withdrawal liability exposure.

The Grassley-Alexander Act provides that the amount of a withdrawal liability assessment is equal to the lesser of (a) the amount of unfunded vested benefit liability allocated to the employer, or (b) the present value of a 20-year payment schedule consisting of the annual amount determined under the preceding paragraph. For terminated plans, plans in declining status, and plans from which substantially all employers have withdrawn, the duration of the payment schedule is extended to 25 years.

Governance

Under the Grassley-Alexander Act, PBGC can petition a court to terminate a plan that either fails to apply for a special partition for which it is eligible, or if PBGC concludes termination is necessary to protect the interests of participants or PBGC. PBGC is also authorized to petition a court to appoint or remove trustees of plans in either critical or declining status, and plans that have terminated. In the case of a plan that receives a special partition, PBGC may appoint or remove trustees without petitioning a court, provided it determines that the actions of the trustees increased the risk of loss to participants or PBGC. For each plan that receives a special partition, PBGC may also appoint a special master who has oversight of plan operations.

The Grassley-Alexander Act provides PBGC with broad authority to investigate multiemployer plans, and directs PBGC to audit a statistically significant number of terminating plans to ensure participants and beneficiaries are receiving the appropriate benefits. PBGC is authorized to condition the receipt of financial assistance on criteria designed to prevent abuse, including the ability to reduce guaranteed benefits based on top-up benefits provided by other plans. There is also an excise tax on compensation above $500,000 for the top-paid 5 employees of partitioned plans.

The Grassley-Alexander Act establishes a reportable event framework for multiemployer plans, and revises the rules regarding annual funding notices and zone status notices. Additionally, it contains provisions intended to facilitate plan mergers, particularly between well-funded and poorly-funded plans.

MPRA Benefit Suspensions

The Grassley-Alexander Act clarifies that a trustee who is appointed as a retiree representative in a plan that is applying for benefit suspensions remains subject to fiduciary standards with respect his or her role as a trustee. It directs the Treasury Department to release regulations that provide guidance on the actuarial assumptions to be used in benefit suspension applications, and also develop a model benefit suspension notice for participants.

The Grassley-Alexander Act provides that once the Treasury Department provides notice and a comment period through the Federal Register, it is not necessary to repeat this process for *de minimis* changes to a suspension application. A new participant notice is also not required in this case. It also establishes a flat, across the board reduction percentage as a safe harbor for equitable distribution purposes, and extends the existing protections for participants receiving disability benefits under a plan to participants who have qualified for Social Security disability benefits.

Composite Plans

The Grassley Alexander Act authorizes a new type of retirement plan called a composite plan. A composite plan operates much like a current defined benefit plan, except that employers' financial obligation to the plan is limited to the bargained contributions. To the extent that underfunding develops that cannot be addressed through increased contributions or reductions in future benefit accruals, participants' accrued benefits are adjusted in order to balance the obligations with the available resources. Composite plans have no withdrawal liability or PBGC guarantees.

The funding standards for composite plans are based on a projection of the assets and liabilities, and plans are required to maintain a projected funded ratio of at least 120%. A composite plan can be a component of an existing defined benefit plan, but separate asset pools are maintained. A current defined benefit plan is not be permitted to implement a composite plan if it is in endangered, critical or declining status.

If a composite plan fails to satisfy the 120% projected funded ratio standard, it is required to develop and implement a realignment program to address the shortfall. A realignment program must first attempt to improve funding levels through increases in the contribution rates that are negotiated by the bargaining parties, reductions to future benefit accruals, and modifications to ancillary benefits. If these measures are insufficient, then the plan is allowed to reduce accrued benefits to non-retired participants and ancillary benefits to retired participants. If these measures are also insufficient, then the plan is able to reduce core benefits to retired participants.

If a legacy defined benefit plan implements a composite plan, it is required to calculate a transition contribution rate that is expected to fully fund the liabilities over 25 years. Any subsequent adverse experience is amortized over 15 years and added to the transition contribution rate. Employers are required to contribute at least the transition contribution rate to the legacy plan, and can only claim that all reasonable measures to improve funding have been taken if 75% or more of the total contributions between the legacy and composite plans are going to the legacy plan.

Outlook and Next Steps

The two competing bills are very different in scope. The Scott-Neal Act narrowly focuses on saving troubled multiemployer plans and providing temporary funding relief to all multiemployer plans. It does not impose any reductions on participant benefits, and retroactively undoes benefit reductions implemented under MPRA. The resources necessary to support this assistance would come entirely from the general fund of the U.S. Treasury.

The Grassley-Alexander Act is broader in scope. In addition to the provisions intended to save insolvent plans, it contains sweeping changes to the funding, withdrawal liability, and plan governance rules. Participants in underfunded plans would experience benefit reductions in the form of PBGC premiums deducted from benefit payments, and the entire system would be subject to substantial premium increases. These premium increases would serve as the primary source of funding for the assistance to insolvent plans, with assets from the U.S. Treasury also available if needed.

There are two possible paths that multiemployer pension reform could follow in 2021. One possibility is that Democrats and Republicans could negotiate a bipartisan solution that has support from both sides of the aisle. This approach would likely produce legislation that contains elements from both the Grassley-Alexander Act and the Scott-Neal Act. Potential areas for compromise could include PBGC premium increases (which are not included in the Scott-Neal Act) below those contained in the Grassley-Alexander Act, a scaled back framework for reforming the funding rules, and a modest level of benefit reductions for participants in insolvent plans.

The other possibility is that Democrats will seek to use their slim majorities in both houses of Congress to enact legislation that does not have any Republican support. This approach would likely involve the use of the budget reconciliation process, and would not be likely to reflect the provisions of the Grassley-Alexander Act. However, substantive changes to the provisions of the Scott-Neal Act may be needed in order to comply with the budget reconciliation rules.

Multiemployer plans, and the employers and unions that participate in them, should consider performing analyses of the effects both acts would have on funding requirements, benefit levels, and plan governance. This analysis will help ensure that all parties are prepared for the changes that might occur and, perhaps more importantly, will put stakeholders in a position to provide valuable feedback to policymakers as they work to finalize a reform package.

Some specific questions that plans might want to consider analyzing are as follows (some questions only apply to one of the two acts):

- Would the plan be eligible for a special partition, and if so, how much liability is likely to be partitioned?
- How would the near-term funding requirements be affected by the temporary funding relief provisions?
- What would the new premium structure mean for plans, employers, and participants?
- How would the change to minimum funding discount rates affect the plan's funded ratio and contribution requirements?
- What zone status would the plan fall into?
- How would withdrawal liability assessments be affected?
- Would transitioning to a composite plan meet the needs of employers and employees more effectively than the current plan?

---

[1] Under current law, PBGC does not receive any funding from the U.S. Treasury. If its multiemployer program exhausts its assets, the guaranteed benefits likely would decrease to a level the agency could afford on a pay-as-you-go basis from premium receipts, which would be a small fraction of the current guarantee level.

[2] Congressmen Scott and Neal introduced slightly different versions of the *Emergency Pension Plan Relief Act*. The 2022 closing date for eligibility in criteria (a) and (c) is from the Scott version of the legislation, while in the Neal version the closing date is 2024.