



Pension Reform in our Time? What Butch Lewis Means for Multiemployer Plans and Participating Employers

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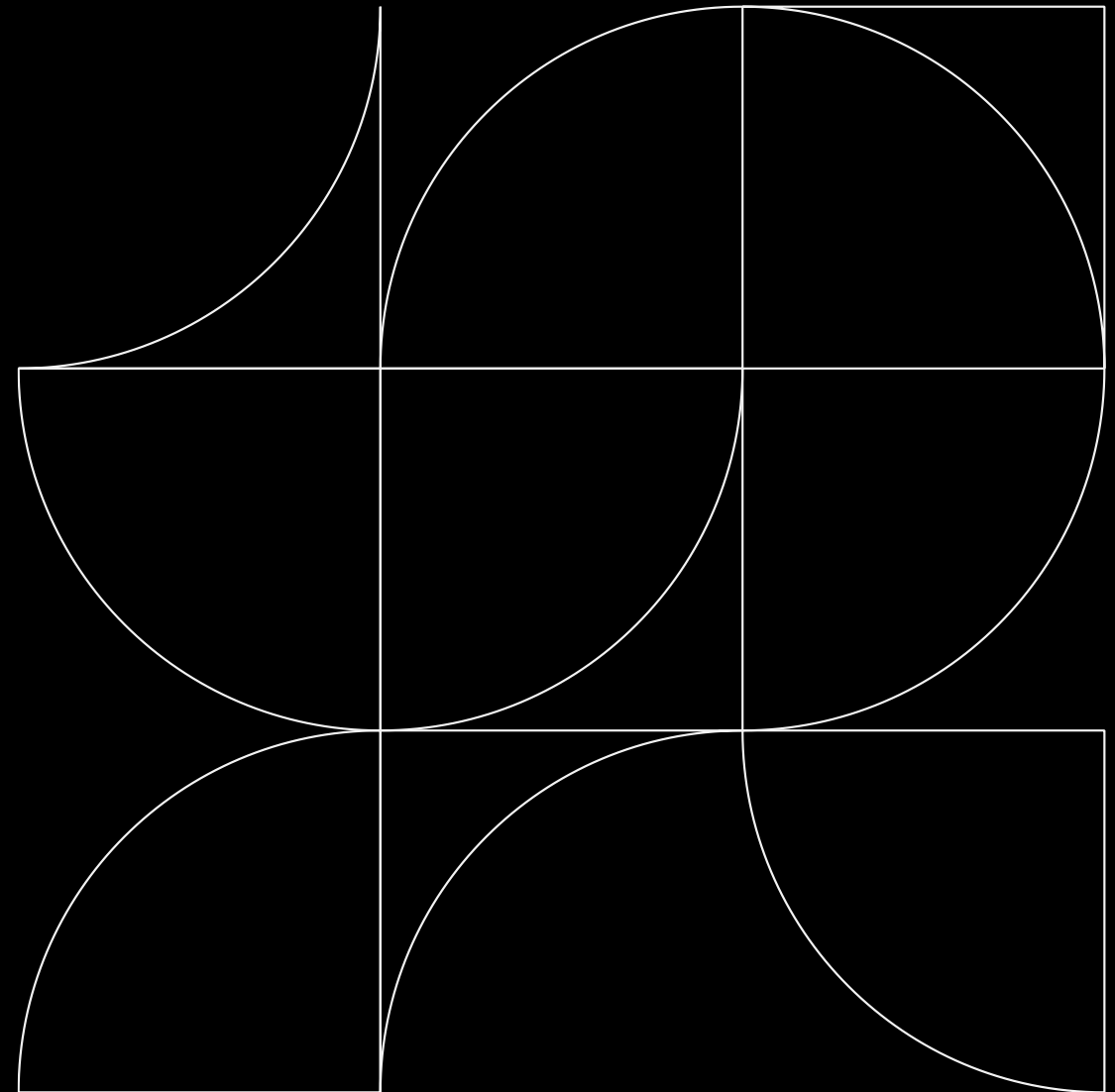


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Agenda

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02	Special Financial Assistance
03	Other MEPP Changes
04	Impact for Plans and Employers
05	Discussion
06	Questions

Overview



Overview

- Congressional History Regarding MEPP Reform
 - Multiemployer Pension Plan Amendments Act of 1980
 - Pension Protection Act of 2006
 - Multiemployer Pension Reform Act of 2014
- PBGC Multiemployer Program - Projected insolvency in 2027
- 2017 Status as reported by the PBGC (ongoing plans (not termed or receiving PBGC assistance))
 - 1234 plans
 - 10 million participants
 - Overall financials using 2.55% discount rate
 - 42% funded
 - underfunded by \$670 billion

Overview

- Ongoing Plans and Participants by Zone Status as of 2017

Status	# Plans	%	# Participants	%
Deep Red (critical and declining)	114	9.2%	1,257,156	12.1%
Red (critical)	191	15.5%	2,148,040	20.6%
Yellow/Orange (endangered and seriously endangered)	133	10.8%	1,012,041	9.7%
Green	796	64.5%	6,001,649	57.6%

Source: PBGC 2018 Data Tables

Overview

Prior Reform Attempts (Selected History)

- Butch Lewis Act of 2017/ Rehabilitation of Multiemployer Pensions Act of 2017
 - Butch Lewis Introduced by Senator Sherrod Brown (D-Ohio), House Companion Rehabilitation bill introduced by Congressman Richard Neal (D-MA) with similar terms
 - Establishes a new agency within Department of Treasury to issue bonds/loans to financially troubled multiemployer plans
- The Joint Select Committee on Solvency of Multiemployer Pension Plans (2018)
 - Bi-partisan Congressional Committee tasked with addressing the multiemployer pension plan crisis
 - Chaired by Senators Orrin Hatch (R-UT) and Sherrod Brown (D-OH)
 - Missed November 30, 2018 deadline
- Rehabilitation of Multiemployer Pensions Act of 2019
 - Introduced by Congressman Richard Neal (D-MA) Passed House on July 24, 2019
 - \$68 billion dollar relief package
 - Would provide 30-year loans to multiemployer plans in “critical and declining” status that become insolvent after December 16, 2014 (but have not terminated), and have an approved suspension of benefits under MPRA

Overview

Prior Reform Attempts (Selected History)

- Butch Lewis Act of 2019
 - 30-year low interest loans with the principal due at the end of the term
 - Employer withdrawing from a plan that took the loans assessed as if party to a mass withdrawal (no 20-year cap) and with plan termination interest assumptions
- Multiemployer Pension Recapitalization and Reform Plan
 - Introduced by Republican Senators Charles Grassley and Lamar Alexander
 - Provides for PBGC partition authority
 - Increases PBGC funding through “shared responsibility” (employers/participants)
 - Reform funding/liability measurement rules, zone status rules, and withdrawal liability rules to encourage participation
- Chris Allen Multiemployer Pension Recapitalization and Reform Act
 - Introduced December 17, 2020 by Republican Senators Charles Grassley and Lamar Alexander

Overview

Prior Reform Attempts (Selected History)

- **Emergency Pension Plan Relief Act of 2020**
 - Allow investment losses in plan years beginning in 2019 and 2020 to be amortized over 30 years (instead of 15 years)
 - Permit a plan to retain for plan year 2020 or 2021 the zone status that applied for the previous year (regardless of its funding status)
 - Provide funding to the PBGC for administrative and operating expenses associated with partition assistance
 - Permit certain eligible plans to forgo repayment of PBGC partition assistance
 - Reinstate benefits that were suspended by critical or declining plans under MPRA
 - Annual increase to the PBGC guaranteed benefit tied to national average wage index
 - Later combined with the Butch Lewis Act

Overview

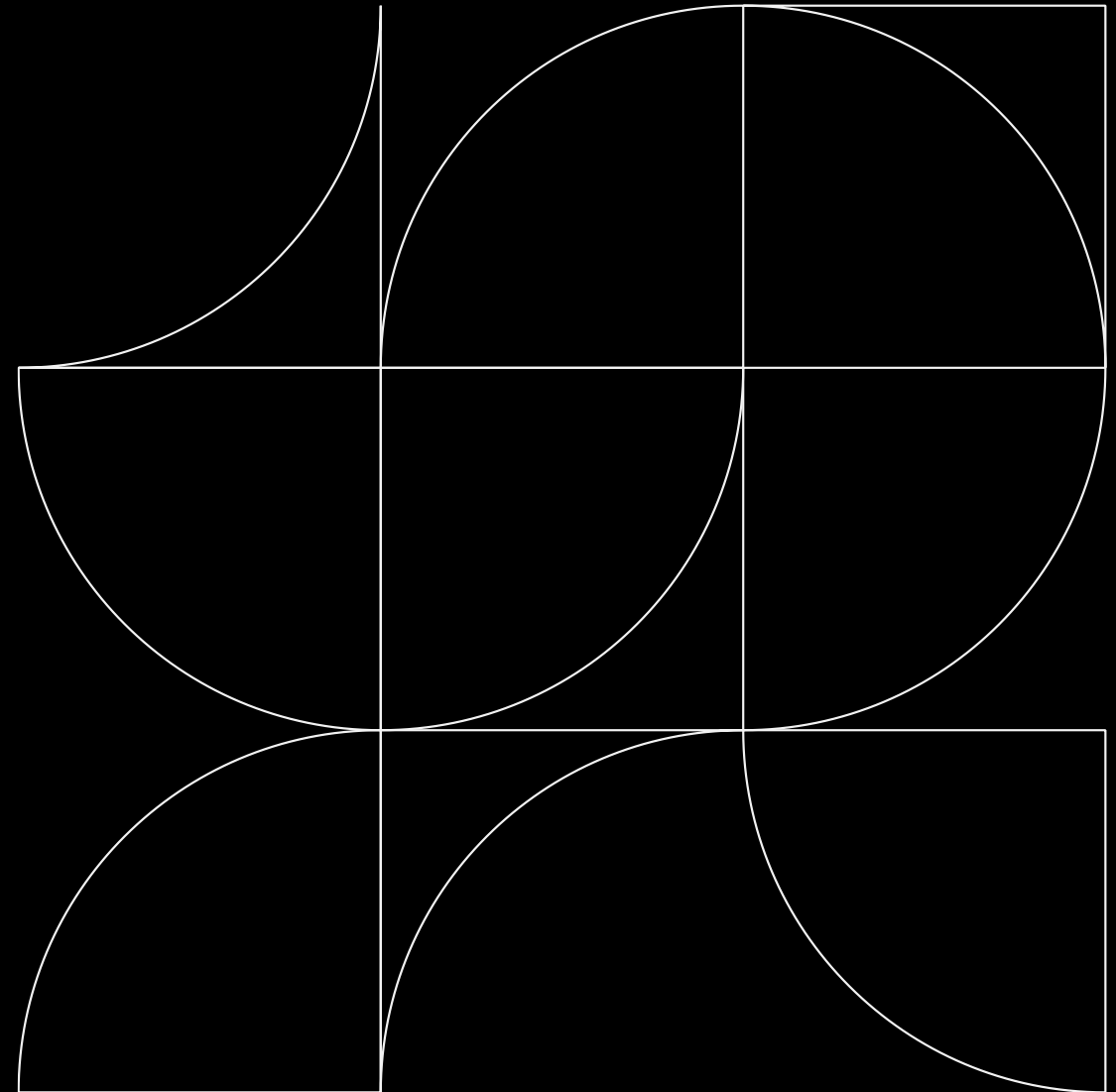
- Butch Lewis Act Emergency Pension Plan Relief Act of 2021
 - Senate ruled multiemployer plan provisions only need majority vote as part of budget reconciliation process
 - Congress, however, limited what could be included/stay-in the bill
 - Eliminated withdrawal liability provisions before it was passed
 - Included as part of American Rescue Plan Act of 2021
 - Signed into law March 11, 2021

Overview

Multiemployer Pension Reform in American Rescue Plan Act

- Key provisions:
 - Special Financial Assistance for qualifying plans in an amount necessary to pay all benefits due through plan years ending 2051
 - Other funding relief
 - Grants, not loans - **No repayment required**
- Estimated cost:
 - \$86 billion (CBO)
- Estimated number of plans that will qualify:
 - 185 plans (average based on 500 simulations by the CBO).

Special Financial Assistance



Plan Eligibility

What plans are eligible?

- Plans in critical and declining status in any plan year beginning in 2020 through 2022
- Plans that suspended benefits in accordance with MPRA prior to March 12, 2021
- Plans that meet each of the following in any plan year beginning in 2020 through 2022
 - In critical status
 - Have a modified funding percentage (current value of plan assets / current liabilities) less than 40%
 - Over 60% of participants are inactive (ratio of active to inactive less than 2 to 3)
- Plans that became insolvent after December 16, 2014 and have remained insolvent and have not been terminated as of March 11, 2021

Application Process

Minimal specifics in statute

PBGC regulations & guidance

- By July 9, 2021
- Regulations & guidance are supposed to
 - Limit materials required to the minimum necessary
 - Specify effective dates for transfers of payments to plans
 - Provide alternative application process for plans that have been approved for a partition

Application Process (continued)

Priority Applications

PBGC may limit applications through March 11, 2023 to:

- Plans that are insolvent or likely to become insolvent prior to March 12, 2026
- Plans for which PBGC would be required to provide more than \$1 billion in assistance in the absence of assistance under the Act
- Plans that have suspended benefits under MPRA as of March 11, 2021
- Other plans as determined by PBGC

Application Process (continued)

Timing

- Deadline to apply – December 31, 2025
 - PBGC has 120 days to notify the plan if the application is incomplete, assumptions are unreasonable, or the plan is ineligible
 - Plan can then submit a revised application
 - Deadline for revised applications – December 31, 2026
 - If PBGC does not notify plan within 120 days, application is deemed approved
- Payments to be made by September 30, 2030

Amount of Special Financial Assistance

- The amount of Special Financial Assistance is the amount required for multiemployer pension plan to pay all benefits due through the end of the last day of the plan year ending in 2051
- Theoretically no cap on amount
- Funding projections are to be made on a deterministic basis
- To be paid to the plan as a single lump sum as soon as practicable upon approval of application by PBGC, but no more than one year after approval

Assumptions

- For determining eligibility
 - A plan's critical and critical and declining status assumptions for plan certifications prior to Jan. 1, 2021 are to be used unless clearly erroneous
 - For certifications post December 2020, a plan is to determine critical/ critical and declining status for determining eligibility using assumptions in its most recently completed certification prior to Jan. 1, 2021, unless the assumptions (excluding plan interest rate) are unreasonable

Assumptions

- For determining amount of special financial assistance
 - Amount must be sufficient to pay benefits through 2051
 - In determining the amount, a plan is to use interest rate used in most recent certification of plan status prior to January 1, 2021, provided it cannot exceed the interest rate limit
 - Plan to use other assumptions from most recent certification of plan status prior to January 1, 2021 -- as long as reasonable
- Interest rate limit for assumption purposes
 - A statutory formula using the portion of the corporate bond yield curve based on bonds maturing after 20 yrs, plus 200 bps (approximately 5.5% currently)
- Assumption changes – No to interest rate changes, but yes to other assumptions if unreasonable and changes are not unreasonable

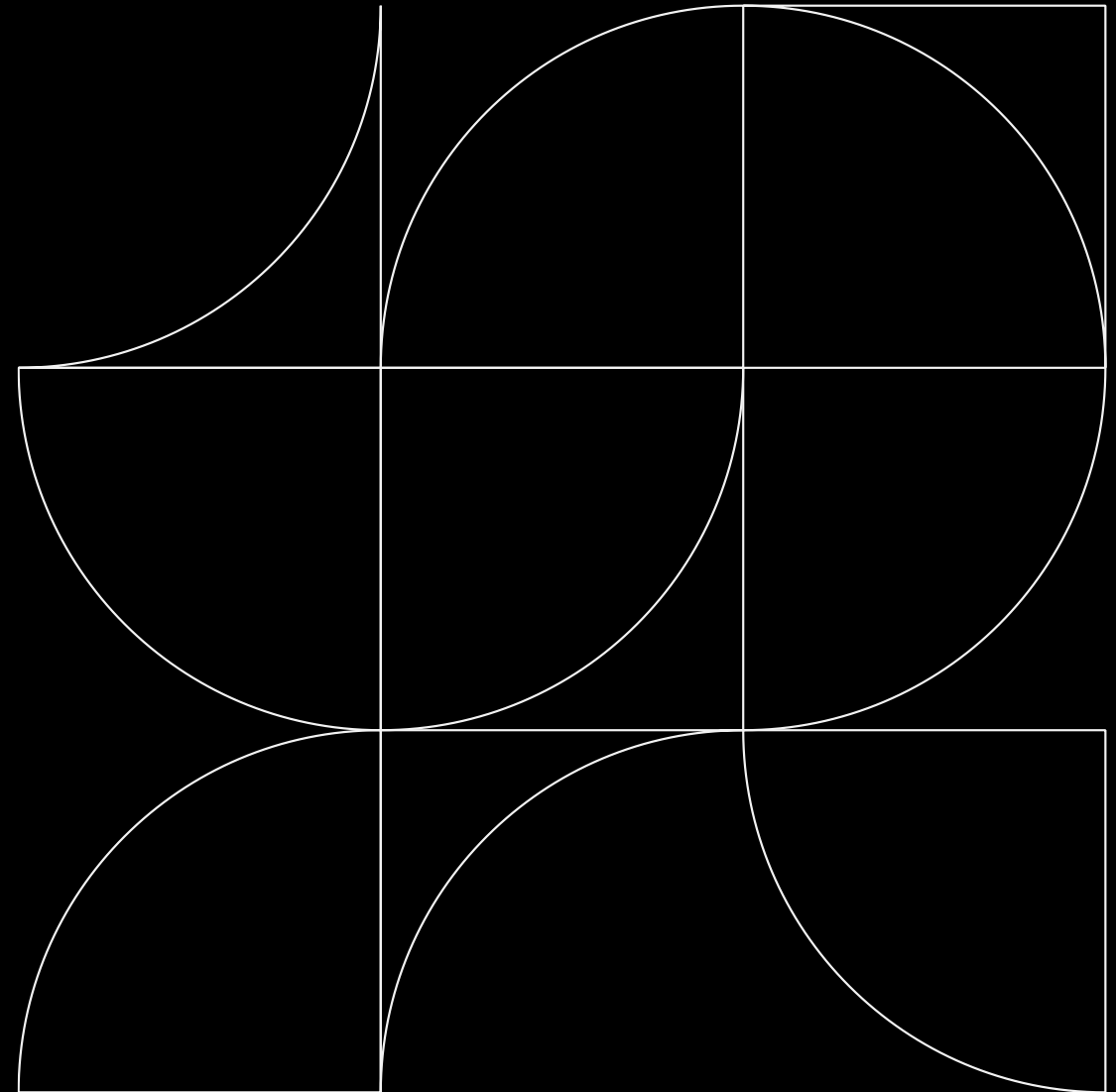
Conditions on Relief

- Special Financial Assistance funds (and earnings thereon) can be used to make benefit payments and pay plan expenses
- Must be segregated from other plan assets; invested only in investment-grade bonds or other investments as permitted by PBGC
- Deemed to be in critical status until the last plan year ending in 2051
- Plans that become insolvent after receiving relief subject to rules for insolvent plans
- Must reinstate any previously suspended benefits under the MPRA
 - Either as lump sum within 3 months or monthly equal installments over 5 years (to begin within 3 months)
- Not eligible to apply for a new suspension of benefits under the MPRA

Conditions on Relief

- The PBGC, in consultation with Treasury, is authorized to issue additional regulations/conditions on plans receiving special financial assistance
 - May relate to increases in future accrual rates and retroactive benefit improvements; allocation of plan assets; reductions in employer contribution rates; diversion of contributions to, and allocation of expenses to, other benefit plans
 - PBGC also authorized to regulate withdrawal liability for plans receiving assistance
 - PBGC may not impose conditions relating to any prospective reduction in plan benefits; plan governance; or any funding rules relating to the plan receiving assistance
 - Act does not set a deadline for issuance of these regulations or guidance
- Also: Increase in PBGC premium rates from \$31 per participant for 2021 to \$52 per participant for plan years beginning after December 31, 2030, with indexing for inflation tied to the Social Security Act's national wage index

Other MEPP Changes



Temporary Funding Status Relief

- Multiemployer pension plan may elect to retain for plan year 2020 or 2021 (known as the “designated plan year”) the zone status that applied for the previous year.
 - Applies to first plan year beginning during period from March 1, 2020 and ending February 28, 2021, or the next succeeding plan year
- Plans in endangered or critical status for year preceding designated plan year not required to update applicable schedules, until the year following the designated plan year.
 - No further notification required regarding endangered or critical status, but must provide notice to participants, beneficiaries, the PBGC, and DOL of its election

Funding Improvement Plan and Rehabilitation Plan Relief

- Multiemployer pension plans already in endangered or critical status may elect to extend any applicable funding improvement plan or rehabilitation plan for five years (from 10 to 15; 15 to 20 for seriously endangered)
- Plan years beginning on or after December 31, 2019

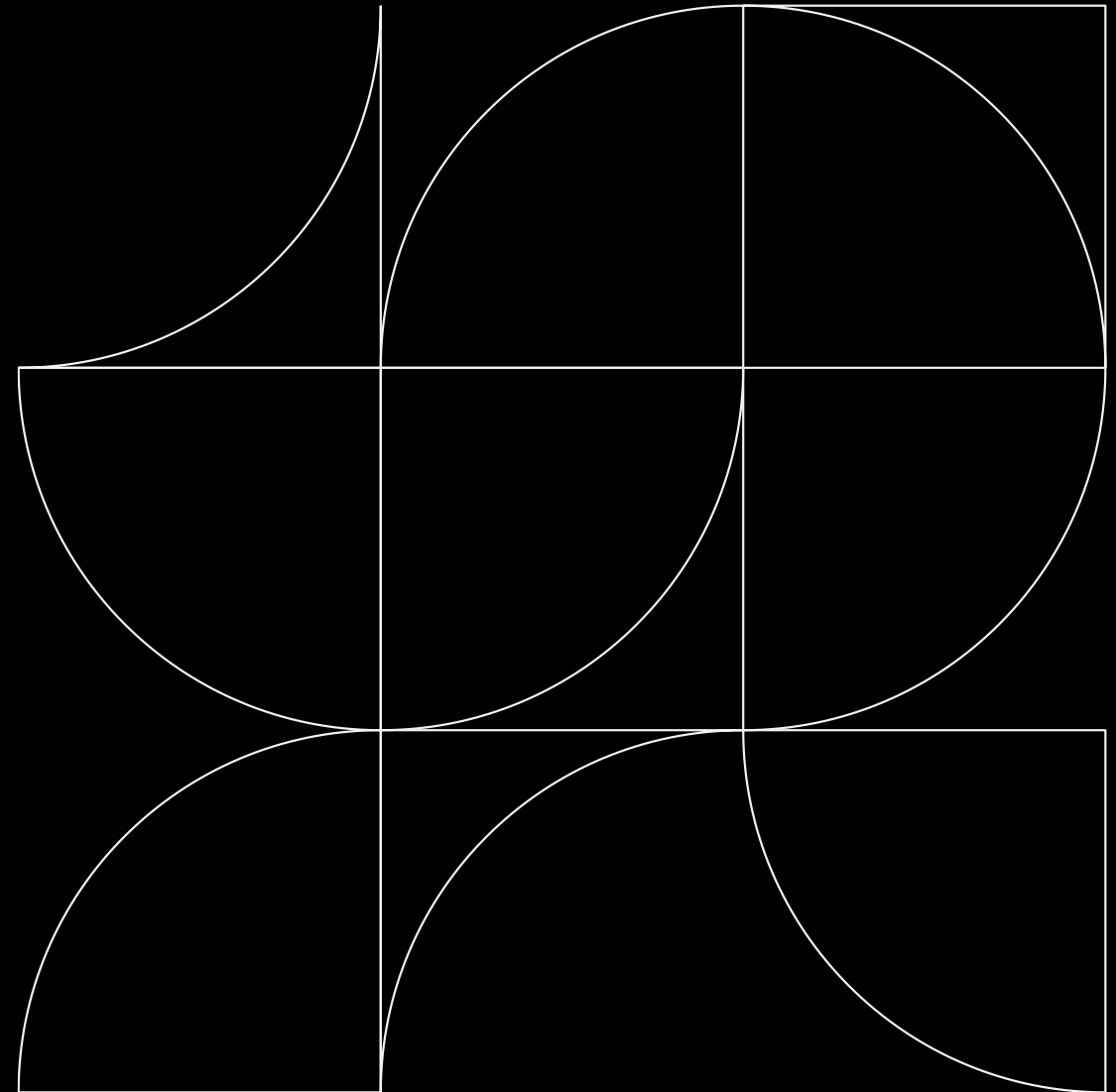
Asset Smoothing

- Similar to relief provided 2008 and 2009
- Investment losses incurred in first two plan years ending after February 20, 2020 may be smoothed over 10 years rather than 5
- Asset may be valued at up to 130% of fair market value for the two plan years beginning after February 29, 2020

Amortization Relief

- Similar to relief provided in 2008 and 2009
- Allows multiemployer pension plans to amortize investment losses from first two plan years ending after February 29, 2020 over a 30-year period (instead of 15 or less)
- Applies to investment losses and “other losses” related to COVID-19, including experience losses related to reductions in contributions, reductions in employment, and deviations from anticipated retirement rates.

Impact for Plans and Employers



Impact for Multiemployer Pension Plans

Financial Assistance

- Depends on funded status
 - Critical and declining, critical status
 - Endangered status
- Plans that do not qualify for relief

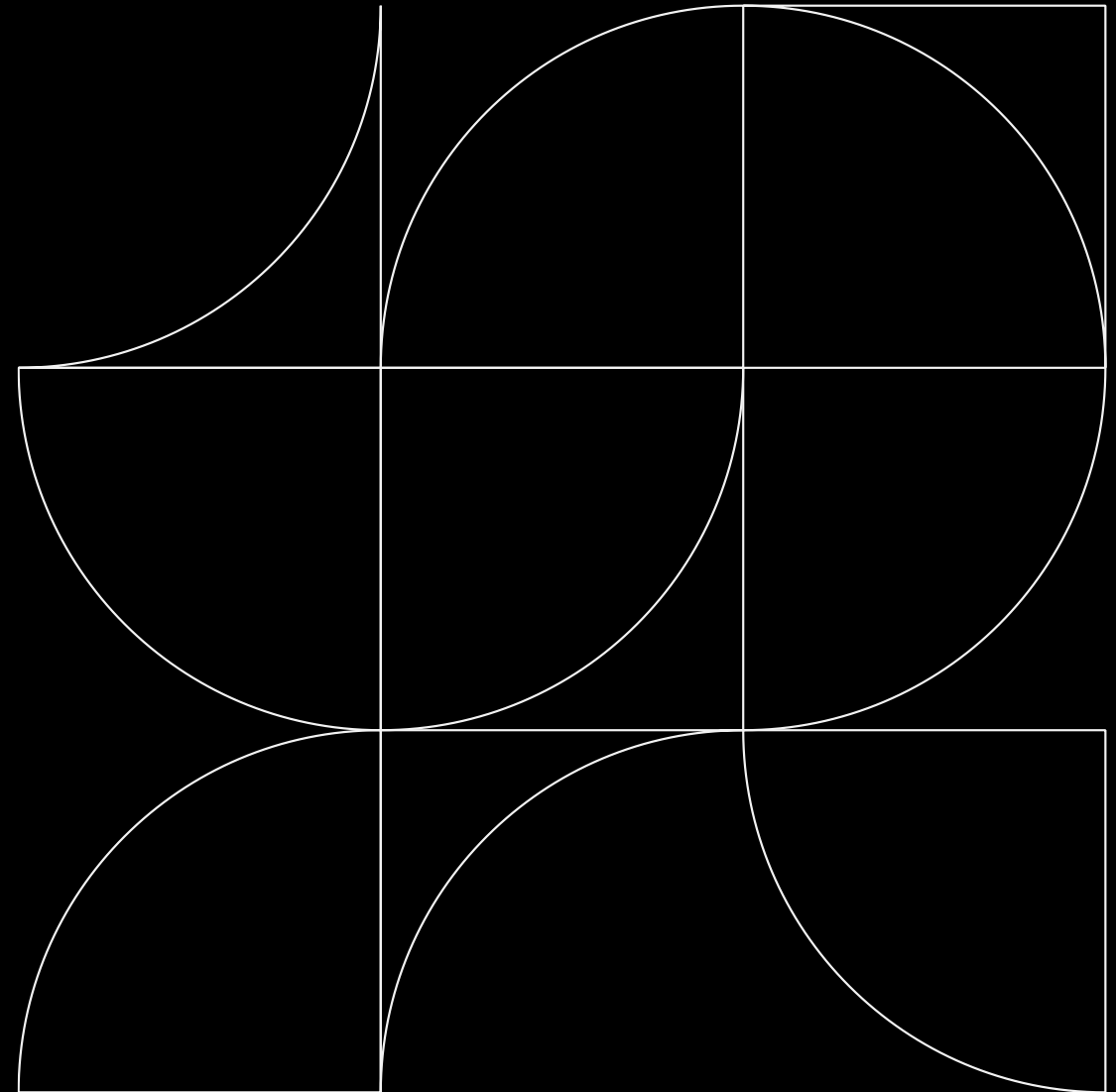
Funding Relief

- Similar to relief provided after Great Recession
- Many plans have recovered from 2020 decline

Impact for Employers

- Mass Withdrawal
- Contribution Rates
- Withdrawal Liability
 - Earlier versions of the Butch Lewis Act of 2021 included provisions stating participating employers would not see reduction in withdrawal liability due to multiemployer plan receiving special financial assistance for 15 years
 - The Act as passed no longer has this carve out for withdrawal liability.
 - The Act would not otherwise change how withdrawal liability is calculated, including application of withdrawal liability payment schedule, 20-year cap on payments, or mass withdrawal liability rules.
 - However, the Act gives PBGC authority to impose additional conditions with respect to withdrawal liability.

Discussion



Big Questions

- How many will qualify?
- Fate of those that do not qualify?
- Impact on hybrid plans?
- Ongoing employer participation?
- What will the regs say as to:
 - Withdrawal liability
 - Investments
 - Contribution changes
 - Benefit changes
- Accuracy of the SFA lump sum to meet objectives?
- Broader pension reform?

Next Steps

- The Development of the Regulations
- Plans
 - Monitor proposed regulations and comment
 - Must assess eligibility as quickly as possible
 - If eligible, apply as soon as possible
- Employers
 - See which plans qualify
 - Evaluate rules imposed on plans that qualify
 - Analyze long term impact on plans
 - Factor changes into benefits analysis

Questions?



Additional Resources :

Beneficially Yours Blog

<https://www.beneficiallyyours.com/>

Employer Labor Relations Blog

<https://www.employerlaborrelations.com/>

thank
you

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