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Updated July 19, 2019

H.R. 397 (116th Congress), the Rehabilitation for Multiemployer Pensions Act

In the 116th Congress, H.R. 397, the Rehabilitation for Multiemployer Pensions Act, would provide financial assistance to financially troubled multiemployer defined benefit (DB) pension plans that meet specified criteria. The financial assistance would consist of loans with a 30-year repayment term and, if the loan were insufficient to restore a plan to solvency, additional financial assistance. H.R. 397 has been reported out of the House Education and Labor and House Ways and Means Committees. In the 115th Congress, two nearly identical bills—H.R. 4444, the Rehabilitation for Multiemployer Pensions Act, and S. 2147, the Butch Lewis Act—were introduced in the House and Senate. A Senate version of the proposal has not been reintroduced in the 116th Congress as of July 19, 2019.

The Congressional Budget Office's (CBO's) preliminary estimate of H.R. 397 indicated that the bill would increase the deficit by $64.4 billion over 10 years. CBO's preliminary analysis of S. 2147 in the 115th Congress indicated that budgetary effects were highly uncertain because of difficulty in projecting how the loan proposal would be implemented.

Multiemployer pension plans are sponsored by more than one employer and are maintained as part of a collective bargaining agreement. In DB plans, participants receive regular monthly benefit payments in retirement (which some refer to as a *traditional* pension). About 10% to 15% of multiemployer DB plan participants are in plans that are projected to become insolvent within 20 years.

When a multiemployer DB pension plan becomes insolvent, the Pension Benefit Guaranty Corporation (PBGC) provides financial assistance to the plan to pay participants' benefits. However, PBGC will likely become insolvent by 2025. The federal government has no obligation to provide assistance to PBGC. In the absence of enactment of legislation to address the insolvency of multiemployer plans or the PBGC, participants in insolvent multiemployer DB plans may face large benefit reductions, likely receiving less than $2,000 per year.

Selected Details of Loan Program

H.R. 397, as reported out of the House Education and Labor and House Ways and Means Committees, would establish the Pension Rehabilitation Administration (PRA), an agency within the U.S. Department of the Treasury. The PRA would make loans to multiemployer plans that

- are in critical and declining status, including plans with approved applications for the suspension of benefits under the Multiemployer Pension Reform Act of 2014 (MPRA; P.L. 113-235);
- have a funded percentage (calculated using the interest rates that fall within a specified range of 30-year Treasury securities) of 40% or less and have a ratio of active to inactive participants of less than 2 to 5; or
- became insolvent after December 16, 2014, and have not been terminated.

Plans that have been approved for benefit suspensions under MPRA would be required to apply for loans. The loan program is to be established no later than September 30, 2019, although the PRA could make loans prior to this date if the loan would be necessary to avoid the suspension of participants' benefits.

Loan Terms

The terms of the loan would include

- a 30-year loan term, with the payment of interest for the first 29 years and the loan principal in the 30th year;
- a prohibition on increasing participants' benefits or reducing employer contributions throughout the loan term; and
- the restoration of any benefits reduced (1) as required by plans in financial distress (called a rehabilitation plan) or (2) when an insolvent plan received PBGC financial assistance.

Loan Application

In its loan application, a plan would be required to demonstrate that

- the loan would enable the plan to avoid insolvency for at least 30 years or, in the case of an already insolvent plan, the loan would allow the plan to emerge from insolvency; and
- the plan would be reasonably expected to pay benefits to participants, pay interest on the loan, and accumulate sufficient funds to repay the principal when due.

The plan would have to provide information necessary to determine the loan amount and to stipulate whether the plan is also applying for (or is already receiving) financial assistance from PBGC.

Loan Amount

The loan amount would be the plan amount needed to pay the full lifetime benefits of plan participants who (1) are receiving plan benefits at the time of the loan (also called participants in *pay status*) and (2) are not accruing benefits in the plan and who are not yet receiving benefits (also called *terminated vested participants*).

Use of Loan Funds

With the loan funds, plans would be required to (1) purchase annuity contracts or (2) be invested in relatively safe fixed-income investments (such as high-quality bonds). Plans could combine (1) and (2).

Loan Default

If a plan were unable to make any payment on the loan, then the PRA would negotiate revised loan terms for repayment. The revised terms could include installment payments over a period of time and forgiveness of a portion of loan principal.

Withdrawal Liability and Funding Rules

If an employer withdraws from a multiemployer plan before the end of the 30-year loan repayment period, the plan's withdrawal liability would be calculated as if it were a mass withdrawal (which occurs when all or substantially all of the employers in a multiemployer DB plan leave the plan). Withdrawal liability is the amount of money an employer owes when it leaves a plan.

The annuity contracts and investment portfolios created by the loan proceeds would not be taken into account to determine either withdrawal liability or how much employers are required to contribute to a plan (minimum required contributions).

Interest and principal payments would be taken into account to calculate required minimum contributions, and required contributions would increase if the loan portfolio were to experience investment losses and were unable to fully satisfy the benefits it was meant to cover.

Concurrent Applications for PBGC Financial Assistance

Plans would be able to file joint applications for PBGC financial assistance and for a PRA loan if the plan were to demonstrate that without PBGC financial assistance the receipt of a PRA loan would not prevent the plan's insolvency within the 30-year loan term. The amount of PBGC assistance would be the plan amount needed to remain solvent if the plan also received a 30-year loan. Participants' benefits in plans receiving PBGC financial assistance would not be reduced (currently plans receiving PBGC financial assistance must reduce participants' benefits if they are above a specified amount).

Policy Considerations

Some proponents view federal financial assistance to multiemployer plans as fulfilling part of a promise made to workers. Opponents argue that no precedent exists for the federal government to bail out private-sector pension plans.

Participants Would Receive Full Benefits

Participants in multiemployer plans that receive PRA loans would not see any reductions in their benefits. By contrast, under current law, there are a number of scenarios in which participants could see benefit reductions if their plan experienced financial distress. Benefit reductions that were approved under MPRA would be restored in plans that received PRA loans, including a retroactive payment of benefits that were reduced.

Repayment of PBGC Financial Assistance

Plans would have to repay any PBGC financial assistance they receive. PBGC would be authorized to forgo repayment of financial assistance if necessary to avoid any suspension of participants' accrued benefits.

Loan Up Front Versus Over Time

The PRA would provide a loan as a lump sum for the amount of the plan's current liabilities (e.g., to participants in pay status). However, there could be other ways to provide the loan. For example, the loan could be provided on an annual basis for the amount of each year's benefit payments to those in pay status when the loan was approved.

Plan Obligations Would Not Change

The loan provisions would not decrease the financial obligations of a plan that receives a PRA loan. A PRA loan would replace a certain amount of plan funding obligations with an obligation to repay the loan. The loan would shift the timing of when those obligations are due from the near future to (1) annual interest payments and (2) the loan principal that would be due in the 30th year of the loan term.

Because a plan's overall financial obligations would remain unchanged (except for the annual interest payments), it is likely that PRA loans would be insufficient to restore some plans to solvency, and those plans would require additional financial assistance to become solvent. H.R. 397 would not require any changes that might return plans to solvency, such as a reduction in plan liabilities, increases in employer contributions, or incentives for new employers to join existing plans. There would continue to be no restrictions on the investment of existing plan assets that are not loan proceeds. These assets would continue to be subject to gains and losses in financial markets.

Greater Benefit to Certain Employers

Certain employers (e.g., United Parcel Service and Kroger) have promised to top up the benefits of some retired former employees in certain plans if the benefits were reduced as a result of PBGC financial assistance or MPRA. Because the proposals would *not* reduce participants' benefits, these employers could benefit financially by not having to make the top-up payments.

For More Information

- CRS Report R43305, *Multiemployer Defined Benefit (DB) Pension Plans: A Primer*
- CRS Report R45187, *Data on Multiemployer Defined Benefit (DB) Pension Plans*
- CRS Report R45311, *Policy Options for Multiemployer Defined Benefit Pension Plans*

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