

Pension Reform? Presidential Memorandum Focuses Attention on Failing Pension Systems

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The Secretaries of the Departments of Treasury, Commerce, and Labor have been directed to review and report on the pension funding crisis in an [October 22, 2020, Presidential Memorandum](#). The Memorandum brings renewed attention to a long-standing pension funding crisis and the failing backstops.

The Memorandum focuses on the insolvent Delphi Corp. pension plans and the overall pension funding crisis. In 2009, the Pension Benefit Guaranty Corporation (PBGC) assumed responsibility for six of Delphi's pension plans covering approximately 70,000 participants. As a result, the PBGC is responsible for paying the benefits up to the limit set by federal law.

The Memorandum discusses both the solvency issues under the single employer and multiemployer plans insured by the PBGC. The PBGC's multiemployer program is expected to be insolvent by 2025.

Proposals in Congress

There are two primary proposals relating to the multiemployer funding crisis and looming insolvency of the PBGC.

The Republican version, the [Multiemployer Pension Recapitalization and Reform Plan](#), would create a new premium structure, including increasing the annual per-participant premium from \$29 to \$80 and imposing a copayment on active employees and most retirees.

The Democrats continue to advance versions of the [Butch Lewis Act](#), which would establish a new office within the Treasury: the Pension Rehabilitation Administration (PRA). The PRA would administer a new trust fund financed by proceeds from bonds and other debt that would bail out failing multiemployer pension plans.

Memorandum: Review and Report

The Memorandum calls for the Secretaries to review and report back to the President on the Delphi plans within 90 days and on the PBGC programs within 180 days. Therefore, the results of the upcoming election likely will impact responses by both the White House and Congress to the ongoing pension funding crisis.

Case in Sixth Circuit

The impact of the Memorandum on pending litigation was more immediate. Just days after the Memorandum was published, the U.S. Court of Appeals for the Sixth Circuit (which has jurisdiction over Kentucky, Michigan, Ohio, and Tennessee) ordered the PBGC to respond to the Delphi retirees' petition for a rehearing, which may increase the likelihood of a rehearing in [Black v. PBGC](#), No. 19-1419 (6th Cir. Sept. 1, 2020).

Jackson Lewis attorneys are available to answer inquiries regarding this and other developments.

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