MEMORANDUM

From: Pamela Nissen
Date: February 25, 2019
Re: Summary of 115 H.R. 4444 (Neal Bill) (Butch Lewis Act)

The Ways and Means Committee Chairman Richard Neal introduced an act in the House of Representatives on January 9, 2019 – the Rehabilitation for Multiemployer Pensions Act (RMPA or Act). The RMPA tracks the Butch Lewis Act with only a few minor changes. The Butch Lewis Act was introduced in the previous Congress. In brief, if the Act became law, it would allow financially-troubled multiemployer pension plans to stabilize their finances with governmental loans.

Executive Summary:
- Eligible plans apply to a new agency, the Pension Rehabilitation Agency for 30-year, low interest loans
- The loans are funded through the issuance of Treasury bonds
- Loan proceeds are used to pay for benefit obligations in pay status (restoring any benefits previously suspended)
- The loan proceeds will be used to either purchase annuities or they will be segregated into a low-interest, low-risk investment portfolio
- The loan is paid off over 30 years with interest payments only in the first 29 years and the principal in year 30
- The plan must demonstrate in the application that it will remain financially solvent and that it will be able to make interest payments plus accumulate funds to pay the principal in year 30
- No benefit improvements or contribution decreases allowed during the loan period
- Changes to the withdrawal liability rules, including treating any withdrawal from a plan during a loan period under the mass withdrawal rules
- Changes to the funding rules regarding the liabilities relating to the loan
It is absolutely essential that relief is provided this Congress. We need a solution to this retirement crisis. Below is a summary of the various sections of the proposed legislation. While the Neal Bill may present some challenges with its implementation, it provides much needed relief for plans who will soon be unable to pay benefits. Following the summaries, the HealthWORKS board provides a reaction to the most pertinent language.

1. Creation of the Pension Rehabilitation Administration (PRA) (Sec. 2)

The Act proposes the establishment of a new agency within the Department of Treasury, the Pension Rehabilitation Administration (PRA). The purpose of the PRA is to issue bonds to finance the loans to plans in the critical and declining status. The Director of the PRA is to be appointed by the President for a five-year term. The PRA will be funded on an annual basis by the Department of Treasury.

Support: The development of another agency may create additional bureaucracy that limits the usefulness of the Act. However, if properly managed and individuals familiar with the operation of federal loan programs are involved, the PRA will be useful in implementing the complex provisions of the Act.

The five-year term may help limit the political nature of the Director’s position. While generally checks and balances are helpful, the Act should provide greater leadership to just this agency. Like MPRA, the Act authorizes involvement from the DOL, PBGC and Treasury. It should be clarified that the PRA is the entity ultimately responsible for the administration of this Act.

2. Establishment of the Rehabilitation Trust Fund (Sec. 3 and Sec. 6)

Section 3 establishes the Rehabilitation Trust Fund within the Treasury. The Trust Fund is to be funded through proceeds of bonds issued by the Treasury.

Section 6 of the Act provides for the Issuance of Treasury bonds, in an amount necessary to fund the loan program (as defined in Section 4). The authority referenced is 31 USC §3102. This is the general authority granted to Treasury to issue bonds. The amount of the bond issuance is determined in consultation with the Director of the PRA. As noted above, the proceeds from those bonds are to be deposited into the Trust Fund. In addition, any interest payments received from pension funds will be deposited into the Trust Fund.

Strongly Support: For those financially troubled plans on the verge of insolvency now, an infusion of cash is the only real solution to continued payment of the promised benefits. The Act also sets up a process that will ensure access to relief for other plans that may encounter financial difficulty in the future.

3. Loan Program for Multiemployer Defined Benefit Plans (Sec. 4)
The heart of the legislation is contained in Section 4 with the establishment of the loan program. The Act provides that the program is to be established not later than April 30, 2019. Regulations are to be issued by the Director of the PRA, PBGC and DOL by July 1, 2019.

Section 4(a)(2)

The Act gives the Director of the PRA the authority to determine whether a loan will be issued, but requires the Director to consult with the Secretary of the Treasury, the Secretary of Labor and the Director of the PBGC.

Section 4(a)(3)

This section establishes the loan program and provides that the Treasury must approve or deny a loan application within 90 days of receiving an application. It also provides that a plan may apply for a loan before the program is established and the PRA may approve the loan if necessary to avoid any suspension of the accrued benefits of participants.

Section 4(b)

A loan will be for a period of 30 years. The plan is required to make interest-only payments for the first 29 years. The final payment in the 30th year will be for the entire principal amount. There are several additional stipulations during the loan period:

- No increase in benefits
  - If the plan had previously suspended benefits under MPRA or had an application approved under MPRA, the plan will reinstate the benefits
- No reduction in employer contribution rates
- Comply with 6059A (actuarial report filing requirements)
- Comply with any such additional requirements the Director of the PRA provides in the loan

**Concern for Process:** The regulations issued for MPRA effectively blocked a number of applications. Regulations may significantly impact the Act’s implementation. We would like to see the Act have more details and less discretionary authority for rule-making and decision-making.

**Strongly Support:** For the financially troubled plans, time is of the essence. One of the impediments to the MPRA application process was the significant delay between the date of filing and the date of determination by Treasury of the application. The 90-day deadline will keep the process moving. For any legislation to be successful, it needs to be agile and adaptable to each plan’s unique circumstance. Give the trustees the tools to address their plan’s situation.

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**Section 4(c)(1)**

The loan application process has a number of requirements, similar in nature to the language used in MPRA.

- Demonstrate that the loan will enable the plan to avoid insolvency for at least 30 years or to emerge from insolvency within the 30 years in the case of an insolvent plan.
- Plan is reasonably expected to be able to pay benefits, the interest on the loan and accumulate sufficient funds to repay the principal at the end of the loan period.
- Provide information necessary to determine the loan amount.
- Stipulate whether the plan is already receiving or plans to apply to receive assistance from the PBGC.
- State the manner in which the loan proceeds will be invested, the person from whom any annuity contracts will be purchased, and the person who will be the investment manager for any portfolio.
  - There does not appear to be a limit on the number of investment managers. The Act also does not provide the process for changing managers. However, there is general oversight delegated to the Director of the PRA and it is likely that the regulations will provide more details.
- Include any other information the Director of the PRA requires.

**Strongly Support (except the last bullet point):** The 30-year time period is necessary for the program to succeed. Although it restricts the trustees’ decision-making authority, we recognize that there should not be benefit improvements until the loan is repaid and that employer contribution requirements should not be decreased. We support the language regarding restoration of any benefits previously suspended.

With respect to the broad discretion granted to the Director of the PRA, as noted above, we believe it would be better to identify all of the requirements in the Act.

**Support (with changes to the use of the loan proceeds):** We generally support the concepts set out in the provisions regarding the contents of the loan application. However, when combined with the restrictions for the use of the loan proceeds, it will make it difficult for plans to meet the requirements. If a plan purchases annuities with the loan proceeds, it will be difficult for the plan to generate sufficient additional revenue for the interest payments and the principal payment. If the plan adopts a portfolio with the restrictions set forth in the Act, it may be able to accumulate some of assets necessary to pay the interest obligation, but it will be difficult for it to demonstrate it will be able to pay the principal amount in year 30.

**Section 4(c)(2)**
The standard the Director is supposed to apply is similar to the standard that was supposed to be applied for reviewing MPRA applications. The Director shall accept the determinations and demonstrations in the application unless the Director, in consultation with the PBGC and DOL, concludes that the determinations and demonstrations were clearly erroneous.

**Strongly Support:** We strongly support this language, but only with the addition of language explicitly listing what determinations and demonstrations are subject to the standard. Further, given the MPRA experience, the Act needs to explicitly define the term “clearly erroneous” to prevent any confusion or misapplication of the standard by the PRA.

Section 4(c)(3)

The Director has 90 days to approve or deny any application. An application is deemed approved unless within the 90 days the Director notifies the plan sponsor that the determinations and demonstrations were deemed clearly erroneous.

Section 4(d)

Generally, the amount of the loan is to be determined using two methods: the amount needed to purchase annuity contracts or the amount needed to implement a portfolio as described later in the Act (or a combination of the two) sufficient to provide benefits to participants and beneficiaries in pay status at the time the loan is made.

If the plan has already suspended benefits, the amount of loan needs to be for the benefits of participants and beneficiaries in pay status without regard to the suspension. In addition, the loan amount must include an amount for retroactive payment of benefits which would have otherwise been payable during the period of suspension.

There are two additional sections addressing the situation where a plan either intends to file for PBGC assistance or is already receiving PBGC assistance.

**Support:** The loan amount needs to be sufficient to allow the plan to succeed. The Act’s description of the determination of the amount of allow seems to include an element of flexibility. For many of the plans closest to insolvency, the proper loan amount will address the current cash flow issues.

We strongly support the reinstatement of previously suspended benefits.
Section 4(d)(3)

The Act constrains the use of the loan proceeds to either the purchase of annuity contracts or to implementing a portfolio within the Act’s requirements.

- The annuities are to be purchased from an A rated or better insurer and meet all of the fiduciary standards of ERISA.
- A separate portfolio is to be established for the loan proceeds.
- The portfolio is limited to a cash matching portfolio or duration matching portfolio consisting of investment grade fixed income investments, issued at fixed or zero coupon rates. Or any other portfolio prescribed by the Secretary of Treasury in regulations.
- The investment manager for the portfolio is required to be a fiduciary under ERISA.
- The portfolio is subject to oversight of the PRA with reporting obligations.
- The plan sponsor must comply with ERISA Section 4004’s Plan Sponsor Advocate requirements, who will act as an ombudsperson with respect to the participants and beneficiaries in pay status.

Strongly Object: While we support providing a separate “pool” for the loan proceeds, we cannot support these restrictions on the loan proceeds. The purchasing of annuities will not generate sufficient revenue for the plan to pay interest and to accumulate a reserve to pay the principal. Purchasing annuities may not even be an option for some of the larger plans given the current market.

While we recognize that it is important to have some restrictions on the investment portfolios, the proposed language is too restrictive. Trustees should be allowed greater flexibility with respect to the investment options for the loan proceeds.

Section 4(e), 4(f) and 4(g)

These sections address loan defaults, the authority to issue rules and coordination with unrelated business income (UBIT). (See previous comments regarding rule-making authority.)

4. Coordination with withdrawal liability and funding rules (Sec. 5)

Section 5 addresses the withdrawal liability rules following the plan’s receipt of a loan. There are a number of complicated rules involving withdrawal liability and this summary is limited to highlighting only the more troubling provisions. If an employer withdraws during the loan period, the withdrawal will be determined using the mass withdrawal rules. In general, the Act appears aimed at substantially increasing an employer’s withdrawal liability.

The Act also refers to the treatment of the liabilities associated with the annuity contracts and the portfolio following the receipt of a loan, for the plan’s funding analysis.
**Strongly Object:** Withdrawal liability can be a significant impediment to organization of employers. If an employer is contemplating becoming signatory to a collective bargaining agreement, but knows that it has the potential to be subject to significant withdrawal liability, the employer is less likely to be willing to enter into the agreement.

One of the key factors for determining a defined benefit plan’s health is its maturity. The more mature a plan is, the more likely it is to encounter funding issues. When you have a strong and growing active population, plans are more likely to cash flow. The less mature plans are also less vulnerable to economic downturns. To the extent that the Act increases withdrawal liability, it works against the general purpose of restoring troubled plans to health.

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**5. Reporting Obligations (Sec 7)**

This section identifies the various reporting requirements of plans who have received a loan. The reporting requirements are annual. Much of the information is the same as what is already required of plans, but will require a separate filing and therefore create additional administrative expenses. There is an additional requirement for reporting to the participants and beneficiaries.

**Support:** While there are some additional costs associated with the reporting obligations, it is important to have the information provided to both the PRA and the participants.

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**6. PBGC Financial Assistance (Sec 8)**

The final section of the Act provides information on PBGC financial assistance. The Act provides for appropriations to the PBGC amounts necessary for the PBGC to provide assistance.

**Strongly Support:** The PBGC is severely underfunded with respect to multiemployer plans. The funding shortfalls cannot be made up through increases in premiums. Additional funding is required if this agency is to remain solvent.