

Summary: “(PBGC) Act.” Pension Benefit Guarantee Continuation ACT

This bill combines aspects of HR 4955/ S. 3240 (now S.270 115th) **Pension and Budget Integrity Act of 2016** and S 1631 / HR 2844 (Now S 1076/HR 2412) **Keep Our Pension Promises. (KOPPA)**

It adds a limitation language to HR 4955 that in solidarity retains flat rate premiums for multi-employer pension funds and raises them to a sustainable level. Variable Rate Premiums (VPR's) in Multiemployer Pensions (MEP's) would further hurt already troubled funds. It also adds wording that the funds can pass on PBGC premiums to participants by using a portion of contributions for actives and deducting the premiums from retirees' pensions. It retains all other aspects such as Exclusion of the receipts and disbursements of the Pension Benefit Guaranty Corporation from the Federal budget since it is an independent government agency that insures the benefits of most private-sector pension plans through an insurance model and is double counting, but includes oversight protections for funds and participants as an independent government agency.

Something added to strengthen the PBGC that does not hand Pension Funds that made bad investments more money, but puts it directly in the backup system of the PBGC:

Some of the \$110 billion collected in Wall Street fines should be transferred to the PBGC for Funds that even with being able to partitioned to the PBGC would not remain solvent, but would survive with a higher PBGC guarantee. <http://fortune.com/2016/03/10/bank-mortgage-fines-wall-street/> This could be done by a direct transfer of \$20b to the PBGC multi insurance fund, (and an amount determined to the single fund) and raising the multi guarantee from \$12,870 to \$24,930, using the same PBGC formula replacing 100% of \$11 with \$22 and 75% of the next \$33 with \$63. (PBGC multi Premiums would still need to be raised from \$28 to an adjustable approx. \$175 per year flat rate but would be determined by the PBGC. (Current PBGC 20 yr. deficits are calculated on funds going broke not partitions as in KOPPA and this bill) A \$175 premium + the \$20B would provide \$55 billion + interest over the next 20 years.

It removes all taxpayer funding. References from S. 1631 to the legacy fund are removed since the original Sec. 6 is eliminated and no taxpayer legacy fund will be created. The \$20b would be part of general funds that allow partitions and are also covered by flat rate premium increases.

One thing to clarify and maybe change under partitions:

Sec. 8 (g) Only one partition order shall be issued with respect to each eligible multiemployer plan.

This needs clarification and thought to allow participants who become “orphans” after a partition order to be covered under the order. Or, maybe with priority in bankruptcies this might be ok as is.

A BILL

To amend the Employee Retirement Income Security Act of 1974 and to exclude the receipts and disbursements of the Pension Benefit Guaranty Corporation from the Federal budget, to modify certain provisions relating to multiemployer pensions, and for other purposes.

Sec. 1.

Short title

This Act may be cited as the “Pension Benefit Guarantee Continuation Act”

Sec. 2.

Pension Benefit Guarantee Corporation Pension and Budget

Sec. 3.

Findings

Congress finds the following:

(1)

The Pension Benefit Guaranty Corporation (in this section referred to as the PBGC)—

(A)

is an independent government agency that insures the benefits of most private-sector pension plans through an insurance model;

(B)

becomes the trustee for the assets of failed pension plans;

(C)

is responsible for the investment and disbursement of premiums and pension plan assets through the PBGC revolving funds and the PBGC trust fund; and

(D)

may only use premiums paid by private-sector pension plans to the PBGC to pay pension beneficiaries and related PBGC operating expenses.

(2)

The Employee Retirement Income Security Act of 1974 did not include the receipts and disbursements of the PBGC in the Federal budget.

(3)

Section 406 of the Multiemployer Pension Plan Amendments Act of 1980 (Public Law 96–364) included the receipts and disbursements of the PBGC in the Federal budget for the first time.

(4)

The revenues from PBGC premiums—

(A)

are deposited into the revolving funds of the PBGC and are credited to the operating budget of the PBGC;

(B)

Cannot be used for any purpose other than PBGC expenses; and

(C)

are counted as revenue to the United States Treasury and used to offset unrelated Federal spending.

(5)

Sound budget policy dictates that—

(A)

crediting PBGC premium revenues to the revolving funds of the PBGC and as receipts to the United States Treasury constitutes double-counting;

(B)

double-counting revenue is inconsistent with sound budgetary policy and good governance; and

(C)

excluding the receipts and disbursements of the PBGC from the Federal budget will eliminate double-counting premium revenue.

Effective date

The amendments made by Sec. 3 shall apply to fiscal years beginning after September 30, 2017.

Sec. 4.

Strengthening the Pension Benefit Guaranty Corporation

(1)

an analysis of whether the premium levels are sufficient for the Pension Benefit Guaranty Corporation to meet its projected mean stochastic basic benefit guarantee obligations for the ten- and twenty-year periods beginning with 2016, including an explanation of the assumptions underlying this analysis; and

(2)

if the analysis under paragraph (1) concludes that the premium levels are insufficient to meet such obligations (or are in excess of the levels sufficient to meet such obligations), a proposed schedule of revised premiums sufficient to meet (but not exceed) such obligations.

(3)

Since the financial crisis has left the PBGC vulnerable for the losses to funds as a direct or indirect result of the industries practices, pension funds can be stabilized through some of the \$110 billion in fines collected. The Treasury shall transfer the greater of \$20 billion or an agreed amount to the PBGC multiemployer fund, and an agreed amount to the PBGC single employer fund from the fines collected.

(4)

To strengthen the partitions for critical pension funds to avoid insolvency the PBGC multiemployer guarantee shall be raised to \$24,930 per year. Participants would receive the lesser of the guarantee or their earned benefit. The guarantee shall also apply to all funds and participants relying on the PBGC insurance since 2008. Critical and declining funds must apply for a partition with the PBGC to avoid insolvency.

(5)

Premiums for multiemployer pension participants shall be raised from \$28 to \$175 for the next plan year unless an analysis and adjustment is made prior.

(6)

The PBGC if possible shall retain CliftonLarsonAllen as independent auditor. Continued Significant Deficiency in lack of controls over premium process, manual processes, and monitoring controls over non-commingled assets shall be reported to the GAO.

Sec. 5

Limitations

(a)

PBGC premiums for multiemployer pension funds in solidarity, shall remain flat rate premiums. A percentage of earned pensions would still be considered flat rate since all would be treated equally. VPR's (Variable Rate Premiums) would further hurt underfunded pension plans.

(b)

PBGC flat rate premiums may at the funds choice be passed onto participants, by using a portion of contributions or payment, deduction from retirees or payment, or deducted from previous contributions for inactive / not retired status or payment.

(c)

Any future change to multiemployer pension funds to use VPR's may not be passed onto participants.

Effective date

The amendments made by Sec. 4-5 shall apply to the date of the enactment of this Act.

Sec. 6.

Exclusion of the receipts and disbursements of the Pension Benefit Guaranty Corporation from the Federal budget

(a)

In general

Paragraph (2) of Section 4002(g) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1302(g)) is amended by striking shall be included and inserting shall not be included.

(b)

Effective date

The amendments made by Sec. 6 shall apply to fiscal years beginning after September 30, 2017.

Sec. 7.

Restoring anti-cutback provisions

Section 201 of the Multiemployer Pension Reform Act of 2014 (division O of Public Law 113-235) and the amendments made by such section are repealed, and the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 shall be applied as if such section and amendments had never been enacted.

Sec. 8.

Partitions of eligible multiemployer plans

(a)

In general

Section 4233 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1413), as amended by section 122 of the Multiemployer Pension Reform Act of 2014 (division O of Public Law 113–235), is amended to read as follows:

4233.

Partitions of eligible multiemployer plans

(a)(1)

Upon the application by the plan sponsor of an eligible multiemployer plan for a partition of the plan, the corporation may order a partition of the plan in accordance with this section. The corporation shall make a determination regarding the application, in accordance with regulations promulgated by the corporation, not later than 270 days after—

(A)

the date such application was filed; or

(B)

if later, the date such application was completed.

(2)

At least 14 days before submitting an application for partition of a plan under paragraph (1), the plan sponsor of the plan shall notify all participants and beneficiaries of such application, in the form and manner prescribed by regulations issued by the corporation.

(b)

For purposes of this section, a multiemployer plan is an eligible multiemployer plan if—

(1)

the plan is in critical status and is projected to become insolvent within the meaning of section 4245—

(A)

during the current plan year or any of the 14 succeeding plan years; or

(B)

during the current plan year or any of the 19 succeeding plan years, if the plan has a ratio of inactive participants to active participants that exceeds 2 to 1 and the funded percentage of the plan is less than 80 percent;

(2)

the corporation determines, after consultation with the Participant and Plan Sponsor Advocate selected under section 4004, that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures described in section 432(e)(3)(A) of the Internal Revenue Code of 1986, and has made (or is making) benefit adjustments under section 432(e)(8) of such Code to reduce the risk of insolvency;

(3)

20 percent or more of the amount by which the liabilities of the plan exceed the value of plan assets is attributable to the service of participants whose employers—

(A)

withdrew from the plan prior to the date of enactment of the Restore Pension Promises Act; and

(B)

failed to pay (or are delinquent with respect to paying) the full amount of the employer's withdrawal liability under section 4201(b)(1) or as otherwise determined under an agreement with the plan;

(4)

the corporation reasonably expects that—

(A)

a partition of the plan will reduce the corporation's expected long-term loss with respect to the plan; and

(B)

a partition of the plan is necessary for the plan to remain or become solvent.

(1)

A partition under this section shall consist of a transfer to the plan created by the partition order of benefits to which eligible participants and beneficiaries were entitled under the plan

that was partitioned, in an amount not to exceed the amount that would be guaranteed under section 4022A if the plan were insolvent as of the date of the partition order.

(2)

The corporation's partition order shall provide for an annual transfer by the corporation to the plan created by the partition order of an amount equal to the yearly benefits that would be guaranteed under section 4022A to the eligible participants and beneficiaries if the plan were insolvent as of the date of the partition order.

(3)(A)

Where practicable, the initial transfer in accordance with paragraph (2) shall be completed at least 60 days prior to the plan year that immediately follows the partition start date. The partition order shall require that the initial transfer be sufficient to satisfy the guaranteed benefits in the first plan year of the partitioned plan.

(B)

Subsequent transfers in accordance with paragraph (2) shall be completed at least 60 days prior to the first day of each succeeding plan year.

(d)(1)(A)

The plan created by the partition order is a successor plan to which section 4022A applies.

(B)

At the discretion of the plan sponsor, the plan created by the partition order may remain a part of the plan that was partitioned or be maintained as a separate plan.

(2)(A)

The plan sponsor and the administrator of an eligible multiemployer plan prior to the partition shall be the plan sponsor and the administrator, respectively, of the plan created by the partition order, and shall adopt reasonable procedures to reduce administrative expenses and to coordinate benefit payments and communications with the participants and beneficiaries in the plan created by the partition order.

(B)

Benefit payments equal to the amount of an eligible participant or beneficiary's guaranteed benefits shall be paid to such participant or beneficiary and may be—

(i)

paid separately by the plan created by the partition order; or

(ii)

paid in a single, monthly payment by the plan that was partitioned.

(3)

In the event an employer withdraws from the plan that was partitioned, withdrawal liability shall be computed under section 4201 with respect to both the plan that was partitioned and the plan created by the partition order.

(e)

In addition to the payment of guaranteed benefits under subsection (d)(2)(B), each eligible participant or beneficiary of the plan created by the partition order shall receive a monthly benefit for each month the benefit is in pay status in an amount that—

(1)

the corporation, in consultation with the Participant and Plan Sponsor Advocate, determines to be fair to the plan, the participant or beneficiary, the employers, and the corporation; and

(2)

is at least equal to the lesser of—

(A)

the monthly nonforfeitable benefit for such participant or beneficiary payable under the plan that was partitioned; or

(B)

80 percent of the maximum benefit commencing at age 65 guaranteed under section 4022(a) for participants and beneficiaries in terminated Single Employer Plans, unreduced for early retirement.

Such monthly benefit may be combined with the monthly payment under subsection (d)(2)(B)(ii).(f)(1)

(g)

Only one partition order shall be issued with respect to each eligible multiemployer plan.

(h)

For purposes of this subsection, the term *eligible participant or beneficiary* means a participant or beneficiary of an eligible multiemployer plan that is partitioned in accordance with a petition order under this section, and who is an employee or beneficiary of an employee of an employer that is described in subsection (b)(3)..

(b)

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Sec.9.

Employer withdrawals relating to multiemployer plans

The matter preceding paragraph (1) of section 4225(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1405(b)) is amended by inserting , including an employer undergoing liquidation under chapter 7 of title 11, United States Code, or similar provisions of State law, after dissolution,.

Sec. 10.

Priorities of claims in bankruptcy

(a)

In general

Section 507(a) of title 11, United States Code is amended—

(1)

by redesignating paragraphs (1) through 10 as paragraphs (2) through (11), respectively;

(2)

by inserting before paragraph (2) (as redesignated) the following:

(1)

First, withdrawal liability determined under part 1 of subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.).

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(3)

in the matter preceding subparagraph (A) of paragraph (2) (as redesignated), by striking First: and inserting Second:;

(4)

in paragraph (3) (as redesignated), by striking Second, and inserting Third,;

(5)

in paragraph (4) (as redesignated), by striking Third, and inserting Fourth,;

(6)

in the matter preceding subparagraph (A) of paragraph (5) (as redesignated), by striking Fourth, and inserting Fifth,;

(7)

in the matter preceding subparagraph (A) of paragraph (6) (as redesignated), by striking Fifth, and inserting Sixth,;

(8)

in the matter preceding subparagraph (A) of paragraph (7) (as redesignated), by striking Sixth, and inserting Seventh,;

(9)

in paragraph (8) (as redesignated), by striking Seventh, and inserting Eighth,;

(10)

in the matter preceding subparagraph (A) of paragraph (9) (as redesignated), by striking Eighth, and inserting Ninth,;

(11)

in paragraph (10) (as redesignated), by striking Ninth, and inserting Tenth,; and

(12)

in paragraph (11) (as redesignated), by striking Tenth, and inserting Eleventh,.

(b)

Technical and conforming amendments

(1)

Section 502(i) of title 11, United States Code, is amended by striking section 507(a)(8) and inserting section 507(a)(9).

(2)

Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by striking section 507(a)(8) and inserting section 507(a)(9).

(3)

Section 507(d) of title 11, United States Code, is amended by striking (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) and inserting (a)(2), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), or (a)(10).

(4)

Section 523(A) of title 11, United States Code, is amended by striking section 507(a)(3) or 507(a)(8) and inserting section 507(a)(4) or 507(a)(9).

(5)

Section 724 of title 11, United States Code, is amended—

(A)

in subsection (b)(2), by striking section 507(a)(1)(C) or 507(a)(2) and inserting section 507(a)(2)(C) or 507(a)(3); and

(B)

in subsection (f)—

(i)

in paragraph (1), by striking section 507(a)(4) and inserting section 507(a)(5); and

(ii)

in paragraph (2), by striking section 507(a)(5) and inserting section 507(a)(6).

(6)

Section 726(b) of title 11, United States Code, is amended by striking paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of section 507(a) and inserting paragraphs (2) through (11) of section 507(a).

(7)

Section 752(a) of title 11, United States Code, is amended by striking section 507(a)(2) and inserting section 507(a)(3).

(8)

Section 766 of title 11, United States Code, is amended—

(A)

in subsection (h), by striking section 507(a)(2) and inserting section 507(a)(3); and

(B)

in subsection (i)—

(i)

in paragraph (1), by striking section 507(a)(2) and inserting section 507(a)(3); and

(ii)

in paragraph (2), by striking section 507(a)(2) and inserting section 507(a)(3).

(9)

Section 901 of title 11, United States Code, is amended by striking 507(a)(2) and inserting 507(a)(3).

(10)

Section 943(b)(5) of title 11, United States Code, is amended by striking section 507(a)(2) and inserting section 507(a)(3).

(11)

Section 1123(a)(1) of title 11, United States Code, is amended by striking section 507(a)(2), 507(a)(3), or 507(a)(8) and inserting section 507(a)(3), 507(a)(4), or 507(a)(9).

(12)

Section 1129(a)(9) of title 11, United States Code, is amended—

(A)

in subparagraph (A), by striking section 507(a)(3) or 507(a)(4) and inserting section 507(a)(4) or 507(a)(5);

(B)

in the matter preceding clause (i) of subparagraph (B), by striking section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) and inserting section 507(a)(2), 507(a)(5), 507(a)(6), 507(a)(7), or 507(a)(8);

(C)

in the matter preceding clause (i) of subparagraph (C), by striking section 507(a)(8) and inserting section 507(a)(9); and

(D)

in subparagraph (D), by striking section 507(a)(8) and inserting section 507(a)(9).

(13)

Section 1222(a)(4) of title 11, United States Code, is amended by striking section 507(a)(1)(B) and inserting 507(a)(2)(B).

(14)

Section 1226(b)(1) of title 11, United States Code, is amended by striking section 507(a)(2) and inserting section 507(a)(3).

(15)

Section 1322(a)(4) of title 11, United States Code, is amended by striking section 507(a)(1)(B) and inserting section 507(a)(2)(B).

(16)

Section 1326(b)(1) of title 11, United States Code, is amended by striking section 507(a)(2) and inserting section 507(a)(3).

(17)

Section 1328(a)(2) of title 11, United States Code, is amended by striking section 507(a)(8)(C) and inserting section 507(a)(9)(C).

Effective date

The amendments made by Sec. 7-10 shall apply to the date of the enactment of this Act.