



HOUSE COMMITTEE ON WAYS & MEANS CHAIRMAN RICHARD E. NEAL

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THE REHABILITATION FOR MULTIEMPLOYER PENSIONS ACT (BUTCH LEWIS ACT) OVERVIEW

Establishing the PRA: The proposal establishes the Pension Rehabilitation Administration (PRA), a new agency within the Department of the Treasury authorized to issue bonds in order to finance loans to “critical and declining” status multiemployer pension plans, plans that have suspended benefits, and some recently insolvent plans currently receiving financial assistance from the PBGC. The PRA is headed by a Director appointed by the President. The term of office of the Director will be 5 years. The Director will have the power to appoint deputy directors, officers and employees. The Director may contract for financial and actuarial services. In general, the PRA shall be funded from within Treasury’s appropriated budget including administrative and operating expenses.

PRA Bonds: The Treasury Secretary is authorized to issue bonds and use the proceeds to make loans to multiemployer defined benefit plans that have been approved to receive a PRA loan. The PRA is authorized to issue bonds in such amounts as it anticipates are needed to fund loans in a given twelve-month period. Bond proceeds will be kept in a separate Treasury fund, the Pension Rehabilitation Trust Fund (PRTF), and eligible uses for the bond proceeds include funding PRA loans. Loan repayments and interest paid on the loans by the pension funds will also go into the fund, from which payments on the bonds will be made. PRTF funds may also be used for PRA operating expenses.

PRA Loans: The PRA is authorized to make loans from the PRTF to multiemployer DB plans in “critical and declining” status as defined in IRC section 432(b)(2) and (6), plans that have suspended benefits under MPRA, and insolvent ongoing plans already receiving financial assistance from the PBGC (“plan”). The loan terms will require the plan to make interest payments for 29 years with final interest and principal repayment due in year 30.

The amount of the loan is the amount of cash needed to fund the plan’s obligations for the benefits of participants and beneficiaries in pay status at the time the loan is made, as identified in the loan application. Plans that receive a loan must fund the plan’s obligations to those in pay status in one of the following ways:

- (1) Annuity purchase: purchase commercial annuity contracts to provide the identified benefits from an insurance company with a credit rating of A or better by a nationally recognized statistical rating organization and the purchase must meet the fiduciary standards under Title I of ERISA and the pertinent Department of Labor regulations (“safest available”);
- (2) Cash Matching or Duration Matching Portfolio: must consist of fixed income investments (bonds) that are investment grade (as rated by a nationally recognized statistical rating organization) including U.S. dollar-denominated public or private debt obligations issued or guaranteed by the U.S. or foreign issuers, which are tradeable in U.S. currency and are issued at fixed or zero-coupon rates or
- (3) Some other portfolio prescribed by the Secretary of the Treasury in regulations which has a similar risk profile as Cash Matching and Duration Matching and is equally protective of participants’ and beneficiaries’ interests.

If a portfolio described above is implemented, it must be maintained until all liabilities to retirees and beneficiaries in pay status at the time of the loan are satisfied.

Portfolio Oversight: Except in the case of annuity purchase, the PRA maintains oversight over all loan proceeds used to fund retiree liabilities. Such assets remain in the plan asset pool, but are segregated from all other plan assets in terms of accounting and investment performance measurement. Such oversight shall include a mandatory triennial review of the adequacy of the portfolio to fund retiree benefits. If such review determines that there is an inadequacy, the plan must take remedial actions to cure such deficiency within five years. Such oversight will also include approval (within a reasonable period of time) of the plan sponsor’s decision to change the investment manager overseeing the fixed income portfolio.

Current law (the fiduciary provisions of Title I of ERISA) will govern the plan sponsor and the investment managers, who must acknowledge that they are plan fiduciaries under ERISA.

The loan proceeds are considered plan assets and the retiree liabilities remain liabilities of the plan. The plan’s other assets will be available to satisfy the retiree liabilities in the event the dedicated portfolio does not generate sufficient income to satisfy the retiree liabilities due to adverse actuarial experience.

Retirees whose liabilities are covered by the dedicated portfolio or annuity purchase remain plan participants under ERISA. Such participants will have an Ombudsman, who shall be the Participant and Plan Sponsor Advocate appointed under Section 4004 of ERISA.

PRA Loan Application: In order to obtain a loan, the plan sponsor must apply to the PRA. The application must demonstrate that:

- (1) Receipt of the loan will enable the plan to avoid insolvency during the loan term; and
- (2) The plan is reasonably expected to be able to pay benefits and interest during the term of the loan and accumulate sufficient funds to repay the principal when due.

(3) The plan will be able to meet these obligations while meeting the following obligations:

- (1) Not increasing benefits or accepting a bargaining agreement that provides for reduced contribution rates during the term of the loan,
- (2) Avoidance of Code/ERISA violations that result in large costs from plan assets, and
- (3) Meeting such other conditions as the Administrator prescribes.

The PRA has 90 days to review and decide whether to approve any loan application or it is deemed approved.

Effect of PRA Loans on Funding and Withdrawal Liability: The annuity contracts and fixed income portfolios purchased with the loan proceeds and the benefits covered by the annuity contracts or portfolios are not taken into account in determining minimum required contributions, but remaining payments due on the loan (interest and principal) are, as well as benefits not covered by the annuity contracts or portfolios. The IRC and ERISA provisions relieving employers from liability for minimum required contributions (and the related excise tax) when a plan is in critical continue to apply. The annuity contracts and fixed income portfolios purchased with the loan proceeds are not taken into account in determining an employer's withdrawal liability, but the benefits covered by the annuity contracts are (or, if greater, the remaining payments due on the loan are).

If an employer withdraws from the Plan during the term of the loan, withdrawal liability of such employer will be determined as if in the case of a mass withdrawal. Specifically, the provisions of ERISA section 4219(c)(1)(D) would apply, eliminating the 20-year cap on the number of withdrawal liability payments and requiring the withdrawing employer to pay its share of reallocation liability. Furthermore, PBGC single-employer plan termination actuarial assumptions should be used to value benefits as prescribed in regulations under section 4281 of ERISA.

PBGC Assistance for Retirees from Certain Critical and Declining Status Plans: A plan can apply for PBGC financial assistance in conjunction with a PRA loan only if that plan can demonstrate that a PRA loan alone will not allow the plan to maintain solvency or become solvent. A plan may apply for a PRA loan in conjunction with PBGC support. The application would demonstrate that with assistance from the PBGC would make a PRA loan viable, based on projections by the plan actuary. If these projections indicate that the plan will become insolvent within 30 years, then the actuary will determine what percentage of the plan liabilities, if covered by PBGC assistance payments, as opposed to the loan proceeds, would result in the plan maintaining solvency. PBGC financial assistance shall not exceed the value of PBGC guarantees for retirees and workers (including beneficiaries).