July 31, 2020

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
Washington, D.C. 20510

The Honorable Chuck Schumer
Minority Leader
U.S. Senate
Washington, D.C. 20510

Dear Leader McConnell, Speaker Pelosi, and Minority Leaders Schumer and McCarthy,

The bipartisan GROW Act, which would authorize a new type of retirement plan called a composite plan, has passed the Democratic-controlled U.S. House as part of the HEROES Act, and is also included in the Grassley-Alexander Senate pension reform plan. We commend the leaders and members of Congress for their thoughtful and bipartisan support of composite plans, as the multiemployer pension system is in desperate need of new ideas and approaches for providing sustainable lifetime income to retired middle-class and blue-collar workers.

It is imperative that Congress act swiftly to permit the adoption of composite plans, and legislators must not be distracted by misleading criticisms of the proposal.

Overview

The GROW Act concept was first proposed over 7 years ago by a group of labor and management representatives from across the multiemployer community, The Retirement Security Review Commission (Commission), who worked together to find innovative solutions to the pension funding crisis that followed the 2008 market crash. The Commission was convened with the premise that it was time to reexamine the basic presumptions on which the system was built, not to reflexively conclude that those presumptions were correct and that new ideas must be wrong. That premise is still true today.

The Commission issued a report entitled, “Solutions Not Bailouts”. The recommendations for reform contained in that report represented significant and, in some cases, profound changes from then current law. Nevertheless, the Commission recognized that the challenges confronting the sponsors and participants of multiemployer plans were and are unprecedented and without bold and decisive action, the ability and the desire of stakeholders to continue to support these essential benefits would quickly be subsumed by forces beyond their control. The recommendations were developed as a community and we have worked together as a community to enact the recommendations into law. The GROW Act is the last piece of the Commission’s recommendations we seek to be enacted. Enactment is important to preserve lifetime retirement benefits for millions of working men and women.

The GROW Act Would Protect Current Defined Benefit Plans

Critics of composite plans have seized on the fact that when a defined benefit pension plan transitions to a composite plan, it is allowed to amortize its unfunded liability over a period of 25 years. These criticisms are misleading in that they disregard provisions of the GROW Act that would dramatically strengthen the obligation of employers to fund legacy benefits.

Current law contains a 15-year funding standard, which sounds tough until you realize that plans are not actually required to comply with it. When a plan becomes significantly underfunded it is classified in critical status, at which time it is permitted to ignore the 15-year amortization period without any penalties applying. Further, under current law the trustees of critical status plans have full discretion to conclude that employers simply cannot afford to fund the benefit promises, and can then set the required contributions at whatever level they feel is reasonable. Current law also provides for a notional 'credit balance', which can allow plans to delay implementing their responses to underfunding while still complying technically with the 15-year funding standard.

In contrast, under the composite plan rules, the trustees of a legacy defined benefit plan would lose all of this discretion and deferral ability. There would be an actuarial calculation done annually of the amount needed to fund the benefits accumulated in the legacy plan, and the contribution rates must be at least at that level. Therefore, after a defined benefit plan converts to a composite plan, the trustees of the legacy plan would have no ability to deviate from the minimum requirements or to defer action in the way they are able to do under the current funding rules.

The composite plan rules provide that the required contributions to a legacy plan will not exceed 75% of the total contributions between the legacy and composite plans. This cap is necessary because active participants will generally only agree to sacrifice pension contributions out of their wages if they get at least a minimally acceptable level of benefit accrual in return. To put this in perspective, a detailed review of Form 5500 filings indicates that the median critical and declining status plan with ongoing benefit accruals provides accruals that represent approximately 25% of the bargained employer contributions, leaving 75% of those contributions available to reduce unfunded liabilities. Among the very worst funded plans, the composite plan rules would therefore require an allocation of contributions to unfunded legacy liabilities that is roughly comparable to what is actually occurring on average today.[1]

The GROW Act Will Preserve and Expand Employer Support of Legacy Defined Benefit Plans

The Commission was aware that employers in some industries experienced credit access problems resulting from lenders' fear of withdrawal liability. In the industries in which this is most common it is also relatively easy to lawfully avoid withdrawal liability under current rules. As a result, some employers in these industries leave defined benefit plans and others seek to convert those plans to defined contribution arrangements. This trend has contributed to the current funding problems of defined benefit plans and the PBGC. The Commission sought a new

[1] Reflects updated analysis as of July 31, 2020.

design that would among other things provide lifetime income and that would eliminate withdrawal liability for new accruals to encourage employers to continue to support the legacy plans.

The GROW Act addresses these issues by providing that composite plan accruals do not add to withdrawal liability, but legacy plan withdrawal liability continues until the legacy plan meets specified improved funding targets. Only then will legacy plan withdrawal liability be eliminated. But new employers organized into the composite plan will help to fund the legacy defined benefit plan and prevent the shrinking contribution base that has led to the decline of a number of defined benefit plans.

The combination of factors—withdrawal liability rules in some industries that make lawfully avoiding liability relatively easy, the impact of credit challenges on employers—may affect some plans and industries more than others. This may be why some groups oppose composite plans and others see them as the solution to save legacy defined benefit plans. These differences in industries are why the Commission insisted that adoption of composite plans must be optional.

Conclusion
Composite plans will be completely optional. If any union or business does not want to use the composite plan option, it will not have to do so. In fact, the adoption of a composite plan will only be possible if labor and management agree to support the change.

As with all new ideas, different observers will analyze the composite plan proposal differently and reach different conclusions. This is not only inevitable, it is healthy. What is unhealthy is when one group seeks to impose its point-of-view on other groups who, after performing exhaustive analyses in good faith, have arrived at more sound evidenced-based conclusions.

The composite plan proposal was released more than 7 years ago. It has been revised during this time period to address legitimate criticisms and adopt solutions to those criticisms. Any group that during this time period has offered only criticisms instead of bringing productive solutions to the table is not interested in addressing the weaknesses of the current multiemployer defined benefit pension system. While the current system may have worked well for some, it has indisputably not worked well for many others. The desire of these critics to prohibit other labor-management groups, all of whom have different needs and circumstances from their own, from negotiating and implementing innovative retirement income approaches is nothing more than an exercise in selfishness.

Congress must not be fooled by desperate last-minute attempts to kill a popular pension reform option that has broad support just as legislators are finalizing the next COVID relief package. Our organizations will continue to work with Congress in good faith to ensure that workers and retirees in multiemployer plans can continue to enjoy a secure retirement.

Sincerely,

Associated General Contractors of America
FCA International
International Council of Employers of Bricklayers and Allied Craftworkers
International Union of Operating Engineers
Laborers' International Union of North America (LiUNA!)
Mechanical Contractors Association of America
National Electrical Contractors Association
Sheet Metal and Air Conditioning Contractors’ National Association
The Association of Union Constructors
The International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers
The Signatory Wall and Ceiling Contractors Alliance
United Association of Plumbers and Fitters
United Brotherhood of Carpenters and Joiners of America