Federal Government to Make Contributions to Union Pension Plans (and other Pension Provisions in the American Rescue Plan Act)

May 11, 2021

Categories:

Tax Law Defined™ Blog

Authors:

Michael T. Bindner

The American Rescue Plan Act of 2021 (ARPA) was enacted on March 11, 2021. Among its many provisions, ARPA (not to be confused with AARP), contains some provisions that affect employer defined benefit plans, and most noteworthy, multiemployer (union) pension plans (MPP), by amending or adding certain provisions to the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (Code).

There are approximately 1400 MPPs in the U.S. and more than 100 of the MPPs are seriously underfunded. Benefits provided by MPPs are insured to some extent by the Pension Benefit Guaranty Corporation (PBGC), a federally chartered corporation which, up to this time, has not been funded by general tax revenues but by insurance premiums paid by MPPs and investment earnings from MPPs it takes over. Within five to seven years, the large number of MPPS expected to be insolvent would likely cause the PGBC to become insolvent. To avoid this result, Congress took a very rare step in ARPA requiring the federal government make contributions to some of the worst-funded MPPs using the PBGC as the conduit, as further described below. This appears to be one of the few times in U.S. history that the federal government has made contributions directly to private employer retirement plans. A recent and possibly the only other example was funding provided to the United Mine Workers of America (UMWA) Pension Plan under the Bipartisan American Miners Act of 2019, though some of these funds were provided by a transfer of previously appropriated funds originally intended for UMWA health benefits and certain mine reclamation programs. The Congressional Budget Office (CBO) estimates that the estimated outlays under ARPA for such contributions will be approximately $83 billion, most of which are expected to be contributed to the affected MPPs in 2022.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons

Summary of ARPA's Pension Provisions

Federal government contributions to multiemployer (union) pension plans (MPP)

Under ARPA, the federal government will contribute to poorly funded MPPs on or before September 30, 2030. ARPA refers to these contributions (76 times) somewhat euphemistically as "special financial assistance," though these contributions are to replace what has always heretofore been funded by private employers or by the PBGC. The federal government will also pay for the necessary administrative and operating expenses related to the contributions. The federal government's contribution to these MPPs must end by September 30, 2030 because ARPA passed the U.S. Senate under the budget reconciliation process which generally limits certain legislative changes to a 10-year period.

A MPP is eligible for federal government contributions under ARPA if:

- The MPP is in critical and declining status;
- A suspension of plan benefits by the MPP has been approved as of March 11, 2021 (the date of enactment of ARPA);
- The MPP is certified by the plan actuary to be in critical status (i.e., not as bad as critical and declining), its assets are less than 40% of its promised benefits, and it has a ratio of active to inactive participants which is less than 2 to 3 in 2020 through 2022; or
- The MPP became insolvent after December 16, 2014 and has remained insolvent but has not been terminated as of March 11, 2021.

The amount of contributions required will be the amount necessary for the MPP to pay benefits through December 31, 2051 (i.e., for the next 30 years). Such contributions will include certain previously suspended benefits which are required to be reinstated.

A MPP must apply in writing for such contributions. The PBGC is required to create an application process by July 9, 2021, which will specify how soon a MPP will receive the contributions after the

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

approval of its application.

The PBGC is allowed to restrict applications filed before March 11, 2023 to the worst-funded plans, which are described as follows:

- A MPP is insolvent or likely to become insolvent before March 11, 2026;
- The PBGC verifies the MPP is insolvent or will be insolvent and projects that the MPP needs more than $1 billion to pay basic benefits;
- The MPP has implemented benefit suspensions; or
- The PBGC determines the MPP should be eligible to be in this group "based on other similar circumstances."

An application for contributions must be filed with the PBGC by December 31, 2025, though a revised application, if required, can be submitted by December 31, 2026. The PBGC is required to coordinate the application process and review process with the Treasury Department.

Applications will be deemed approved unless the PBGC notifies the MPP within 120 days of filing that the application is incomplete, needs changes or that the MPP is not eligible, which may require a revised application. Contributions which are approved will be made in a single lump-sum payment to the MPP as soon as practicable upon approval of the application by the PBGC.

Contributions can only be used to make benefit payments and pay MPP plan expenses, must be segregated from other assets of the MPP and must be invested in investment-grade bonds or other PBGC permitted investments.

The PBGC, along with the Treasury Department, may impose reasonable conditions on a MPP that receives contributions relating to benefits, employer contributions, withdrawal liability and similar matters. As a result, we do not yet know how the contributions will impact the withdrawal liability exposure of MPP participating employers who are still paying withdrawal liability payments or who may have a partial or complete withdrawal from such a MPP in the future. For some perspective on this issue, the Bipartisan American Miners Act of 2019 referenced above included a provision that

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

provides that the federal government's funding to the UMWA Pension Plan is disregarded in determining the withdrawal liability of any employer withdrawing from the UMWA Pension Plan. Some employers are hopeful that forthcoming PBGC regulations or guidance will absolve withdrawing employers from withdrawal liability. In late April 2021, a Minnesota Federal District Court case stayed (i.e., paused) a withdrawal liability proceeding involving the Central States Pension Fund until one week after the PBGC's July 9, 2021 deadline for issuance of regulations and guidance under ARPA. The employer in this case requested the stay by arguing government contributions to the Central States Pension Fund "could wipe out" the fund's liabilities which would "moot its claim" for withdrawal liability.

MPPs receiving contributions are required to continue to pay PBGC premiums as they have in the past, with such premiums to increase to $52 per participant for plan years beginning in 2030. Premiums after 2030 will increase based on increases in a national wage index.

Most importantly, MPPs that receive contributions under ARPA will not be required to repay such contributions to the federal government as prior proposed legislation would have required.

Temporary Delay of Designation of MPP's Funding Status

If a MPP elects, the MPP's funding status (endangered, critical, or critical and declining) may remain the same for one additional year, generally between 2020 and 2022, notwithstanding any change in status that would otherwise be required.

Temporary Extension of the Funding Improvement and Rehabilitation Periods for MPPs in Critical and Endangered Status for 2020 or 2021

If a MPP elects, the MPP's funding improvement period or rehabilitation period shall be extended by 5 years.

Adjustments to Funding Standard Account Rules for MPPs

A MPP may amortize certain experience losses in the 2021 and 2022 plan years over a 30-year period (rather than 15 years) and treat

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

the value of assets in such years in certain ways that moderate the effect in plan funding. These adjustments are not available to MPPs which receive contributions as described above.

Single Employer Plans – Extended Amortization

ARPA extends the period that a single employer defined benefit plan is required to amortize a funding shortfall of the plan from a 7-year period to a 15-year period. ARPA reduces a plan's shortfall amortization bases for pre-2022 Plan years to zero.

Single Employer Plans – Extension of Pension Funding Stabilization Percentages

ERISA and the Code specify interest rates and interest rate ranges that must be used in determining certain components of an employer's annual defined benefit plan contribution. ARPA tightens the range of such interest rates until 2025 which will be based on a corporate bond yield curve and ARPA provides that, in certain circumstances, an interest rate of no less than 5% can be used.

You can read more about the ongoing union pension plan issues in our previous articles:

- Union Pension Plan Participation Can Create Massive Unexpected Liabilities
- 17 Ways to Avoid or Reduce Multiemployer Pension Plan Withdrawal Liability
- SURPRISE! You may be liable for union pension plan withdrawal liability
- Employer Receives a Multiemployer (Union) Pension Plan Withdrawal Liability Assessment – What To Do Next?
- Federal Government to Make Contributions to Union Pension Plans (and other Pension Provisions in the American Rescue Plan Act)

If you need assistance or would like additional information, please contact Michael Bindner or any other attorney in Frost Brown Todd's Employee Benefits Group & ERISA practice group.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons