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# Torrillo & Associates

Benefit Plan Audit Specialists

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## American Rescue Plan Act of 2021 – Key Benefit Plan Funding Provisions



The American Rescue Plan Act of 2021 (ARPA, HR 1319) is expected to become law. Key benefit plan provisions [\[i\]](#) are highlighted below. Many of these affect funding provisions for defined benefit plans. Plan sponsors should work with their advisors, actuaries and ERISA attorneys to understand the implications of these changes.

### **Extended Period for Single-Employer Pension Plans to Amortize Funding Shortfalls**

Defined benefit pension plans are generally subject to minimum funding rules that require the sponsoring employer to periodically make contributions to fund plan benefits. A complex set of rules applies if there's a funding shortfall. Code Sec. 430 specifies the minimum funding requirements that apply to single-employer pension plans under Code Sec. 412.

For purposes of calculating the minimum required contribution, Code Sec. 430 generally requires a plan to establish a shortfall amortization base with respect to a plan year for which the value of a plan's assets is less than the amount of the plan's funding target. Under pre-ARPA law, a seven-year amortization period generally applied in the case of a single-employer pension plan funding shortfall. (Code Sec. 430(c)(2))

**New law.** Under ARPA, all shortfall amortization bases in single-employer plans for certain plan years, and all shortfall amortization installments determined with respect to those bases, are reduced to zero. Those shortfalls, as recalculated, and all future funding shortfalls, are to be amortized over a period of 15 years, rather than over seven years. (Code Sec. 430(c)(8), as amended by ARPA Sec. 9705(a))

*Parallel ERISA provision.* The ARPA includes an ERISA provision that is parallel to the Code Sec. 430 minimum funding rules for single-employer plans. (ERISA § 303(c)(8) as amended by ARPA Sec. 9705(b)).

**Observation.** Extending the amortization period for funding shortfalls gives plan sponsors a longer period over which to pay for long-term liabilities.

**Effective date.** Plan years beginning after December 31, 2018. (ARPA Sec. 9705(c))

### **Pension Smoothing for Single-Employer Plans Extended and Modified**

In 2012 (under the Moving Ahead for Progress in the 21st Century Act, PL 112-141), 2014 (under the [Highway and Transportation Funding Act, PL 133-159](#)), and 2015 (under the [Bipartisan Budget Act, PL 114-74](#)), Congress provided for 25-year pension interest rate smoothing in order to address concerns that historically low interest rates were creating inflated pension funding obligations, diverting corporate assets away from jobs and business recovery and reducing federal income tax revenue. Under this 25-year pension interest rate smoothing, the interest rates used to value pension liabilities must be within 10% of 25-year interest rate averages.

The smoothed interest rates were scheduled to begin phasing out in 2021, with the 10% corridor around the 25-year interest rate averages increasing five percentage points each year until interest rates must only be within 30% of the 25-year averages. (Code Sec. 430(h)(2)(C))

**Observation.** This 25-year pension interest rate smoothing has the effect of raising interest rates for funding purposes, which in turn lowers the amount of a plan's minimum required contribution.

**New law.** ARPA extends the pension funding stabilization percentages through 2029 and creates a 5% floor. The 10% interest rate corridor is reduced to 5%, effective in 2020. The phase-out of the 5% corridor is now delayed until 2026, at which point the corridor increases by 5 percentage points each year until it attains (and then remains at) 30% in 2030. A 5% floor is established on the 25-year interest rate averages. (Code Sec. 430(h)(2)(C)(iv), as amended by ARPA Sec. 9706(a))

**Observation.** The 5% floor helps create stability and predictability on a longer-term basis, so that interest rate variations do not cause excessive volatility and helps to protect funding rules from the extremes of interest rate movements.

*Parallel ERISA provision.* ARPA includes an ERISA provision that is parallel to the Code Sec. 430 minimum funding rules for single-employer plans. (ERISA § 303(h)(2)(C)(iv) as amended by ARPA Sec. 9706(b))

**Effective date.** Plan years beginning after December 31, 2019. (ARPA Sec. 9706(c)(1)) However, a plan sponsor may elect not to apply the provision to any plan year beginning before January 1, 2022 either for all purposes, or solely for purposes of determining the adjusted fund target attainment percentage under Code Sec. 436. (ARPA Sec. 9706(c)(2))

### **Expanded Availability of the Special Minimum Funding Standards for Community Newspaper Plans**

Community newspapers are generally family-owned, nonpublicly traded, independent newspapers. Defined benefit pension plans sponsored by certain community newspapers may elect to have alternative minimum funding standards apply to the plan in lieu of the minimum funding requirements that would otherwise apply under Code Sec. 430.

Specifically, the interest rate used to calculate the plan's funding obligations is increased to 8%, and the amortization

period is increased to 30 years, from seven years. Together, these changes enable financially distressed community newspapers to stretch out their required pension plan contributions over a longer time-period. (Code Sec. 430(m))

Under Pre-ARPA law, a community newspaper plan meant, among other things, a plan maintained by an employer as of December 31, 2017. (Code Sec. 430(m)(4)(A))

**New law.** The ARPA expands availability of the Code Sec. 430(m) funding relief rules to include additional community newspaper plans. Specifically, under ARPA, an eligible community newspaper plan includes any plan maintained by an employer which maintains the plan for those participants and beneficiaries in the trade or business of publishing one or more newspapers which were published by the employer at any time during the 11-year period ending on December 20, 2019. (Code Sec. 430(m)(5)(A)(i), as amended by ARPA Sec. 9707(a)).

*Parallel ERISA provision.* The ARPA includes an ERISA provision that is parallel to the Code Sec. 430(m) minimum funding rules for community newspaper plans. (ERISA § 303(m)(5)(A)(i) as amended by ARPA Sec. 9707(b))

**Effective date.** This provision is effective for plans years ending after December 31, 2017. (ARPA Sec. 9707(c))

## **Multiemployer Pension Plans May Retain 2019 Plan Funding Status for 2020 and 2021**

Multiemployer plans, which are subject to the minimum funding rules under Code Sec. 412 and Code Sec. 431, are also subject to an additional set of funding rules if they are in endangered, critical, or critical and declining status. (Code Sec. 432)

Under the Code Sec. 432 rules, the plan actuary must annually certify to IRS whether the plan is in endangered status, critical status, or critical and declining status for the plan

year. (Code Sec. 432(b)(3)) If a plan is in endangered status, the plan sponsor must adopt and follow a funding improvement plan. If a plan is in critical status, the plan sponsor must adopt and follow a rehabilitation plan. If the plan is in critical and declining status, then the rehabilitation plan requirements for a plan in critical status must be applied, and the plan sponsor may suspend benefits. (Code Sec. 432(a))

**New Law.** Under ARPA, a plan may elect to retain its 2019 plan funding status for plan years that begin in 2020 or 2021. A plan in endangered or critical status is not required to update its plan or schedules until the plan year beginning March 1, 2021. (ARPA Sec. 9701(a)) However, any plan that elects to retain its 2019 funding status during the election period, and is certified to be in critical status without regard to the election, will be treated as a plan in critical status regardless of the election. (ARPA Sec. 9701(b))

Plans that make the election are subject to specified participant notification requirements. (ARPA Sec. 9701(c)(2))

**Effective date.** Date of enactment of ARPA.

### **Multiemployer Pension Plans May Extend Funding Improvement or Rehabilitation Periods for 2020 or 2021**

A multiemployer pension plan that is in endangered or critical status, and that is subject to the Code Sec. 412 and Code Sec. 431 funding rules, must adopt and comply with

1. A funding improvement plan (for a multiemployer plan in endangered status), or
2. A rehabilitation plan (for a multiemployer plan in critical status). (Code Sec. 432(a))

Specifically, if a plan is certified to be in endangered status (including seriously endangered status), the plan sponsor must adopt a funding improvement plan that is reasonably expected to enable the plan to achieve certain

funding improvements by the end of its 10-year funding improvement period. (Code Sec. 432(c))

Similarly, the sponsor of a plan that has been certified to be in critical status must adopt a rehabilitation plan that is reasonably expected to enable the plan to emerge from critical status by the end of its 10-year rehabilitation period. (Code Sec. 432(e))

**New law.** Under ARPA, a plan in endangered or critical status for a plan year beginning in 2020 or 2021 may elect to extend its funding improvement period or rehabilitation period, whichever is applicable, by five years. (ARPA Sec. 9702(a))

**Observation.** The election to extend a plan's funding improvement or rehabilitation period gives the plan additional time to improve its contribution rates, limit benefit accruals, and maintain plan funding.

**Effective date.** This provision is effective for plan years beginning after December 31, 2019. (ARPA Sec. 9702(c))

## **Funding Standard Account Rules Eased for Multiemployer Pension Plans**

Defined benefit pension plans are subject to minimum funding rules under Code Sec. 431 that require the sponsoring employer to periodically make contributions to fund plan benefits. A multiemployer plan subject to the minimum funding requirements must establish and maintain a funding standard account. (Code Sec. 431(b))

For each plan year, the funding standard account is charged with the sum of the

1. Normal cost, and
2. The amortization of supplemental costs, determined based on the use of an acceptable actuarial cost method.

A plan's normal cost for a plan year generally represents the

cost of future benefits allocated to the plan year under the funding method used by the plan for current employees. (Code Sec. 431(b)(2)(A))

The supplemental cost for a plan year is the cost of future benefits that would not be met by future normal costs, or plan assets, such as net experience loss. Supplemental costs are amortized (i.e., recognized for funding purposes) over a specified number of years. The amortization period for a multiemployer plan for most credits and charges is 15 years. Experience gains and losses also are amortized over 15 years. (Code Sec. 431(b)(2)(B))

**New law.** ARPA allows multiemployer plans that satisfy a solvency test to elect to make changes in the funding standard account for either or both of the first two plan years ending after February 29, 2020, by amortizing net investment losses over 30 years, instead of 15 years. (Code Sec. 431(b)(8)(F), as amended by ARPA Sec. 9703(a)(2))

**Observation.** Thus, for 2020 and 2021, plan sponsors have the option to spread out investment and other losses over 30 years, instead of 15 years.

*Parallel ERISA provision.* ARPA includes an ERISA provision that is parallel to the Code Sec. 431 minimum funding rules. (ERISA Sec. 304(b)(8)(F), as amended by ARPA Sec. 9703(a)(1))

**Effective date.** This provision applies to plan years ending on or after February 29, 2020. (ARPA Sec. 9703(b))

## **Financial Assistance for Underfunded Multiemployer Pension Plans**

A multiemployer pension plan is generally a defined benefit plan to which more than one employer is required to contribute, and which is maintained pursuant to a collective bargaining agreement. Numerous multiemployer plans are expected to become insolvent in coming years, and the Pension

Benefit Guarantee Corporation (PBGC), which insures benefits to be paid out under those plans, faces bankruptcy due to the number of plans facing insolvency, and the total amount of unfunded vested liabilities owed to participants and beneficiaries.

**New law.** ARPA establishes a special financial assistance program for underfunded multiemployer pension plans.

Under the program, payments are to be made by the PBGC to certain underfunded multiemployer pension plans. (ERISA Sec. 4262, as added by ARPA Sec. 9704(b))

**Observation.** Financial assistance provided to plans in danger of insolvency will help to ensure those plans are able to pay benefits to participants and beneficiaries under the plan.

Funding for the program is to be provided through a general Treasury transfer to the PBGC in “such amounts as are necessary” to provide needed financial assistance. (ERISA Sec. 4005(i)(1), as amended by ARPA Sec. 9704(a))

**Observation.** ARPA does not specify, or otherwise limit, the amount to be transferred to the PBGC to fund the program.

A multiemployer plan is eligible for the assistance program if the plan:

- Is in critical and declining status in any plan year beginning in 2020 through 2022;
- Has been approved for a suspension of benefits as of the date of enactment of ARPA;
- Is certified by the plan actuary, in any plan year beginning in 2020 through 2022, to be in critical status, with more inactive participants than active participants;
- Became insolvent after December 16, 2014, and has remained insolvent and not been terminated as of the date of enactment of ARPA. (Code Sec. 432(k)(3), as

amended by ARPA Sec. 9704(d); ERISA Sec. 4262(b))

Applications for special financial assistance must be submitted no later than December 31, 2025. ERISA Sec. 4262(f). Once an application is approved, the payment made by the PBGC to the eligible multiemployer pension plan is to be made as a single, lump sum payment. (ERISA Sec. 4262(h))

The amount of financial assistance to be provided to a plan is the amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment, and ending on the last day of the plan year ending in 2051, with generally no reduction in a participant's or beneficiary's accrued benefit. (ERISA Sec. 4262(j)(1))

**Observation.** Thus, eligible plans will receive enough financial assistance from the PBGC to pay out benefits for the next 30 years (i.e., through 2051).

Financial assistance received by a plan (and the earnings thereon) may be used to pay plan expenses, as well as make benefit payments. Plans are required to invest amounts received in investment-grade bonds, or other investments, as permitted by the PBGC. (Code Sec. 432(k)(2)(B); ERISA Sec. 4262(l))

**Effective date.** Date of enactment of ARPA.

### **Multiemployer Pension Plan PBGC Premium Rates Increased**

Multiemployer pension plans that are covered by ERISA's termination insurance program must pay the Pension Benefit Guarantee Corporation (PBGC) a flat-rate premium for each participant the plan has during the applicable plan year. For plan years beginning in 2021, the PBGC flat-rate premium for multiemployer plans, as adjusted for inflation, is \$31 per participant.

**New law.** Starting in calendar year 2031, the ARPA increases

the PBGC multiemployer plan premium rate to \$52 per participant. That rate is to be indexed for inflation in years after 2031. (ERISA Sec. 4006(a)(3), as amended by ARPA Sec. 9704(c))

**Effective date.** Date of enactment of ARPA.



[\[i\]](#) Per Checkpoint Newstand, Thomson Reuters.



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## Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New

York and Florida. We are also able to practice in additional states that have passed firm mobility.

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