Multiemployer Pension Legislative Proposals

January 2021 Update

Segal

For over a decade, it has been widely known that the multiemployer pension system is facing a solvency crisis. Absent legislative relief, more than 130 plans covering more than 1.4 million workers, retirees and beneficiaries will become insolvent in the next several years. These plan insolvencies will cause the Pension Benefit Guaranty Corporation multiemployer insurance program to become insolvent, likely in 2026.

In the years since the passage of the Multiemployer Pension Reform Act of 2014 (MPRA), there have been many legislative initiatives and proposals to address this solvency crisis. As the nation faces unprecedented health and economic crises caused by the COVID-19 pandemic, Congress continues to evaluate multiemployer relief and reform. Both Democrats and Republicans have introduced new proposals.

This is a high-level summary of proposed legislation related to multiemployer defined benefit pension plans, as of January 21, 2021.

Outlook

Segal is monitoring proposals as they evolve in the 117th Congress. We will provide updates as they become available.

Overview

On December 17, 2020, Senators Chuck Grassley (R-IA) and Lamar Alexander (R-TN), then the chairmen, respectively, of the Committee on Finance and Committee on Health, Education, Labor and Pensions, introduced the "Chris Allen Multiemployer Pension Recapitalization and Reform Act" (Grassley-Alexander 2020). The bill updates their previous reform proposal, the "Multiemployer Pension Recapitalization and Reform Plan," released in November 2019.

On January 21, 2021, House Democrats released the Emergency Pension Plan Relief Act of 2021 (EPPRA). The relief measures in EPPRA were previously introduced in 2020 as part of the "Health and Economic Recovery Omnibus Emergency Solutions Act" (Heroes Act). Unlike the Heroes Act, however, EPPRA does not include the provisions related to the composite plan design. (EPPRA also includes relief measures for single-employer plans. This document focuses on multiemployer provisions only.)

In the final weeks of 2020, Democrats and Republicans negotiated over multiemployer relief and reform provisions, but they ultimately did not reach a bipartisan compromise before the end of the 116th Congress. The multiemployer proposals in EPPRA and Grassley-Alexander 2020 are largely believed to represent the parties' respective positions, and they do not appear to reflect discussions that occurred at the end of 2020.

This high-level summary covers the key provisions from EPPRA (as well as the Heroes Act) and Grassley-Alexander 2020 organized into these sections:

- Special partition program
- PBGC guarantees
- PBGC premiums
- PBGC oversight and authority
- MPRA reforms
- Funding relief
- Funding reforms
- Withdrawal liability reforms
- Composite plans

This summary is not intended to be comprehensive, and provisions may be subject to change.

Provisions

Special partition program

PBGC guarantees

PBGC premiums

PBGC oversight and authority

MPRA reforms

Funding relief

Funding reforms

Withdrawal liability reforms

Composite plans

Special partition program

Both EPPRA and Grassley-Alexander 2020 would address the current multiemployer solvency crisis with a special PBGC partition program. If the PBGC approves a partition, it takes on the financial responsibility to pay a portion of the benefits of an eligible plan facing projected insolvency, thus enabling the plan to remain solvent.

Under current law, only plans in critical and declining status are eligible for a partition by PBGC. In general, plans must implement maximum "benefit suspensions" under the Multiemployer Pension Reform Act of 2014 (MPRA), subject to approval by the Treasury Department, as a precondition for a partition.

Both proposals would create a temporary, special partition program that would expand eligibility not just to plans in critical and declining status, but to certain plans in critical (but not declining) status. Neither proposal would require maximum benefit suspensions as a precondition of a special partition.

The proposals differ significantly in the scope of the special partition program, as well as on the conditions and restrictions imposed on plans that receive a special partition. For example, EPPRA would keep the special partition eligibility window open for a few years. Published legislative text differs on the number of years the eligibility window would remain open. The bill posted by the Committees on Education and Labor says through 2022, while the bill posted by the Committee on Ways and Means says through 2024. The Heroes Act also said 2024.

Grassley-Alexander 2020 would limit the relief to plans that meet eligibility requirements on the date of enactment. EPPRA requires that applications for special partition be submitted no later than December 31, 2024 (extended to 2025 for revised applications). Grassley-Alexander 2020 would impose significant restrictions on plans that receive a special partition, including limitations on future benefit accruals and benefit increases. By contrast, EPPRA would impose minimal restrictions and conditions on plans that receive a special partition.

Both proposals provide mechanisms for PBGC to periodically review and adjust the amount of financial assistance based on plan experience. Unlike EPPRA, Grassley-Alexander 2020 would give PBGC authority to terminate a plan if it fails to demonstrate projected solvency in three consecutive post-partition reviews.

It is significant that both EPPRA and Grassley-Alexander 2020 include a special PBGC partition program. Prior to 2020, the Democrats largely backed a federal loan program (such as the one provided under the "Butch Lewis Act") as the means to address the existing solvency crisis. While the latest bills released by Democrats continue to include a special partition program, the two parties' proposals differ significantly on the scope and limitations of the program.

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PBGC guarantees

Both proposals would increase the maximum PBGC guaranteed benefit, while retaining the current two-tier formula.

Comparison of Current Formula for the Maximum PBGC Guarantee to the Two Proposed Alternatives

	Monthly Guaranteed Benefit Calculation							
	100 Percent of First		75 Percent of Next				Years of Service	Annual Maximum Guaranteed Benefit
Current Law	$11	+	$33, which is $24.74	=	$35.75	X	30	$12,870
EPPRA	$15	+	$70, which is $52.50	=	$67.50	X	30	$24,300
Grassley-Alexander 2020	$15	+	$54.67, which is $41.00	=	$56.00	X	30	$20,160

Under EPPRA, the guarantee formula would also be indexed for inflation. Under Grassley-Alexander 2020, there would be no automatic indexing.

Both EPPRA and Grassley-Alexander 2020 would increase the guarantee prospectively.

PBGC premiums

EPPRA does not include any increases in PBGC premiums, nor does it include any new sources of revenue for PBGC to be paid by the multiemployer pension system. In other words, the additional cost of the special partition program and increased PBGC guarantees would be funded entirely by the Treasury Department.

In stark contrast, Grassley-Alexander 2020 includes significant increases in PBGC premiums, a new variable rate premium and new fees paid by retirees of some plans, employers and unions. In total, the projected revenue from these premiums and fees appear to cover the vast majority of the costs associated with the special partition program. With these significant increases in premiums and fees, PBGC would require very little (if any) funding from the Treasury Department.

The following are the key sources of PBGC revenue under Grassley-Alexander 2020:

- The flat-rate premium paid by certain multiemployer plans would increase from \$30 per participant in 2020 to \$86 in 2021. This flat rate is the same as paid by single-employer plans and would increase annually with inflation.
- Multiemployer plans would be subject to a new variable-rate premium equal to 1 percent of unfunded vested current liability. The variable-rate premium would be subject to a cap equal to the lesser of \$250 per participant or 10 percent of contributions. Plans in certain statuses would be exempt from the variable-rate premium. The variable-rate premium does not apply to plans receiving financial assistance or those in "unrestricted" status. The variable-rate also does not apply to plans in "stable" status until 2025. "Unrestricted" and "stable" are new statuses defined by Grassley-Alexander 2020.
- Retirees in certain plans would be charged a "fee" equal to a percentage of their benefits. This fee would be withheld from their monthly pension check and remitted as a premium payment to PBGC. The percentage would vary based on the plan's certified zone status. The fee would be 10 percent for retirees in plans that receive special partition assistance. Retirees in plans in unrestricted or stable status (new statuses under Grassley-Alexander) and those age 80 or older would not pay a fee.
- Employers and unions would be required to pay the plan a monthly fee for each active employee or member participating in the plan. The monthly fee would vary from \$1.00 to \$2.50 per active employee, depending on the plan's zone status.

As written, the PBGC premiums and fees in Grassley-Alexander 2020 are similar to what was included in the 2019 proposal. For many multiemployer plans, the higher premiums would have a significant adverse effect on projected funding and solvency levels.

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PBGC oversight and authority

EPPRA requires PBGC accountability and transparency regarding the special partition program, but in general, it does not expand PBGC authority with respect to ongoing, solvent plans. In contrast, Grassley-Alexander 2020 significantly expands PBGC's oversight and investigatory authority with regard to all multiemployer plans — both those that receive a special partition and those that do not. Under the Grassley-Alexander proposal, how PBGC chooses to exercise its new authority could significantly affect the long-term outlook of the multiemployer system.

The following are noteworthy PBGC reforms under Grassley-Alexander 2020:

- A plan would be considered to be insolvent when it is within five years of projected insolvency. Insolvent plans are required to terminate, as are plans that are denied a special partition. After termination, plan benefits would be reduced to PBGC guarantee levels (as increased in the proposal).
- PBGC may file a petition in federal district court to terminate an ongoing multiemployer plan, if PBGC believes the termination will be in the best interest of plan participants and will reduce PBGC's expected loss with respect to the plan.
- PBGC may appoint an independent trustee to a plan in critical status or declining status. The appointment is subject to court approval, unless otherwise agreed to by the plan and PBGC.
- A list of PBGC-reportable events would apply to multiemployer plans. For example, a collective bargaining agreement that includes participation in a new pension plan would be a reportable event.

MPRA reforms

EPPRA would repeal benefit suspensions under MPRA on a going-forward basis. For plans that previously implemented benefit suspensions (unless voluntarily undone as part of a special partition), they would remain in effect. Presumably, other measures under MPRA — specifically, "regular" PBGC partitions and financially facilitated mergers — would remain future options for plans in critical and declining status.

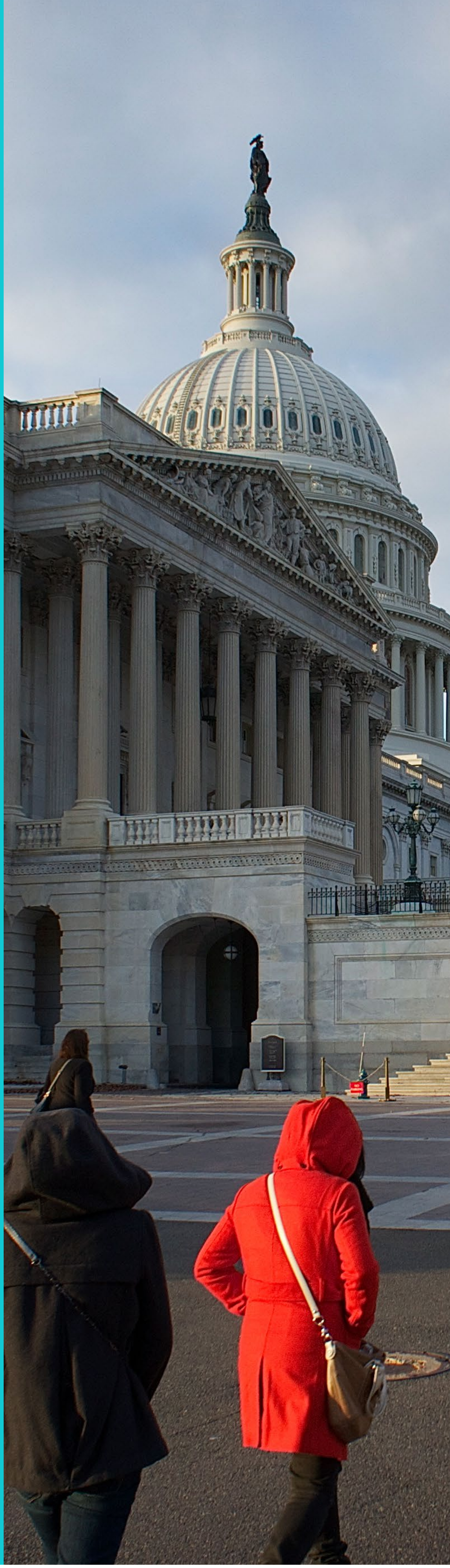
Grassley-Alexander 2020 expands and reforms benefit suspensions under MPRA. As described in the section on funding reforms on the next page, the proposal would significantly expand the definition of when a plan is in "declining" status (which would replace "critical and declining" status under current law). With more plans considered to be in declining status, more plans would be eligible to suspend benefits or take some other corrective measure under MPRA.

Grassley-Alexander 2020 clarifies that benefit suspensions would remain in effect after a merger between two multiemployer plans, and it provides technical corrections that would expand PBGC's authority to provide financial assistance to facilitate mergers. It also provides a new safe harbor design (a flat percentage) for MPRA benefit suspensions and requires the Treasury Department to issue regulations on actuarial assumptions used in suspension applications. Unlike their 2019 proposal, Grassley-Alexander 2020 does not modify the MPRA participant voting requirements, so the current rule that counts unreturned ballots as a vote in support of the suspension would remain in place.

Funding relief

EPPRA includes temporary funding relief provisions designed to help multiemployer plans cope with investment losses related to the pandemic, similar to what was offered under the Worker, Retiree, and Employer Recovery Act (WRERA) of 2008 and the Pension Relief Act (PRA) of 2010. Grassley-Alexander 2020 includes no such relief provisions.

Specifically, under EPPRA, plans could elect to retain the prior year zone status (up to a two-year freeze), and plans in critical or endangered status could extend their rehabilitation period or funding improvement period by five years. Plans could also elect to smooth investment losses related to the pandemic over 10 years in the actuarial value of assets and amortize losses over 29 years in the funding standard account. In the bill introduced by the Education and Labor Committee, other experience losses related to the pandemic (such as a loss of contribution income) would also be eligible for extended recognition. It is unclear how these losses would be calculated.



Funding reforms

EPPRA would not impose any new funding requirements for multiemployer pension plans. Grassley-Alexander 2020, however, would significantly reform minimum funding rules for multiemployer plans as well as zone-status rules and requirements.

The following are noteworthy funding reforms under Grassley-Alexander 2020. As with their 2019 proposal, these reforms address both the actuarial interest rate assumption and zone status rules, but they do so in different ways.

- The actuarial interest rate used to measure plan liabilities and determine minimum funding requirements would be subject to a cap. The cap would begin at 7.5 percent for 2021 and would be gradually phased down to 6.5 percent by 2036. Each increase in the actuarial liability resulting from a decrease in the interest rate would be amortized over 30 years, rather than 15 years.
- The normal cost would be measured at a lower interest rate equal to the least of (A) the actuarial interest rate; (B) the third segment bond rate (non-stabilized) plus 2 percent; or (C) 5.5 percent. A new "investment risk reduction" subaccount would be established within the funding standard account. The subaccount would capture actuarial gains arising from the difference between the actuarial liability and normal cost interest rates but could be used only to offset the cost of reducing the overall actuarial interest rate.
- Zone-status rules would also be revamped. New restrictions on benefit increases would be applied to plans that do not meet high funding thresholds for a new "unrestricted" status. The new zone-status rules would incorporate tests based on projected funded percentage, in addition to current funded percentage and projected funding standard account (as under current law).

The table on the next page summarizes the key provisions of the proposed zone status rules under Grassley-Alexander 2020. Under these new rules, many plans currently in the "green zone" would likely enter endangered, critical or even declining status.

Proposed Zone Status Rules Under Grassley-Alexander 2020

Status	Description	Tests
Unrestricted	No restrictions on contributions or benefits	Not in endangered, critical, or declining status; and: • Projected funded percentage in 15 years ≥ 115 percent and current liability funded percentage ≥ 70 percent, *or* • Current liability funded percentage at least 80 percent
Stable	No corrective action required; some restrictions on benefit increases apply	Not in unrestricted, endangered, critical or declining status
Endangered	Must adopt and maintain funding improvement plan	Not in critical or declining status; and one of: • Funded percentage for current plan year < 80 percent • Projected funded percentage in 15 years < 100 percent • Projected funding deficiency in next 10 years
Critical	Must adopt and maintain rehabilitation plan	Not in declining status; and one of: • Funded percentage for current plan year < 65 percent • Projected funded percentage in 15 years < 80 percent • Projected funding deficiency in next 7 years
Declining	Must adopt and maintain solvency plan	Any one of: • Projected to be insolvent in the next 30 plan years • Unable to emerge from critical status within 30 years, exhausted all reasonable measures • Funded percentage projected to decline over 15 years (unless funded percentage for current plan year ≥ 100 percent)*

* Note: some plans currently in the green zone would fail this declining status test

Grassley-Alexander 2020 provides transition rules that would allow certain plans currently in endangered or critical status the option to continue operating under their existing funding improvement plan or rehabilitation plan. The proposal would also allow plans to elect early endangered status or early critical status, if the plan is projected to enter that status within the next five plan years.

Grassley-Alexander 2020 would permit plans in endangered status to reduce adjustable benefits such as early retirement subsidies. Under current law, only plans in critical status (or critical and declining status) may reduce adjustable benefits. The proposal also expands the definition of adjustable benefits, for example, to include benefit improvements adopted within the last 120 months (rather than 60 months) as well as 13th checks.

Withdrawal liability reforms

Both EPPRA and Grassley-Alexander 2020 include special withdrawal liability rules for plans that receive a special partition, for example, that the effect of the partition must be disregarded for a specified number of years.

Grassley-Alexander 2020 also includes reforms to withdrawal liability rules in general. Among other things, the proposed reforms would increase the de minimis credit, limit the amount of withdrawal liability in a mass withdrawal to 25 years of statutory payments, and expand the lookback periods for determining the statutory payment amount. The proposal would also allow construction industry plans to apply to PBGC for an alternate allocation method (current law requires the "presumptive" method).

It is noteworthy that the proposed withdrawal liability reforms under Grassley-Alexander 2020 are not nearly as sweeping as in the 2019 proposal. Unlike its previous incarnation, the 2020 proposal largely operates within the existing statutory framework, and it does not mandate actuarial assumptions for measuring unfunded vested benefits for purposes of withdrawal liability. Note, however, that the 2020 proposal requires that the most recent funding assumptions be used in calculating the annual payment schedule.

Composite plans

Both the Heroes Act of 2020 and Grassley-Alexander 2020 included the composite plan proposal, which had previously been introduced as part of the Giving Retirement Options to Workers Act of 2018 (GROW Act).

Under the Heroes Act, there would be no premium due on participants who are covered only under the composite portion of the plan; under Grassley-Alexander 2020, the flat-rate premium for these individuals would be $15. Under both proposals, PBGC guarantees would continue to apply to legacy benefits only, and not composite benefits.

The Heroes Act and Grassley-Alexander 2020 differ on certain details of the composite plan proposal such as plan eligibility, funding targets, and the definitions of benefits that may be adjusted as part of a realignment program.

EPPRA, however, includes only relief provisions and does *not* include provisions related to the composite plan design.

It is unclear whether Democrats will reintroduce composite plan legislation in 2021.

What Is a Composite Plan?

A composite plan is an alternative design that is neither a defined benefit nor a defined contribution. If a composite plan does not meet certain funding targets, the trustees must adopt a realignment program that could include contribution increases and benefit reductions. Retiree benefits would be reduced only as a last resort.

If a multiemployer plan adopts a composite design for future service, legacy benefits already accrued under the existing defined benefit plan would be frozen. New "transition" contribution requirements would apply for the legacy benefits. The legacy plan would remain subject to zone status and minimum funding rules.

A multiemployer plan that elects to convert to the composite design for future service would pay the prevailing flat-rate PBGC premium only on participants who have accrued benefits under the legacy portion.

Learn More

Interested in reading the legislative language?

Questions? Contact us.

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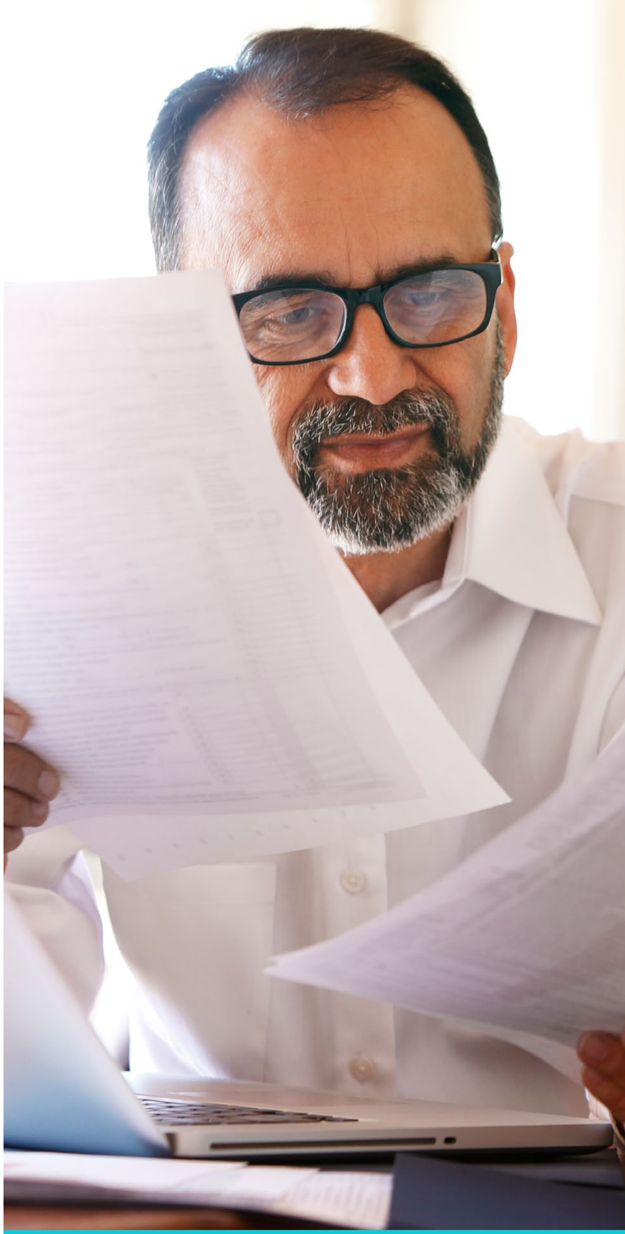
The Senate Finance Committee website includes a section-by-section summary of the Grassley-Alexander 2020 proposal, as well as the proposed legislative text.

For press releases about EPPRA and legislative text, visit the House Education and Labor Committee website and the Ways and Means Committee website. The versions of EPPRA published by the two Committees differ slightly on certain technical details.

For a summary and legislative text for the Heroes Act, visit the House Appropriations Committee website. In the October 2020 version of Heroes Act, Divisions G and H include provisions related to multiemployer pension plans.



Questions? Contact us.

For a more detailed analysis of how the provisions between the two proposals summarized in this publication differ and may impact a particular multiemployer pension plan, please contact your Segal consultant or David Brenner, Senior Vice President and National Director of Multiemployer Consulting, at dbrenner@segalco.com or 617.424.7330. You can also get in touch with us via our website.

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