SECTION BY SECTION

House Committee on Education and Labor
Chairman Robert C. "Bobby" Scott

Emergency Pension Plan Relief Act of 2021 (EPPRA)

Sec. 1. Short Title.
This section specifies the short title of the legislation is the Emergency Pension Plan Relief Act of 2021 (EPPRA).

Title I – Relief for Multiemployer Pension Plans

Sec. 101. Special Partition Relief.
Under the Employee Retirement Income Security Act (ERISA), the PBGC has limited authority to "partition" certain failing multiemployer pension plans. In practice, this means that a failing plan can apply to the PBGC to transfer a portion of its benefit obligations (such as the benefits of participants of an employer who is no longer making contributions to the plan) to what's referred to as a successor plan. Those participants whose benefits are transferred to a successor plan then have the PBGC directly pay their benefits but at a reduced amount. The original plan continues to pay the full benefits of the non-partitioned participants. The partition concept is intended to help failing plans avoid insolvency and preserve benefits for as many of the participants as possible, though, in practice, the PBGC has only used its partition authority a handful of times.

This section, which amends ERISA and expands upon existing PBGC partition authorities, establishes a special partition relief program to be implemented and administered by the PBGC. The purpose of the special partition relief program is to ensure eligible plan participants receive earned benefit (no cuts) and eligible plans remain well-funded for 30 years. The program is funded through the direct transfer of funds from the Treasury Department.

There are four categories of plans that are eligible for the special partition relief program: (1) plans that are in "critical and declining" status (projected to be insolvent within the next 15 years or, in some situations, 20 years) between the date of enactment and 2022; (2) plans that a suspension of benefits application approved under the *Multiemployer Pension Reform Act* (MPRA); (3) plans that are in "critical" status and less than 40% funded and have an active to inactive participant ratio of less than two to three between the date of enactment and 2022; and (4) plans that became insolvent after December 16, 2014. Because of the COVID-19 pandemic's on-going impact to multiemployer plans, particularly the loss of employment and decrease in number of hours worked, EPPRA allows plans to become eligible for a period after the date of enactment.

Within 120 days following enactment, the PBGC is required to issue regulations setting forth requirements for the special partition application process. The PBGC may prioritize the processing of applications of those plans most in need. An eligible plan may apply to the PBGC and, upon approval, receive financial assistance. Under the special partition relief program, the amount of liabilities that the PBGC assumes (and finances) is enough to keep the plan solvent and well-funded for 30 years – with no cuts to the earned benefits of participants and beneficiaries.

Any plan, which previously cut benefits under the MPRA and receives financial assistance in this special partition relief program, must restore its benefit cuts on a going forward basis and provide participants a lump sum payment (or equivalent monthly installments over a period of five years) to make them whole from past cuts.

The partition amount is readjusted every five years to ensure the plan remains solvent and well-funded, and adjustments cease when a plan attained an 80% funded level in five consecutive years.

Each plan receiving special partition relief assistance must comply with certain conditions imposed by PBGC and file regular comprehensive reports. Employers in multiemployer pension plans receiving partition relief do not have such partition assistance considered for purposes of calculating withdrawal liability for 15 years following the partition.

This section includes accountability and transparency provisions. The PBGC is required to annually report to Congress on the implementation and administration of the special partition relief program. The Government Accountability Office (GAO) is required to regularly evaluate PBGC's implementation and administration of the special partition relief program. The PBGC's Inspector General receives funding to audit the special partition relief program to prevent against waste, fraud, and abuse. The PBGC is required to establish and regularly update a user-friendly website so that plan administrators, employers, participants, beneficiaries, interested stakeholders, and the public can track the implementation and administration of the special partition relief program.

Sec. 102. Repeal of Benefit Suspensions for Multiemployer Plans in Critical And Declining Status.
The MPRA permitted certain failing plans to apply to the Treasury Department to cut participants' benefits to avoid insolvency. In Section 101, those plans that used the MPRA process to secure benefit cuts are eligible for the special partition relief and required to restore any pension cuts. This section repeals this section of MPRA on a going forward basis. In the future, no participant or beneficiary in a multiemployer plan would have their hard-earned benefits cut under MPRA.

Sec. 103. Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical, or Critical and Declining Status.
The *Pension Protection Act of 2006* (PPA) required plan trustees to conduct financial status projections of their plans at least once a year. If the projections reveal a problem, a plan will be classified as endangered (yellow zone) or critical (red zone). The MPRA added another classification – critical and declining (deep red zone) – for those plans that are projected to become insolvent in the next 20 years. In this section, a plan may retain its funding zone status as of a plan year beginning in 2019 for plan years that begin in 2020 or 2021. A plan in endangered or critical status will not have to update its plan or schedules until the plan year beginning March 1, 2021. This section is intended to provide plans with flexibility and ease an administrative burden in light of the COVID-19 crisis. Congress granted similar relief for multiemployer plans during the 2008 financial crisis.

Sec. 104. Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Endangered and Critical Status for 2020 and 2021.
The PPA required trustees of multiemployer pension plans that are less than 80% funded to develop either funding improvement or rehabilitation plans to improve its funding status. In this section, a plan in endangered (yellow zone) or critical (red zone) status for a plan year beginning in 2020 or 2021 may extend its rehabilitation period by five years. This section is intended to give plans additional time to improve contribution rates, limit benefit accruals, and maintain plan funding. This provision, which will help those plans that are not eligible for the partition relief program, is effective for plan years beginning after December 31, 2019. Congress granted similar relief for multiemployer plans during the 2008 financial crisis.

Sec. 105. Adjustments to Funding Standard Account Rules.
Funding shortfalls as a result of investment losses are generally required to be made up by plans over a period of 15 years. Following the financial crisis of 2008, multiemployer plans were allowed to amortize investment losses from 2008 or 2009 over a period of 30 years. The COVID-19 crisis and resulting loss of employment is damaging multiemployer pension plans, which are funded by negotiated contributions typically made to plans based on participants' hours worked. Expanded smoothing allows plans to fully reflect these losses over a longer time frame and allows additional time for plans to recover from the impacts of the pandemic. In this section, for plan years beginning in 2019 and 2020, a plan may use a 30-year amortization base to spread out investment and employment losses. Congress granted similar relief for multiemployer plans following the 2008 financial crisis.

Sec. 106. PBGC Guarantee for Participants in Multiemployer Plans.
The PBGC "guarantee" is the amount of a participant's benefit that he/she receives if the plan becomes insolvent. The guarantee is based on a formula (100% of the first $11 of the monthly benefit rate, plus 75% of the next $33 monthly benefit rate, multiplied by the participant's years of service. This section nearly doubles the guarantee to 100% of the first $15 in monthly benefits per year of service and 75% of the next $70 in monthly benefits per year of services, and it indexes it thereafter. Currently, the maximum guaranteed benefit for a participant with 30 years of service is $1,072.50 per month or $12,870 per year. With the proposed changes in this section, the maximum guaranteed benefit increases to $2,025 per month or $24,300 per year. The enhanced guarantee applies to any plan that may go insolvent in the future. For instance, if a critical status (red zone) plan, which does not meet the special partition relief program's eligibility criteria, becomes insolvent in any year following the date of enactment, its participants' benefits will be reduced to the enhanced guarantee level. The enhanced guarantee is not retroactive, meaning it does not apply to participants in those plans that are already insolvent.

Title II – Relief for Single Employer Pension Plans

Sec. 201. Extended Amortization for Single Employer Plans.
In light of an ongoing pattern of interest rate volatility, pension plans and plan sponsors need more stability and a longer period to pay for long-term liabilities that can stretch out for more than 50 years. In this section, funding shortfalls are amortized over 15 years (instead of 7 years).

Sec. 202. Extension of Pension Funding Stabilization Percentages for Single Employer Plans.
In 2012, 2014, and 2015, Congress provided for pension interest rate smoothing. Under interest rate smoothing, the interest rates used to value pension liabilities must be within 10% of 25-year interest rate averages. The smoothed interest rates will begin phasing out in 2021, with the 10% corridor around the 25-year interest rate averages increasing five percentage points each year until interest rates need only be within 30% of the 25-year averages. In this section, the 10% interest rate corridor is reduced to 5% effective in 2020. The phase-out of the 5% corridor is delayed until 2026, at which point the corridor increases by 5 percentage points, as under current law, each year until it attains 30% in 2030, where it stays. A 5% floor is put on the 25-year interest rate averages. This floor is intended to establish stability and predictability on a longer-term basis so that interest rate variations do not create excessive volatility. The provision is effective for plan years beginning after December 31, 2019. These provisions are typically scored as "revenue raisers," as businesses would be allowed to decrease pension contributions in the short term; and, consequently, businesses' taxable income would increase, and the government would collect more money in the short run.