

COVID-19 Relief Bill Could Rescue Union Retirees' Pensions

By **Emily Brill**

Law360 (February 23, 2021, 6:45 PM EST) -- The COVID-19 pandemic relief legislation set for a vote this week in the House contains a provision to save struggling union pension plans that experts say has a good shot at passing, forecasting a possible end to a \$65 billion funding crisis that threatens one million retirees' pensions.

The American Rescue Plan, which cleared the House Budget Committee on Monday, would provide direct assistance to roughly 200 financially struggling union pension plans through the federal government's safety net for these plans, the Pension Benefit Guaranty Corp., which would in turn receive the money from the U.S. Treasury.

If the proposal becomes law, union pension activists say the long-brewing, dire funding crisis could finally come to an end, and about a million retirees could breathe easier after a lot of false starts.

"We've seen no less than 10 bills and proposals in the time I've been doing this, since the beginning of 2013. It's time," said Mike Walden, the president of the advocacy group National United Committee to Protect Pensions. "I personally am optimistic they'll get something done, because everybody needs help right now because of COVID."

The \$1.9 trillion American Rescue Plan's pension section differs slightly from previous proposed fixes to the funding crisis, though it follows a mold laid out in the Butch Lewis Act. That bill, which passed the House in 2019, proposed a federal lending program for troubled union pension plans, which are also called multiemployer plans.

Unlike the Butch Lewis Act, the COVID-19 relief bill wouldn't require the plans to pay back the money they receive from the federal government.

Pension activists think lawmakers structured the proposal this way to get the OK to include it in the American Rescue Plan, which is moving through Congress under the fast-tracked budget reconciliation process.

Each component of bills that pass through this process must have a sufficient connection to the federal budget to get the approval of a Senate official called the parliamentarian, who decides which proposals belong in fast-tracked legislation.

"A provision has to have a budgetary impact to be included in a reconciliation bill. You can't include, say, something like social policy," said Timothy Lynch, who directs Morgan Lewis & Bockius LLP's government relations practice.

When it comes to the American Rescue Plan, Lynch said he believes federal lawmakers "have already started discussions with the parliamentarian" about what concerns go into her decision-making process.

If the parliamentarian lets the union pension language stay in the pandemic relief bill, Lynch said he believes the measure will pass, citing "the overwhelming support among the Democratic caucus for addressing the multiemployer plan issue."

The bill would need to gain the support of 100% of the Senate's Democrats to make it to President Joe Biden's desk, with Vice President Kamala Harris casting the tie-breaking vote.

Two moderate Senate Democrats, Sens. Joe Manchin of West Virginia and Kyrsten Sinema of Arizona, have said they're opposed to another proposal currently in the American Rescue Plan — raising the minimum wage to \$15 by the year 2025.

"There's a pretty strong debate on the minimum wage," said Lynch, who pointed out that this provision would need to clear two hurdles to remain in the bill: centrist Democrats' skepticism and the parliamentarian's decision-making process.

The proposal to rescue troubled union pension plans has generated less vocal opposition, and Manchin has gotten behind a version of it in the past, introducing the Butch Lewis Act into the Senate in 2019.

Karen Friedman, executive director of the Pension Rights Center, said she's optimistic for the proposal's chances, especially given that it would prevent further damage to a pandemic-bruised economy.

"It's good money spent, because you're saving pensions, you're saving plans, you're saving the economy in a lot of ways," Friedman said. "From our perspective, this is a COVID issue."

The pension fix arrived in the American Rescue Plan less than a month after House lawmakers introduced a similar bill to save ailing union pension plans.

Pension activists and benefits attorneys who monitor the union pension funding crisis have said they're optimistic a solution will finally get over the finish line now that Biden has taken office.

The funding crisis, which has grown worse over the past decade, was spurred by a cocktail of factors including deregulation of several union industries in the 1980s and baby boomers aging out of the workforce en masse.

If Congress does not intervene, several large pension plans are slated to run out of money within the next four years, including the 256,000-member Central States Pension Fund.

Those insolvencies will speed up depletion of the PBGC's insurance program for these plans, which is currently more than \$60 billion in debt and slated to run out of money by 2026. If that happens, retirees could see their pensions cut by 90% or more, the agency has said.

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