

American Rescue Plan Act of 2021 excerpt:

SEC. 9704. SPECIAL FINANCIAL ASSISTANCE PROGRAM FOR FINANCIALLY
TROUBLED MULTIEMPLOYER PLANS.

(a) Appropriation.--Section 4005 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1305) is amended by adding at the end the following:

``(i)(1) An eighth fund shall be established for special financial assistance to multiemployer pension plans, as provided under section 4262, and to pay for necessary administrative and operating expenses of the corporation relating to such assistance.

``(2) There is appropriated from the general fund such amounts as are necessary for the costs of providing financial assistance under section 4262 and necessary administrative and operating expenses of the corporation. <<NOTE: Determination. Termination date.>> The eighth fund established under this subsection shall be credited with amounts from time to time as the Secretary of the Treasury, in conjunction with the Director of the Pension Benefit Guaranty Corporation, determines appropriate, from the general fund of the Treasury, but in no case shall such transfers occur after September 30, 2030.''.

(b) Financial Assistance Authority.--The Employee Retirement Income Security Act of 1974 is amended by inserting after section 4261 of such Act (29 U.S.C. 1431) the following:

``SEC. 4262. <<NOTE: 29 USC 1432.>> SPECIAL FINANCIAL ASSISTANCE
BY THE CORPORATION.

``(a) Special Financial Assistance.--

``(1) In general.--The corporation shall provide special financial assistance to an eligible multiemployer plan under this section, upon the application of a plan sponsor of such a plan for such assistance.

``(2) Inapplicability of certain repayment obligation.--A plan receiving special financial assistance pursuant to this section shall not be subject to repayment obligations with respect to such special financial assistance.

``(b) Eligible Multiemployer Plans.--

``(1) <<NOTE: Time period.>> In general.--For purposes of this section, a multiemployer plan is an eligible multiemployer plan if--

``(A) the plan is in critical and declining status (within the meaning of section 305(b)(6)) in any plan year beginning in 2020 through 2022;

``(B) a suspension of benefits has been approved with respect to the plan under section 305(e)(9) as of the date of the enactment of this section;

``(C) <<NOTE: Certification.>> in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status (within the meaning of section 305(b)(2)), has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3; or

``(D) the plan became insolvent for purposes of section 418E of the Internal Revenue Code of 1986 after December 16, 2014, and has remained so insolvent and has not been terminated as of the date of enactment of this section.

``(2) <<NOTE: Definition.>> Modified funded percentage.-- For purposes of paragraph (1)(C), the term `modified funded

percentage' means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in section 3(26) of such Act) and the denominator of which is current liabilities (as defined

[[Page 135 STAT. 191]]

in section 431(c)(6)(D) of such Code and section 304(c)(6)(D) of such Act).

``(c) <<NOTE: Deadline. Regulations. Requirements.>> Applications for Special Financial Assistance.--Within 120 days of the date of enactment of this section, the corporation shall issue regulations or guidance setting forth requirements for special financial assistance applications under this section. In such regulations or guidance, the corporation shall--

``(1) limit the materials required for a special financial assistance application to the minimum necessary to make a determination on the application;

``(2) specify effective dates for transfers of special financial assistance following approval of an application, based on the effective date of the supporting actuarial analysis and the date on which the application is submitted; and

``(3) provide for an alternate application for special financial assistance under this section, which may be used by a plan that has been approved for a partition under section 4233 before the date of enactment of this section.

``(d) Temporary Priority Consideration of Applications.--

``(1) <<NOTE: Regulations. Time period.>> In general.--The corporation may specify in regulations or guidance under subsection (c) that, during a period no longer than the first 2 years following the date of enactment of this section, applications may not be filed by an eligible multiemployer plan unless--

``(A) <<NOTE: Time period.>> the eligible multiemployer plan is insolvent or is likely to become insolvent within 5 years of the date of enactment of this section;

``(B) the corporation projects the eligible multiemployer plan to have a present value of financial assistance payments under section 4261 that exceeds \$1,000,000,000 if the special financial assistance is not ordered;

``(C) the eligible multiemployer plan has implemented benefit suspensions under section 305(e)(9) as of the date of the enactment of this section; or

``(D) <<NOTE: Determination.>> the corporation determines it appropriate based on other similar circumstances.

``(e) <<NOTE: Determinations. Termination date.>> Actuarial Assumptions.--

``(1) Eligibility.--For purposes of determining eligibility for special financial assistance, the corporation shall accept assumptions incorporated in a multiemployer plan's determination that it is in critical status or critical and declining status (within the meaning of section 305(b)) for certifications of plan status completed before January 1, 2021, unless such assumptions are clearly

erroneous. <<NOTE: Certifications. Effective date.>> For certifications of plan status completed after December 31, 2020, a plan shall determine whether it is in critical or critical and

declining status for purposes of eligibility for special financial assistance by using the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions (excluding the plan's interest rate) are unreasonable.

``(2) <<NOTE: Termination date.>> Amount of financial assistance.--In determining the amount of special financial assistance in its application, an eligible multiemployer plan shall--

``(A) use the interest rate used by the plan in its most recently completed certification of plan status before

[[Page 135 STAT. 192]]

January 1, 2021, provided that such interest rate may not exceed the interest rate limit; and

``(B) for other assumptions, use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

``(3) <<NOTE: Time period.>> Interest rate limit.--The interest rate limit for purposes of this subsection is the rate specified in section 303(h)(2)(C)(iii) (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points.

``(4) <<NOTE: Determinations. Disclosure.>> Changes in assumptions.--If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose in its application to change such assumptions, provided that the plan discloses such changes in its application and describes why such assumptions are no longer reasonable. The corporation shall accept such changed assumptions unless it determines the changes are unreasonable, individually or in the aggregate. The plan may not propose a change to the interest rate otherwise required under this subsection for eligibility or financial assistance amount.

``(f) Application Deadline.--Any application by a plan for special financial assistance under this section shall be submitted to the corporation (and, in the case of a plan to which section 432(k)(1)(D) of the Internal Revenue Code of 1986 applies, to the Secretary of the Treasury) no later than December 31, 2025, and any revised application for special financial assistance shall be submitted no later than December 31, 2026.

``(g) <<NOTE: Notifications. Deadlines.>> Determinations on Applications.--A plan's application for special financial assistance under this section that is timely filed in accordance with the regulations or guidance issued under subsection (c) shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the application that the application is incomplete, any proposed change or assumption is unreasonable, or the plan is not eligible under this section. Such notice shall specify the reasons the plan is ineligible for special financial assistance, any proposed change or assumption is unreasonable, or information is needed to complete the application. If a plan is denied <<NOTE: Revisions.>> assistance under this subsection, the plan may submit a revised application under this section. Any revised application for special financial assistance submitted by a plan shall be deemed approved unless the corporation notifies the plan within 120 days of the filing of the revised application that the application is incomplete, any proposed change or

assumption is unreasonable, or the plan is not eligible under this section. Special financial assistance <<NOTE: Effective date. Determination. Deadline.>> issued by the corporation shall be effective on a date determined by the corporation, but no later than 1 year after a plan's special financial assistance application is approved by the corporation or deemed approved. <<NOTE: Termination date.>> The corporation shall not pay any special financial assistance after September 30, 2030.

``(h) Manner of Payment.--The payment made by the corporation to an eligible multiemployer plan under this section shall be made as a single, lump sum payment.

``(i) Amount and Manner of Special Financial Assistance.--

[[Page 135 STAT. 193]]

``(1) In general.--Special financial assistance under this section shall be a transfer of funds in the amount necessary as demonstrated by the plan sponsor on the application for such special financial assistance, in accordance with the requirements described in subsection (j). Special financial assistance shall be paid to such plan as soon as practicable upon approval of the application by the corporation.

``(2) No cap.--Special financial assistance granted by the corporation under this section shall not be capped by the guarantee under 4022A.

``(j) Determination of Amount of Special Financial Assistance.--

``(1) <<NOTE: Time period.>> In general.--The amount of financial assistance provided to a multiemployer plan eligible for financial assistance under this section shall be such 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 under this section and ending on the last day of the plan year ending in 2051, with no reduction in a participant's or beneficiary's accrued benefit as of the date of enactment of this section, except to the extent of a reduction in accordance with section 305(e)(8) adopted prior to the plan's application for special financial assistance under this section, and taking into account the reinstatement of benefits required under subsection (k).

``(2) Projections.--The funding projections for purposes of this section shall be performed on a deterministic basis.

``(k) <<NOTE: Coordination. Effective dates.>> Reinstatement of Suspended Benefits.--The Secretary, in coordination with the Secretary of the Treasury, shall ensure that an eligible multiemployer plan that receives special financial assistance under this section--

``(1) reinstates any benefits that were suspended under section 305(e)(9) or section 4245(a) in accordance with guidance issued by the Secretary of the Treasury pursuant to section 432(k)(1)(B) of the Internal Revenue Code of 1986, effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month; and

``(2) <<NOTE: Determination. Deadlines.>> provides payments equal to the amount of benefits previously suspended under section 305(e)(9) or 4245(a) to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable, as determined by the eligible multiemployer plan--

``(A) as a lump sum within 3 months of such effective date; or

``(B) <<NOTE: Time period.>> in equal monthly installments over a period of 5 years, commencing within 3 months of such effective date, with no adjustment for interest.

``(1) Restrictions on the Use of Special Financial Assistance.-- Special financial assistance received under this section and any earnings thereon may be used by an eligible multiemployer plan to make benefit payments and pay plan expenses. Special financial assistance and any earnings on such assistance shall be segregated from other plan assets. Special financial assistance shall be invested by plans in investment-grade bonds or other investments as permitted by the corporation.

[[Page 135 STAT. 194]]

``(m) Conditions on Plans Receiving Special Financial Assistance.--

``(1) <<NOTE: Consultation. Regulations.>> In general.--The corporation, in consultation with the Secretary of the Treasury, may impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan that receives special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions to, and allocation of expenses to, other benefit plans, and withdrawal liability.

``(2) Limitation.--The corporation shall not impose conditions on an eligible multiemployer plan as a condition of, or following receipt of, special financial assistance under this section relating to--

``(A) any prospective reduction in plan benefits (including benefits that may be adjusted pursuant to section 305(e)(8));

``(B) plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers; or

``(C) any funding rules relating to the plan receiving special financial assistance under this section.

``(3) <<NOTE: Continuance.>> Payment of premiums.--An eligible multiemployer plan receiving special financial assistance under this section shall continue to pay all premiums due under section 4007 for participants and beneficiaries in the plan.

``(4) Assistance not considered for certain purposes.--An eligible multiemployer plan that receives special financial assistance shall be deemed to be in critical status within the meaning of section 305(b)(2) until the last plan year ending in 2051.

``(5) Insolvent plans.--An eligible multiemployer plan receiving special financial assistance under this section that subsequently becomes insolvent will be subject to the current rules and guarantee for insolvent plans.

``(6) Ineligibility for other assistance.--An eligible multiemployer plan that receives special financial assistance under this section is not eligible to apply for a new suspension of benefits under section 305(e)(9)(G).

``(n) <<NOTE: Consultations.>> Coordination With Secretary of the Treasury.--In prescribing the application process for eligible multiemployer plans to receive special financial assistance under this section and reviewing applications of such plans, the corporation shall

coordinate with the Secretary of the Treasury in the following manner:

``(1) <<NOTE: Determinations.>> In the case of a plan which has suspended benefits under section 305(e)(9)--

``(A) in determining whether to approve the application, the corporation shall consult with the Secretary of the Treasury regarding the plan's proposed method of reinstating benefits, as described in the plan's application and in accordance with guidance issued by the Secretary of the Treasury, and

``(B) the corporation shall consult with the Secretary of the Treasury regarding the amount of special financial assistance needed based on the projected funded status of the plan as of the last day of the plan year ending in 2051, whether the plan proposes to repay benefits over

[[Page 135 STAT. 195]]

5 years or as a lump sum, as required by subsection (k)(2), and any other relevant factors, as determined by the corporation in consultation with the Secretary of the Treasury, to ensure the amount of assistance is sufficient to meet such requirement and is sufficient to pay benefits as required in subsection (j)(1).

``(2) In the case of any plan which proposes in its application to change the assumptions used, as provided in subsection (e)(4), the corporation shall consult with the Secretary of the Treasury regarding such proposed change in assumptions.

``(3) <<NOTE: Regulations.>> If the corporation specifies in regulations or guidance that temporary priority consideration is available for plans which are insolvent within the meaning of section 418E of the Internal Revenue Code of 1986 or likely to become so insolvent or for plans which have suspended benefits under section 305(e)(9), or that availability is otherwise based on the funded status of the plan under section 305, as permitted by subsection (d), the corporation shall consult with the Secretary of the Treasury regarding any granting of priority consideration to such plans.''.

(c) Premium Rate Increase.--Section 4006(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is amended--

(1) in subparagraph (A)--

(A) in clause (vi)--

(i) by inserting `` , and before January 1, 2031'' after ``December 31, 2014,''; and

(ii) by striking ``or'' at the end;

(B) in clause (vii)--

(i) by moving the margin 2 ems to the left;

and

(ii) in subclause (II), by striking the period and inserting `` , or''; and

(C) by adding at the end the following:

``(viii) <<NOTE: Effective date.>> in the case of a multiemployer plan, for plan years beginning after December 31, 2030, \$52 for each individual who is a participant in such plan during the applicable plan year.''; and

(2) by adding at the end the following:

``(N) <<NOTE: Effective date.>> For each plan year beginning in a calendar year after 2031, there shall be substituted for the dollar amount specified in clause (viii) of subparagraph (A) an amount equal to

the greater of--

- ``(i) the product derived by multiplying such dollar amount by the ratio of--
 - ``(I) the national average wage index (as defined in section 209(k)(1) of the Social Security Act) for the first of the 2 calendar years preceding the calendar year in which such plan year begins, to
 - ``(II) the national average wage index (as so defined) for 2029; and
- ``(ii) such dollar amount for plan years beginning in the preceding calendar year.

If the amount determined under this subparagraph is not a multiple of \$1, such product shall be rounded to the nearest multiple of \$1.''

(d) Amendments to Internal Revenue Code of 1986.--

[[Page 135 STAT. 196]]

(1) In general.--Section 432(a) of the Internal Revenue Code of 1986 <<NOTE: 26 USC 432.>> is amended--

(A) by striking ``and'' at the end of paragraph

(2)(B),

(B) by striking the period at the end of paragraph

(3)(B) and inserting `` , and'' , and

(C) by adding at the end the following new paragraph:

``(4) <<NOTE: Requirements. Applicability.>> if the plan is an eligible multiemployer plan which is applying for or receiving special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974, the requirements of subsection (k) shall apply to the plan.''

(2) Plans receiving special financial assistance to be in critical status.--Section 432(b) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

``(7) <<NOTE: Time period.>> Plans receiving special financial assistance.--If an eligible multiemployer plan receiving special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974 meets the requirements of subsection (k)(2), notwithstanding the preceding paragraphs of this subsection, the plan shall be deemed to be in critical status for plan years beginning with the plan year in which the effective date for such assistance occurs and ending with the last plan year ending in 2051.''

(3) Rules relating to eligible multiemployer plans.--Section 432 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

``(k) Rules Relating to Eligible Multiemployer Plans.--

``(1) Plans applying for special financial assistance.--In the case of an eligible multiemployer plan which applies for special financial assistance under section 4262 of such Act--

``(A) <<NOTE: Requirements.>> In general.--Such application shall be submitted in accordance with the requirements of such section, including any guidance issued thereunder by the Pension Benefit Guaranty Corporation.

``(B) Reinstatement of suspended benefits.--In the case of a plan for which a suspension of benefits has been approved under subsection (e)(9), the application shall describe the manner in which suspended benefits will be reinstated in accordance with paragraph (2)(A)

and guidance issued by the Secretary if the plan receives special financial assistance.

``(C) Amount of financial assistance.--

``(i) <<NOTE: Determination. Termination date.>> In general.--In determining the amount of special financial assistance to be specified in its application, an eligible multiemployer plan shall--

``(I) use the interest rate used by the plan in its most recently completed certification of plan status before January 1, 2021, provided that such interest rate does not exceed the interest rate limit, and

``(II) for other assumptions, use the assumptions that the plan used in its most recently completed certification of plan status before January 1, 2021, unless such assumptions are unreasonable.

[[Page 135 STAT. 197]]

``(ii) <<NOTE: Time period.>> Interest rate limit.--For purposes of clause (i), the interest rate limit is the rate specified in section 430(h)(2)(C)(iii) (disregarding modifications made under clause (iv) of such section) for the month in which the application for special financial assistance is filed by the eligible multiemployer plan or the 3 preceding months, with such specified rate increased by 200 basis points.

``(iii) <<NOTE: Determination. Disclosure.>> Changes in assumptions.--If a plan determines that use of one or more prior assumptions is unreasonable, the plan may propose in its application to change such assumptions, provided that the plan discloses such changes in its application and describes why such assumptions are no longer reasonable. The plan may not propose a change to the interest rate otherwise required under this subsection for eligibility or financial assistance amount.

``(D) Plans applying for priority consideration.--In the case of a plan applying for special financial assistance under rules providing for temporary priority consideration, as provided in paragraph (4)(C), such plan's application shall be submitted to the Secretary in addition to the Pension Benefit Guaranty Corporation.

``(2) Plans receiving special financial assistance.--In the case of an eligible multiemployer plan receiving special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974--

``(A) <<NOTE: Effective dates.>> Reinstatement of suspended benefits.--The plan shall--

``(i) reinstate any benefits that were suspended under subsection (e)(9) or section 4245(a) of the Employee Retirement Income Security Act of 1974, effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month, and

``(ii) <<NOTE: Determination. Deadlines.>>

provide payments equal to the amount of benefits previously suspended to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable, as determined by the plan--

``(I) as a lump sum within 3 months of such effective date; or

``(II) <<NOTE: Time period.>> in equal monthly installments over a period of 5 years, commencing within 3 months of such effective date, with no adjustment for interest.

``(B) Restrictions on the use of special financial assistance.--Special financial assistance received by the plan may be used to make benefit payments and pay plan expenses. Such assistance shall be segregated from other plan assets, and shall be invested by the plan in investment-grade bonds or other investments as permitted by regulations or other guidance issued by the Pension Benefit Guaranty Corporation.

``(C) Conditions on plans receiving special financial assistance.--

[[Page 135 STAT. 198]]

``(i) <<NOTE: Consultation. Regulations.>> In general.--The Pension Benefit Guaranty Corporation, in consultation with the Secretary, may impose, by regulation or other guidance, reasonable conditions on an eligible multiemployer plan receiving special financial assistance relating to increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates, diversion of contributions and allocation of expenses to other benefit plans, and withdrawal liability.

``(ii) Limitation.--The Pension Benefit Guaranty Corporation shall not impose conditions on an eligible multiemployer plan as a condition of, or following receipt of, special financial assistance relating to--

``(I) any prospective reduction in plan benefits (including benefits that may be adjusted pursuant to subsection (e)(8)),

``(II) plan governance, including selection of, removal of, and terms of contracts with, trustees, actuaries, investment managers, and other service providers, or

``(III) any funding rules relating to the plan.

``(D) Assistance disregarded for certain purposes.--

``(i) Funding standards.--Special financial assistance received by the plan shall not be taken into account for determining contributions required under section 431.

``(ii) <<NOTE: Applicability.>> Insolvent plans.--If the plan becomes insolvent within the meaning of section 418E after receiving special financial assistance, the plan shall be subject to all rules applicable to insolvent plans.

``(E) Ineligibility for suspension of benefits.--The plan shall not be eligible to apply for a new suspension of benefits under subsection (e)(9)(G).

``(3) Eligible multiemployer plan.--

``(A) <<NOTE: Time periods.>> In general.--For purposes of this section, a multiemployer plan is an eligible multiemployer plan if--

``(i) the plan is in critical and declining status in any plan year beginning in 2020 through 2022,

``(ii) a suspension of benefits has been approved with respect to the plan under subsection (e)(9) as of the date of the enactment of this subsection;

``(iii) <<NOTE: Certification.>> in any plan year beginning in 2020 through 2022, the plan is certified by the plan actuary to be in critical status, has a modified funded percentage of less than 40 percent, and has a ratio of active to inactive participants which is less than 2 to 3, or

``(iv) <<NOTE: Effective date.>> the plan became insolvent within the meaning of section 418E after December 16, 2014, and has remained so insolvent and has not been terminated as of the date of enactment of this subsection.

``(B) <<NOTE: Definition.>> Modified funded percentage.--For purposes of subparagraph (A)(iii), the term 'modified funded percentage' means the percentage equal to a fraction the numerator of which is current value of plan assets (as defined in

[[Page 135 STAT. 199]]

section 3(26) of the Employee Retirement Income Security Act of 1974) and the denominator of which is current liabilities (as defined in section 431(c)(6)(D)).

``(4) <<NOTE: Consultations.>> Coordination with pension benefit guaranty corporation.--In prescribing the application process for eligible multiemployer plans to receive special financial assistance under section 4262 of the Employee Retirement Income Security Act of 1974 and reviewing applications of such plans, the Pension Benefit Guaranty Corporation shall coordinate with the Secretary in the following manner:

``(A) <<NOTE: Determinations.>> In the case of a plan which has suspended benefits under subsection (e)(9)--

``(i) in determining whether to approve the application, such corporation shall consult with the Secretary regarding the plan's proposed method of reinstating benefits, as described in the plan's application and in accordance with guidance issued by the Secretary, and

``(ii) <<NOTE: Time period.>> such corporation shall consult with the Secretary regarding the amount of special financial assistance needed based on the projected funded status of the plan as of the last day of the plan year ending in 2051, whether the plan proposes to repay benefits over 5 years or as a lump sum, as required by paragraph (2)(A)(ii), and any other relevant factors, as determined by such

corporation in consultation with the Secretary, to ensure the amount of assistance is sufficient to meet such requirement and is sufficient to pay benefits as required in section 4262(j)(1) of such Act.

``(B) In the case of any plan which proposes in its application to change the assumptions used, as provided in paragraph (1)(C)(iii), such corporation shall consult with the Secretary regarding such proposed change in assumptions.

``(C) <<NOTE: Regulations.>> If such corporation specifies in regulations or guidance that temporary priority consideration is available for plans which are insolvent within the meaning of section 418E or likely to become so insolvent or for plans which have suspended benefits under subsection (e)(9), or that availability is otherwise based on the funded status of the plan under this section, as permitted by section 4262(d) of such Act, such corporation shall consult with the Secretary regarding any granting of priority consideration to such plans.''.