

Multiemployer Alert

Update on Issues Affecting Taft-Hartley Plans

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Multiemployer relief in HEROES Act

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On May 15, 2020, the House of Representatives passed the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act in response to the COVID-19 pandemic. Although passage in the Senate is uncertain and provisions of the bill could change as negotiations take place, the HEROES Act currently contains several items for both single employer and multiemployer defined benefit (DB) plans. This alert focuses on the multiemployer provisions in Division D of the Act.

Special partition relief and MPRA benefit suspension repeal

A partition splits a DB plan into two plans, the successor plan and the original plan. The Pension Benefit Guaranty Corporation (PBGC) pays the benefits and expenses of the successor plan and the original plan pays the remaining benefits and continues to operate as an ongoing plan (coordinating with the successor plan). Under current law, multiemployer plans can only apply for a partition if the maximum benefit suspensions under the Multiemployer Pension Reform Act of 2014 (MPRA) are not enough to keep the plan solvent. The maximum benefit suspensions under MPRA generally reduce participant benefits to 110% of the PBGC guarantee level. If those benefit reductions are not sufficient, the plan can apply to the PBGC to “partition” the plan and have the PBGC pay the guaranteed benefit for a group of participants while the original plan pays the remaining benefits.¹

The HEROES Act expands the PBGC’s ability to provide partition assistance to struggling multiemployer plans. Under the special partition relief, the PBGC would be able to assume a greater portion of the original plan’s liabilities in order to help it meet the funding goals described in the HEROES Act.

In order to qualify for the special partition relief, a plan must meet one of the following conditions and apply for assistance before December 31, 2026:

- Certified as critical and declining at any time in 2020 through 2024.
- Has an approved suspension of benefits application.
- Certified as critical with a current liability funded percentage of under 40% and an active to inactive ratio of less than two to three.
- Has gone insolvent after December 16, 2014, and not terminated by the date of enactment of the HEROES Act.

Funding Goals:

- Remain solvent over 30 years with no reduction in participant or beneficiary benefits (except those already reduced under a rehabilitation plan prior to the HEROES Act)
- The funded percentage of the plan is at least 80% at the end of the 30-year period.

¹ See the February 2015 Multiemployer Review at <https://us.milliman.com/en/insight/multiemployer-review-tools-for-plans-in-critical-and-declining-status>.

REPEAL OF MPRA SUSPENSIONS

Rather than require that a plan apply for maximum benefit suspensions prior to applying for a partition, the HEROES Act repeals the portion of MPRA relating to benefit suspensions. Under the HEROES Act, critical and declining plans will no longer be able to apply for benefit suspensions and would instead be able to apply for special partition relief. It is unclear what will happen for plans that do not qualify for special partition relief during the application window but later face insolvency.

For plans that have already been approved for a MPRA benefit suspension, the benefit suspension will remain in effect unless the plan sponsor applies for and receives the special partition relief. If the plan is partitioned, then benefits are restored to pre-suspension levels. Additionally, back payments equal to the suspended benefit amounts are made to affected retirees and beneficiaries in the form of a lump sum or equal monthly installments over a five-year period.

NO CAP ON LIABILITY TRANSFER

In addition to the repeal of benefit suspensions, the special partition relief allows the PBGC to assume liabilities in excess of the benefit guarantee level for individual participants. As noted above, current law only allows the PBGC to assume 100% of the benefit guarantee for an individual. The HEROES Act would allow plans to transfer the full benefit of a participant, without any benefit reductions, to the successor plan. Every five years, the amount of the partition is evaluated and adjusted as necessary to satisfy the funding goals of the plan. Once a plan meets its funding goals and is projected to remain above 80% funded for at least 10 years, the partition order ceases and the PBGC assumes permanent responsibility for all benefits in the successor plan, even if they exceed the PBGC benefit guarantee level.

REASONABLE CONDITIONS

If a plan is approved for a partition, the PBGC can impose “reasonable conditions” relating to future accrual rates, retroactive benefit improvements, allocation of plan assets, employer contribution rates, diversions of contributions and allocations of expenses to other retirement plans, and withdrawal liability. The PBGC may not impose any conditions related to reduction of plan benefits or related to plan governance as a condition of receiving partition assistance. No details are currently available as to what “reasonable conditions” might look like.

Other multiemployer provisions

In addition to the special partition relief and repeal of MPRA benefit suspensions, the HEROES Act contains several other multiemployer plan provisions.

WRERA AND PRA TYPES OF RELIEF

The HEROES Act provides multiemployer plan relief similar to what was provided under 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). Generally, these provisions provide plan sponsors additional time to smooth any market losses and defer any immediate zone status impact. Key elements of this provision of the HEROES Act allow asset losses to be spread over 29 years (instead of 15) and allow plan sponsors to utilize their 2019-2020 zone status as their zone status for the 2020-2021 plan year (first applicable for plan years beginning March 1, 2020). In addition, plan sponsors that are already in endangered or critical status may elect to extend their funding improvement or rehabilitation period by an additional five years.

INCREASED PBGC GUARANTEES

The HEROES Act provides for an increase in the PBGC maximum guaranteed benefit. The current maximum guarantee, for a participant with 30 years of service, is equal to \$12,870 per year, comprised of (100% of the first \$11 of the participant's monthly accrual rate plus 75% of the next \$33 of the accrual rate) multiplied by years of service. Under the HEROES Act, the guaranteed benefit would be nearly doubled to \$24,300 per year, comprised of (100% of the first \$15 of the accrual rate plus 75% of the next \$70 of the accrual rate) multiplied by years of service. As noted above, benefits transferred to the PBGC through the special partition assistance program included in the HEROES Act would not be limited to the PBGC guaranteed benefit level.

GROW ACT

The HEROES Act contains a separate Division N titled the Giving Retirement Options to Workers (GROW) Act. This is the same GROW Act that was introduced in early 2018 but failed to move beyond the committee stage in the House of Representatives during the 115th Congress. The GROW Act permits plans to adopt alternative funding rules referred to as “composite plans” for future benefit accruals.

What is next

Although many plans will make it through the COVID-19 pandemic and recover on their own, the number of significantly troubled multiemployer pension plans is likely to increase.² While prior COVID-19 stimulus bills had limited relief for pension plans, there has been mounting pressure to provide some of the key relief measures for multiemployer pension plans included in the HEROES Act. In addition to the type of relief passed after the 2008 global financial crisis, there appears to be growing support for some form of special partition assistance as versions of this provision have been proposed by both Democrats and Republicans. One of the key questions that remains is whether or not these relief measures are married with significant increases in PBGC premiums and other fees previously proposed. The HEROES Act currently provides for a transfer from the Treasury to fund the partition assistance and does not propose any increases in PBGC premiums. The issue of funding could become a sticking point if and when the Senate holds hearings on the HEROES Act.

For more information on how the provisions of the HEROES Act could impact your plan, please contact the authors or your Milliman consultant.

² See the April 2020 Multiemployer Review at <https://us.milliman.com/en/insight/covid-19-to-leave-multiemployer-pension-system-more-distressed-than-ever>.



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