

# **MULTIEMPLOYER PENSION RECAPITALIZATION AND REFORM PLAN**

**White Paper**



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# Multiemployer Pension Recapitalization and Reform Plan

## Whitepaper

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### *The Multiemployer Pension System is Failing and Needs Reform*

The multiemployer pension system, which promises retirement benefits to over 10 million participants, is in crisis. Around 125 multiemployer plans in “critical and declining” status have determined that they will become insolvent over the next two decades, and several in the next few years, if they keep their current benefit levels.<sup>1</sup> This will leave more than 1.3 million participants without the benefits they have been promised.<sup>2</sup> Another large group of participants are in “critical status” plans that do not expect to meet minimum-funding requirements of the law. More generally, multiemployer plans are poorly funded in comparison with other employee pension plans in the private sector.

This level of existing and incipient plan failures represents a sharp change from historical experience. Since 1980, fewer than 100 multiemployer pension plans have become insolvent, covering approximately 100,000 participants. Projected plan failures over the next two decades, by contrast, threaten the retirement security of more than 1.3 million workers.

Until recently, most participants in insolvent plans received their full benefit from the multiemployer pension guarantee financed through the Pension Benefit Guaranty Corporation (PBGC).<sup>3</sup> Recent insolvencies have departed from this pattern, as the federal guarantee has not been updated to keep up with changes in plan benefit levels or even inflation. As a growing number of participants face plan failures over the next 20 years, the benefit guarantees provided by the federal government are increasingly likely to fall short of the amount of benefits promised by their plans.

The projected rise in multiemployer plan insolvencies threatens not just the security of participant benefits, but also the ability of the federal guaranty program to deliver on the limited guarantees it provides. Those guarantees are provided by PBGC, a wholly owned U.S. government corporation established under the Employee Retirement Income Security Act (ERISA) and financed predominantly through premiums paid by insured pension plans and their

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<sup>1</sup> Under present law, a “critical and declining” plan has a funding percentage of less than 65 percent and is within 20 years of projected insolvency. The proposal would revise these benchmarks to within 15 years of insolvency and entering critical status within five years. Such plans would be required to take stronger remedial actions to improve their funded status.

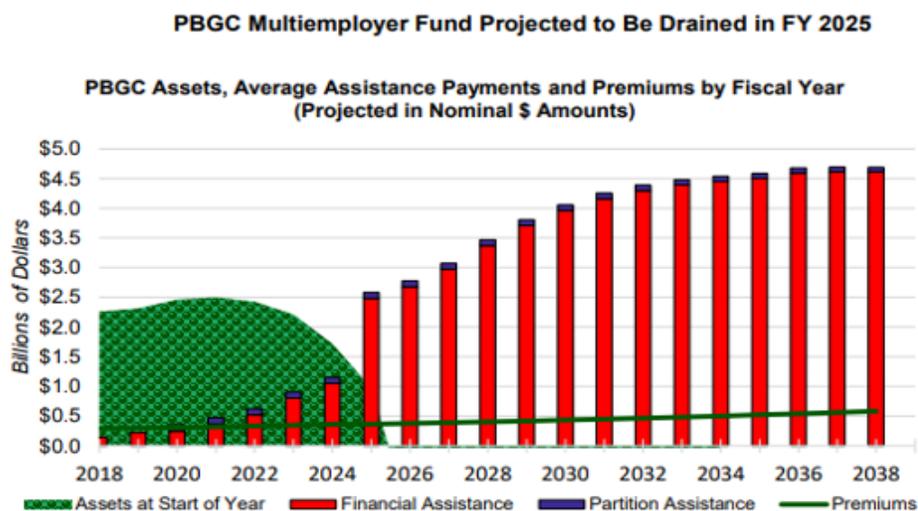
<sup>2</sup> PENSION BENEFIT GUARANTY CORP., FY 2018 PBGC PROJECTIONS REPORT at 1 (2019), <https://www.pbgc.gov/sites/default/files/fy-2018-projections-report.pdf>.

<sup>3</sup> In a March 2015 Study, PBGC found that over 79 percent of participants in plans that became insolvent prior to October 1, 2013, received or would receive their full accrued benefit and that most of the remaining participants received more than 90 percent of their benefit. See PENSION BENEFIT GUARANTY CORP., PBGC’S MULTIEMPLOYER GUARANTEE at 1, fig. 1 (2015), <https://www.pbgc.gov/documents/2015-ME-Guarantee-Study-Final.pdf>.

participants.<sup>4</sup> PBGC insures, under two separate programs, both single-employer and multiemployer private-sector defined benefit pension plans.

PBGC’s multiemployer insurance program faces a financing crisis because its premium-based funding is falling short of liabilities. As of November 18, 2019, the multiemployer program had a \$65.2 billion deficit – \$68 billion in liabilities, primarily for plans that are likely to become insolvent in the next decade and only \$2.9 billion in assets.<sup>5</sup> The multiemployer program deficit dwarfs that of PBGC’s historical experience under the single-employer program, which provides a higher guarantee to nearly three times as many individuals, and is subject to higher premiums. The multiemployer program’s liabilities have increased dramatically, particularly since 2014. The significant problems projected for the multiemployer insurance program stem from the wave of anticipated insolvencies among currently ongoing plans, and existing problems arising from the insufficiency of assets and premiums to pay the current level of guarantees for plans already insolvent and/or terminated.

On a cash-flow basis, annual financial assistance provided from the PBGC’s multiemployer program to financially challenged multiemployer plans is projected to rise rapidly as plans continue to become insolvent – from \$140 million in 2017, to \$1 billion by 2023, \$2 billion by 2025, \$3 billion by 2027, and upwards of \$4 billion *per year* by 2033.<sup>6</sup> By 2025, however, assets in the multiemployer insurance fund are likely to be exhausted, according to PBGC projections. Unless Congress acts to increase premiums and fundamentally reform the system, current law requires PBGC to reduce guarantees to only the amount payable from incoming premiums, which will result in participants receiving only a small fraction of the benefit guarantees they currently are eligible to receive.



Source: PBGC FY 2018 Projections Report, p. 10, available [here](#).

<sup>4</sup> Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974).

<sup>5</sup> PENSION BENEFIT GUARANTY CORP., ANNUAL REPORT 2018, at 27 (2018), <https://www.pbgc.gov/sites/default/files/pbgc-annual-report-2018.pdf>.

<sup>6</sup> PENSION BENEFIT GUARANTY CORP., *supra* note 2, at 10, fig. 3.

The figure above shows that average projected financial assistance payments (red and blue bars combined) from PBGC to multiemployer plans rise dramatically over the next 10 years, because of the rising needs of plans projected to enter insolvency in the 2020s. Annual financial assistance payments rise much more rapidly than premiums (green line) to exceed \$3 billion in every year with continuous growth. And, "...under current law, the projections show that *any single year of financial assistance* in the 2030s is anticipated to exceed the largest level of assets ever projected to have accumulated for the multiemployer fund."<sup>7</sup>

Each year of delay in confronting the problems of the multiemployer system significantly increases both the need for additional PBGC premiums and the cost of preserving benefits on which 1.3 million participants and beneficiaries depend.<sup>8</sup>

### ***What Needs to be Done?***

Despite unfavorable economic conditions in some prior years, many multiemployer plans are currently, by the plans' preferred measurement approaches, in adequate financial condition and may remain so for many years. However, a significant number of plans, including some very large ones, are facing severe financial difficulties. Many of those plans report that no realistic combination of contribution increases or allowable benefit reductions – options available under current law to address their financial condition – will enable them to emerge from critical and declining status.<sup>9</sup> As a result, without some prudently structured federal reforms, the plans face insolvency.

The financial challenges in PBGC's multiemployer pension program is exacerbated by the fact that neither the troubled multiemployer plans nor PBGC currently have the flexibility or financial resources to mitigate the effects of anticipated insolvencies adequately. Should a critical mass of plan insolvencies drain the PBGC multiemployer insurance fund, PBGC will not be able to pay either current or future retirees more than a very small fraction of the benefits they were promised. Consequently, a substantial reduction in retirement income may be a real possibility for the millions of workers and retirees who depend on benefits from these plans.

### ***The Proposed Reforms***

The reform concepts described in the Technical Explanation that accompanies this Whitepaper (hereafter, the proposed reforms) address the immediate financial challenges of a number of

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<sup>7</sup> PENSION BENEFIT GUARANTY CORP., *supra* note 2, at 11, fig. 4 (emphasis added).

<sup>8</sup> See *The Multiemployer Pension Plan System: Recent Reforms and Current Challenges: Hearing Before the S. Comm. on Fin.*, 114th Cong. at 49–55 (prepared statement of Joshua Gotbaum, Guest Scholar, Economic Studies Program, Brookings Institution) (2016).

<sup>9</sup> See, e.g., *Challenges Facing Multiemployer Pension Plans: Reviewing the Latest Findings by PBGC and GAO: Hearing before the Subcomm. on Health, Empl., Labor, and Pensions of the H. Comm. on Edu. and the Workforce*, 113th Cong. at 16 (2013) (testimony of Charles Jeszeck, Dir. of Edu., Workforce, and Sec., Gen. Acct. Off. ("GAO")); see also U.S. GENERAL ACCOUNTABILITY OFFICE, PRIVATE PENSIONS: TIMELY ACTION NEEDED TO ADDRESS IMPENDING MULTIEMPLOYER PLAN INSOLVENCIES (GAO-13-240) at 20 (Mar. 2013), <https://www.gao.gov/assets/660/653383.pdf>.

plans in critical financial condition. But, unlike other reform proposals,<sup>10</sup> the proposed reforms also make significant changes to the management and operation of all multiemployer pension plans so that, moving forward, all plans will be better funded and more transparent to participants, sponsoring employers, and government regulators. The reforms are designed in a balanced way to avoid tipping more plans into a poorer funded condition, and also to avoid exposing taxpayers to the full risks associated with the largely underfunded multiemployer system and pushing the PBGC into insolvency. Providing relief to critical and declining plans as part of the reforms is contingent on changes to the legal framework of the multiemployer pension system to ensure that the plans operate on a sound financial basis in the future.

The scale and scope of the underfunding in a large number of multiemployer plans is high. The costs of financial assistance and changes to the system envisioned in the proposed reforms, which are anticipated to decline over time, should be born principally by the stakeholders within the system.

### ***Reformed Premium Structure***

To finance the reforms and provide a stronger insurance guarantee to participants in the system, the proposed reforms create a new premium structure, designed to broaden the base upon which premiums are assessed in order to spread more equitably the costs of insuring benefits and to ensure PBGC solvency over the long term. This new structure applies a co-payment to active workers and retirees. However, because of the broadened contributing base, the co-payments are significantly less than the amount of the typical benefit cuts retirees would face under current law if a plan should fail. Older retirees and disabled participants will be protected. The small monthly co-payments envisioned in the reforms not only shore up the finances of the PBGC, but also fund an increase in the guaranteed benefit level for the vast majority of participants in the system.<sup>11</sup> Raising the guaranteed benefit in this manner greatly reduces the risk of significant reductions in income that retirees face should the plan in which they participate become insolvent. That is, the PBGC multiemployer pension insurance benefit guarantee is increased under the proposed reforms, and the financial condition of PBGC's multiemployer pension program is significantly improved.

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<sup>10</sup> For example, according to a letter from the Congressional Budget Office (CBO) to the Honorable Mike Enzi, the Rehabilitation for Multiemployer Pensions Act of 2019 (sometimes referred to as the "Butch-Lewis Act"), despite calling for the federal government to disburse \$39.7 billion in loans to certain multiemployer pension plans, "...about one-quarter of the affected pension plans would become insolvent in the 30-year loan period and would not fully repay their loans..." and "[m]ost of other plans would be insolvent in the decade following their repayment of their loans." See Letter from Phillip L. Swagel, Dir., Cong. Budget Office, to Sen. Mike Enzi, Chairman, Sen. Comm. on the Budget, regarding potential effects of H.R. 397, the Rehabilitation for Multiemployer Pensions Act of 2019 (Sept. 6, 2019), [https://www.cbo.gov/system/files/2019-09/Enzi\\_letter\\_hr397.pdf](https://www.cbo.gov/system/files/2019-09/Enzi_letter_hr397.pdf).

<sup>11</sup> Without an infusion of new premium revenue and absent other reforms, the PBGC has reported that it will likely become insolvent by 2026. See PENSION BENEFIT GUARANTY CORP., *supra* note 1, at 1 ("This year's projections for PBGC's Multiemployer Program continue to show a very high likelihood of insolvency during FY 2025, and that insolvency is a near certainty by the end of FY 2026.").

### ***Providing Immediate Help with Expanded Partition Authority***

Financial assistance offered to critical status plans comes in the form of a special partition option. This is not a new concept. Rather, it is simply an expansion of the PBGC's current authority.<sup>12</sup> Partitioning permits financially healthy employers to maintain a plan by carving out plan liabilities attributable to participants who have been "orphaned" by employers who have exited the plan without paying their full share of contributions. Those orphan liabilities generally are the unmet obligations that degrade a plan's funding status. Removing them allows the original plan to continue to provide benefits in a self-sustaining manner, by funding benefits with contributions from current participating employers. Partitioning is akin to creation of a "healthy pension" that continues in a healthy fashion and a separate "sick pension" that requires attention and assistance from the PBGC.

Under current law, PBGC has the authority to order the partition of a plan's orphaned participants either on its own or through an application by the plan sponsor.<sup>13</sup> Once a plan is partitioned, PBGC assumes the responsibility of paying benefits to the orphaned participants up to the guarantee limits. ERISA specifies criteria for when PBGC can utilize its partitioning authority based on whether the plan is receiving adequate contributions to remain solvent and whether a partition will prevent insolvency of the "healthy pension" that remains from the original plan. In practice, however, PBGC has rarely used this authority, because the standards for doing so are hard to meet and because of concerns about the solvency of PBGC should it take on liabilities through partition. The proposed reforms address the latter concern by strengthening the PBGC.

The proposed reforms revise the partition qualification requirements. By expanding PBGC's ability to take over the sick part of a troubled plan, the healthy portion of the plan remains financially viable. The partitioned plan will be subject to limitations on future benefit accruals and limited benefit reductions, structured such that workers will be made better off than under current-law partition requirements. In the long run, this also benefits taxpayers because, without the partition, in the event of overall plan insolvency, PBGC would be responsible for paying benefits to *all* beneficiaries and not just those resulting from the sick portion of the multiemployer plan.

### ***Increasing PBGC Multiemployer Insurance Guarantee***

Under current law, PBGC has separate guarantee programs for single-employer plans and for multiemployer plans. For multiemployer plans, PBGC uses a formula to calculate a maximum benefit guarantee based on the amount of a plan participant's years of credit service earned and pension benefit accrual rate (the rate at which the worker's pension benefit is built up over the participant's years of service). For example, if a retiree has earned 30 years of credit service, the maximum coverage under the PBGC guarantee is about \$1,073 per month, which results in an *annual* pension benefit of \$12,870. The current guaranteed benefit is not adjusted for inflation or

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<sup>12</sup> The partition concept is similar to procedures employed by the Federal Deposit Insurance Corporation when it takes over an FDIC-insured financial institution facing insolvency.

<sup>13</sup> Under ERISA's multiemployer rules, "plan sponsor" refers to the joint board of trustees established under the governing documents of the plan.

cost-of-living increases. In contrast, the *monthly* guarantee for a similar participant in a private-sector single-employer pension plan is \$15,343.<sup>14</sup>

Because the PBGC multiemployer guaranty level is comparatively low, many participants would lose a considerable amount in earned pension benefits above the current maximum guarantee level if their plans were to become insolvent.

The proposed reforms include an increase in the guaranteed benefit level to provide participants more insurance against underfunding – PBGC’s guaranty would cover more of their earned benefits given a higher maximum guarantee level if their plan became insolvent. But, critically, the proposal is balanced with other changes designed to improve the funding of the multiemployer plans over time.

### ***How are the Proposed Reforms Financed?***

While the PBGC is a federal agency, it is not funded with tax dollars. Instead, its insurance programs are funded primarily by premiums collected from defined benefit plan sponsors, and from earnings from invested assets it assumes from failed plans. PBGC’s premiums are set by Congress and are a key determinant of whether PBGC has enough money to pay all benefits in the future or whether the agency runs a deficit and itself faces insolvency.

The sponsor of a multiemployer pension plans pays a flat-rate premium to the PBGC for insurance coverage, which is payable with respect to every participant with a benefit under the plan. In 2019, the annual flat-rate premium is \$29 per participant in a multiemployer plan. In stark contrast, the flat-rate premium for 2019 in PBGC’s single-employer pension guarantee program, which is in sound financial position, is \$80 per participant.<sup>15</sup>

For several years, PBGC has reported that premiums in the multiemployer program are insufficient to cover the multiemployer program guarantees. In a 2016 study, PBGC estimated the amount of premium revenue expected to be needed to fund the insurance program through 2025.<sup>16</sup> With respect to premium increases necessary to prevent insolvency, PBGC projected that “[t]he range of potential increases is wide, ranging from 59 percent to 85 percent for 10 year solvency and from 363 percent to 552 percent for 20 year solvency.”<sup>17</sup>

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<sup>14</sup> See *Maximum Monthly Guarantee Tables*, PENSION BENEFIT GUARANTY CORP., <https://www.pbgc.gov/wr/benefits/guaranteed-benefits/maximum-guarantee>.

<sup>15</sup> The PBGC single-employer pension guarantee program also charges a variable-rate premium, in addition to the flat-rate premium. For 2019, in addition to the \$80 flat-rate premium, the variable-rate premium is \$43 per \$1,000 of unfunded vested benefits capped at \$541 times the number of participants. See PENSION BENEFIT GUARANTY CORP., COMPREHENSIVE PREMIUM FILING INSTRUCTIONS FOR 2019 PLAN YEARS at 1, <https://www.pbgc.gov/sites/default/files/2019-premium-payment-instructions.pdf>.

<sup>16</sup> Section 131(c) of the Multiemployer Pension Reform Act of 2014 (“MPRA”) required PBGC to submit a report to Congress analyzing whether current premium levels are sufficient for the PBGC to meet its multiemployer financial assistance obligations for 10- and 20-year periods beginning with 2015. PENSION BENEFIT GUARANTY CORP., PBGC MPRA REPORT at 4, n.4 (2016), <https://www.pbgc.gov/documents/MPRA-Report.pdf>.

<sup>17</sup> PENSION BENEFIT GUARANTY CORP., PBGC MPRA REPORT at 1.

The proposed reforms establish a new premium structure designed to enable PBGC to provide financial assistance to the most troubled multiemployer plans, generate revenue to fund the increased guaranteed benefit, and improve the financial condition of PBGC. In particular, the reform proposal raises the current flat-rate premium from \$29 per participant to \$80, a level more consistent with that required of private-sector single-employer plans as described above. It establishes a variable-rate premium tied to a plan's funding status to manage the risks stemming from more poorly funded plans. The proposal also creates a new stakeholder co-payment assessed on all employers and unions participating in a plan, and a sliding-scale co-payment applied to retirees receiving benefit payments from a plan, based on the plan's funding status. In no case, however, would the retiree co-payment be higher than 10 percent, and it will be substantially less than the benefit cuts retirees face under MPRA, which begin at 20 percent and many cases, can be much higher. The retiree co-pays are sliding-scale in that they change with age and health status of the retiree – the proposed reforms generally exempt elderly and disabled retirees from the co-payments. This structure ensures that the individuals who most directly benefit from the reforms to the multiemployer system bear a meaningful but not burdensome cost of the reforms and take a direct stake in providing a safe-and-sound, financially healthy, multiemployer pension system for the future.

While the foregoing reforms to the premium structure and other proposed reforms will fundamentally strengthen the financial status of the multiemployer pension system, limited federal taxpayer resources still will be necessary for the proposed reforms to be implemented in the near term and to succeed over the long term. As structured in the proposed reforms, the transfer of federal resources is expected to comprise only a small portion of the financial assistance provided to the faltering multiemployer plans. The proposed reforms mirror previous efforts with respect to financial institutions, which were funded primarily through changes within the financial-services system, but also included reforms to the underlying system in order to reduce risks to the federal taxpaying public and to prevent future financial crises.<sup>18</sup> The proposal follows these precedents by providing financial assistance to the most critically declining multiemployer plans, while reforming the system to improve future funding, and providing the pension regulators new authority to oversee the management and operations of the plans.

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<sup>18</sup> For example, the financial assistance provided to banking institutions during the Great Depression included the establishment of the federal deposit insurance system paid for by a premium structure, as well as new regulatory authority for banking regulators to oversee the system. *See generally* Banking Act of 1933, Pub. L. No. 73-66, 48 Stat. 162. Later legislation, the Banking Act of 1935, included a series of reforms to limit bank behavior, in order to reduce federal taxpayer exposure to risks related to aggressive banking practices. *See* Banking Act of 1935, Pub. L. No. 74-305, 49 Stat. 684. Likewise, the financial assistance provided to the large financial institutions in 2008 and 2009 was accompanied by substantial reforms of the regulatory structure to reduce future risks, as well as rigorous conditions placed on the financial institutions receiving financial aid in order to reduce taxpayer risk. *See* Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343, 122 Stat. 3765. These are just three examples of attaching systemic reforms to legislation to provide federal aid to financial institutions. There are numerous other examples of these types of reforms.

## *Making the Multiemployer Pension System Healthier*

### *Estimating Plan Liabilities*

The Internal Revenue Code sets minimum-funding standards for private-sector defined benefit pension plans, according to which plan sponsors are required to set aside funds to ensure the payment of promised benefits. Minimum-contribution amounts are determined by the plan's actuary and reflect an amount expected to be sufficient to pay for benefits over time.

Under current law, multiemployer plan actuaries have wide discretion to set the assumptions and funding methods used to measure their expected future liabilities, values of asset holdings, and determine funding costs (*i.e.*, how much they should set aside to be able to pay promised future benefits).

This discretion has remained unchanged since ERISA was enacted in 1974. While the statute affords plans considerable flexibility in setting assumptions, and the Internal Revenue Service (IRS) has some authority to regulate assumptions, plan actuaries and plan trustees generally determine key actuarial assumptions with little meaningful regulation. This is one of the most important factors in the chronic underfunding of these plans.<sup>19</sup>

The regulation of the multiemployer pension systems stands in stark contrast to the regulation of the private-sector single-employer defined benefit pension plans. The rules for the single-employer system require much more conservative pricing of future benefit obligations, generally restrict increasing benefits when a single-employer plan is poorly funded, and mandate the termination of a plan if it cannot meet required contributions or projects that it is unable to pay benefits when they are due. These rules, which were strengthened in the Pension Protection Act of 2006, have substantially improved the funding of the single-employer plans and the financial position of PBGC's single-employer insurance program.<sup>20</sup>

Current measurement rules governing acceptable actuarial assumptions for use in multiemployer plan funding decisions do not serve the best interests of workers and retirees. The rules have not been sufficient to keep a significant portion of multiemployer plans in good financial health, as key actuarial assumptions – particularly the discount rate – have tended to underestimate liabilities and result in insufficient contributions to the plans.

To ensure that benefits promises ultimately are met, the proposed reforms strengthen the rules for measuring present values of known future obligations (pension benefit promises). While immediate implementation of these changes would be ideal, a rapid change to a more rigorous funding standard could cause contributions to rise substantially and create unexpected financial burdens for participating employers. To avoid an unnecessary shock to the system, the proposed reforms phase in new measurement standards over time as necessary, and near-term

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<sup>19</sup> The authority and discretion to make unrealistic assumptions of high anticipated future returns on a pension fund's assets or high rates with which to discount future obligations can easily lead to pension plan instability and eventual insolvency.

<sup>20</sup> Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780.

contributions initially may be limited, where appropriate, to a measure of affordability for employers.

The proposed changes will require plan trustees and actuaries to measure and project more prudently and accurately plan assets and liabilities. These reforms are designed to help move plans toward full funding and to ensure protection of the interests of plan participants and taxpayers, and not to punish plans for past inaccuracies.

### *Zone Status Measurement*

In 2006, the Pension Protection Act introduced new funding rules for multiemployer pension plans based on tiered funded (“zone”) statuses, which operate in addition to the minimum-funding standards. Under the zone system,<sup>21</sup> every plan is required to certify annually its funded status to the plan’s trustees and the IRS, including the zone in which it falls. Certifications of zone status are based on whether the plan’s “funded status” (*i.e.*, ratio of assets to liabilities using actuarial funding measurements) at the beginning of the plan year is at least 80 percent, and on projections of the plan’s ability to meet the minimum-funding requirements and remain solvent in the future. These rules, which are summarized in the figure below, are designed, in principal, to compel trustees to identify and correct existing and potential funding issues proactively, in order to prevent further funding deterioration and stabilize the plans’ finances.

**Summary of Plan Zone Status Criteria**

Not in Distress (Green Zone)	- Not Yellow, Orange, or Red Zone
Endangered (Yellow Zone)	- Plan is less than 80% funded or a funding deficiency is projected within 7 years
Seriously Endangered (Orange Zone)	- Plan is less than 80% funded and a funding deficiency is projected within 7 years
Critical (Red Zone)	- Various alternative criteria indicating severe funding or liquidity issues—generally less than 65% funded ratio, insolvency projected within 5-7 years, or a funding deficiency is projected within 4-10 years
Critical and Declining (Red Zone subset)	- Plan is projected to become insolvent within 15 years (20 years if the plan is less than 80% funded or there is less than one active for each inactive participant)

The current zone-status rules, however, have not proven to be an effective tool for reducing plan underfunding, particularly for plans in the lower-zone categories. For example, various statutory exemptions have allowed “Red-Zone” plans (*i.e.*, those in the most severe financial condition) to

<sup>21</sup> The zone system ranges from the so-called “Green Zone” for healthy plans to “Yellow Zone” and “Red Zone” status as the health of the plan declines.

make smaller contributions than those required of “Green-Zone” and “Yellow-Zone” plans.<sup>22</sup> Moreover, the rules do not require plans to be fully funded at any point. The zone targets are based on plan funding estimates developed by a plan’s actuaries based on their own assumptions, and do not measure key factors for estimating the long-term financial status of a plan.<sup>23</sup>

The proposed reforms strengthen the zone rules. Plans will be required to look farther into the future in estimating their financial status, institute a form of “stress testing” to check whether a plan can remain financially sustainable through potential economic and demographic “shocks,” and bolster the steps a plan must take when it begins to show signs of financial hardship. Additionally, the proposal includes new incentives for multiemployer plans to improve their funding status by establishing new upper-tier zones for very healthy plans, which will be subject to fewer restrictions as long as they continue to demonstrate financial health and an ability to weather potential financial shocks and protect participant benefits.<sup>24</sup>

### *Withdrawal Liability*

The Multiemployer Pension Plan Amendments Act (MPPAA) established employer withdrawal liability rules that have remained largely unchanged for multiemployer plans since 1980.<sup>25</sup> The current rules make any employer that leaves a multiemployer plan liable to the plan for its share of the plan’s underfunding. The rules are intended to discourage employers from leaving a plan. In practice, however, the rules also discourage new employers from joining an existing multiemployer plan, because they would have to assume partial responsibility for any unfunded liability of all employers in the plan. Without new participants, there will be no growth and less assurance of the long-term stability of the multiemployer pension system.

In addition, because withdrawal liability assessments are based on a plan’s self-selected actuarial assumption, which are not required to be consistent with the assumptions the plan uses for determining liabilities and employer contributions, they are frequently estimated to be much higher than liabilities reported for other purposes under ERISA.<sup>26</sup> This leads to frequent litigation between exiting employers and the plans, or negotiated withdrawal liability, which in either case can exacerbate plan underfunding.<sup>27</sup>

The proposed reforms replace the current withdrawal liability rules with a simpler and more transparent method for determining an employer’s withdrawal liability. The proposal will require measurement of withdrawal liability using the same methods and measures as the plan uses to measure its assets and liabilities for funding and reporting purposes. Under the proposal,

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<sup>22</sup> *The Multiemployer Pension Plan System: Recent Reforms and Current Challenges: Hearing before the S. Comm. Fin.*, 114th Cong. at 16 (2016) (statement of Andrew G. Biggs, Resident Scholar, American Enterprise Institute).

<sup>23</sup> Charles Blahous, *Averting the Multiemployer Pension Solvency Crisis*, ECONOMICS at 21 (Oct. 26, 2018), <https://economics21.org/multiemployer-pension-blahous>.

<sup>24</sup> Under the proposed reforms, these better funded plans will not be required to adopt corrective actions plans, including benefit cuts, and may reduce contributions in certain circumstances, as long as the plans continue to show they are financially healthy on a long-term basis.

<sup>25</sup> Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364, 96 Stat. 1208.

<sup>26</sup> Blahous, *supra* note 23.

<sup>27</sup> Participating employers also report that uncertainty over withdrawal liability has led to issues in accessing bank credit and in succession planning for smaller businesses.

the payment of withdrawal liability amounts will be based on the plan's funded status, once the withdrawal liability is measured under the new rules.

These reforms of the withdrawal liability system are linked to other reforms to the system under the proposal. It is important to note that withdrawal liability is paid only when an employer leaves a plan, so that as funding levels for the plans improve, withdrawal liability becomes less of an overall factor in the financial health of the system.

### ***Safeguarding Reform***

In order for the reform proposal's partition program to operate effectively, the proposed reforms includes transfer of a limited amount of federal taxpayer funds to PBGC. Because this transfer places taxpayers at risk should plans fail to move to fully funded status, the proposal includes a number of internal plan governance reforms to protect taxpayers. The proposal is not punitive in nature, but recognize that the federal government has a limited stake in the management of the pension funds that choose to seek partition assistance from PBGC. The internal plan governance reform parallels conditions that were placed on financial intermediaries that received federal financial assistance historically, such as in the 2008-2009 financial crisis.

The reforms to plan management and governance will subject the trustees, who are the fiduciaries for the plans, to greater safeguards in order to reduce moral hazard and to make it clear that this proposal, like all previous federal assistance to financial intermediaries, comes with changes and controls to safeguard taxpayers from further financial risk.

### ***Keeping Participants and Regulators Informed***

Reporting and disclosure by multiemployer pension plans under current rules are inadequate and need to be reformed. Participants do not receive clear and understandable information on the financial condition of their multiemployer pension plan. Participating employers do not have regular access to information on their withdrawal liability or about the basis on which the liability is calculated. Similarly, government regulators do not receive timely or usable information on the status of the plans or the economic conditions under which the plans operate.

The proposed reforms strengthen disclosure requirements for multiemployer plans and increase penalties for late filing of information and for filing inaccurate information. More user-friendly and accurate information will enable all participants and stakeholders in multiemployer plans to understand the risks and benefits of these programs, while stronger disclosure rules will ensure that plan stakeholders can accurately monitor the condition and outlook of a plan.

### ***Looking to the Future***

The proposed reforms will provide an option for the sponsors of a multiemployer plan to establish a new hybrid pension plan – called a “composite” plan – on a prospective basis. Under this concept, the sponsors of a multiemployer plan can set up a hybrid plan that pools employer contributions for investing, but only provides benefits to participants based on the contributions and any associated gains on their investment. Employers establishing a new composite plan

would be relieved of withdrawal liability for benefits in the new plan, and, because workers and retirees transitioned to the new plan would no longer be covered by PBGC insurance guarantees, the plans and participants would not pay premiums to PBGC, leaving more of the funding to strengthen the retirement benefits under the composite plan. These provisions include explicit mechanisms to maintain the funded status of the legacy multiemployer plan from which the new composite plan would originate.