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DC Tax Flash: House Sends HEROES Act to Senate

Tax Alert
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The House this evening approved the Health and Economic Recovery Omnibus Emergency Solutions (HEROES) Act (H.R. 6800), sending the $3 trillion bill to an uncertain fate in the GOP-controlled Senate.

The HEROES Act passed on a 208-199 tally. Fourteen Democrats opposed the bill, while Rep. Peter King (R-NY) was the only Republican to support it. Nearly two dozen members did not vote. After the bill passed, Majority Leader Steny Hoyer (D-MD) announced that the House would be in recess until May 27, 2020.

The bill has little hope in the Senate. Majority Leader Mitch McConnell (R-KY) this evening heaped scorn on the measure, saying it "reads like the Speaker of the House pasted together random ideas from her most liberal members and slapped the word 'coronavirus' on top of it." Even still, the bill will likely serve as a negotiating position for congressional Democrats in future talks with GOP Senate leaders and the White House, which has issued a Statement of Administration Policy threatening a veto.

In broad terms, the HEROES Act would authorize more than $3 trillion in federal spending and tax provisions directed at states, individuals, health care providers and businesses. According to the Joint Committee on Taxation (JCT), the bill's tax provisions would reduce federal revenue by $883 billion.

The 1,815-page text of the HEROES Act is posted here. Just ahead of final passage today, the House adopted an 89-page manager's amendment to the bill that is posted here.

A one-page summary of the HEROES Act is posted here.

A 90-page section-by-section summary is posted here. As excerpted from this summary, the bill's pension and retirement-related policy changes are listed and explained below:

DIVISION D – Retirement Provisions

Prepared by the Democratic staff of the House Committees on Ways and Means and Education and Labor

Sec. 100. Short title. The short title of the legislation is the Emergency Pension Plan Relief Act of 2020 ("EPPRA").

Title I – Relief for Multiemployer Pension Plans

Sec. 101. Special Partition Relief.

About 10 million Americans participate in multiemployer pension plans and about 1.3 million of them are in plans that are quickly running out of money.

Many of these troubled multiemployer plans cover workers who are on the front lines of the COVID-19 public health crisis, such as trucking, food processing, grocery store workers, and others. Even before the pandemic, workers, businesses, and retirees faced a crisis and were in dire need of our help. With work drying up around the country and the market downturn, the economic catastrophe resulting from COVID-19 has exacerbated the multiemployer pension crisis and threatened the hard-earned pensions of even more workers and retirees. This threatens to bankrupt the Pension Benefit Guaranty Corporation ("PBGC"), impose damaging liabilities on thousands of businesses, and devastate communities across the country.

Under current law, PBGC has limited authority to partition certain troubled multiemployer pension plans. In a partition, PBGC takes on the financial responsibility of some of the benefits of an eligible plan, so that the plan can stay solvent. EPPRA creates a special partition program that would expand PBGC's existing authority, increase the number of eligible plans, and simplify the application process—allowing more troubled plans to obtain much-needed relief. Just like the bipartisan Butch Lewis Act (H.R. 397), eligible plans would include: plans in critical and declining status, plans with significant underfunding with more retirees than active workers, plans that have suspended benefits, and certain plans that have already become insolvent. In contrast, EPPRA allows plans to become eligible for the special partition program through 2024. Because the COVID-19 crisis has already caused significant investment losses to pension plan assets and decreased the number of hours worked, plan funding may deteriorate over time. Consequently, plans may need to access the special partition relief program in coming years.

PBGC is required to issue regulations within 120 days of enactment of this legislation and may prioritize the processing of applications of plans most in need. A qualifying plan may apply to PBGC and, upon approval, would receive financial assistance. Under the special partition program, a plan would receive enough financial assistance to keep it solvent and well-funded for thirty years—with no cuts to the earned benefits of participants and beneficiaries. Plans that previously cut benefits would have to restore them to the retirees who earned them. In exchange for the financial assistance, each plan would have to comply with certain conditions, and would be required to file regular comprehensive reports to PBGC and to the Congressional committees of jurisdiction.

This legislation also includes important accountability and transparency provisions. PBGC would be required to annually report to Congress. The Government Accountability Office ("GAO") would be required to regularly evaluate PBGC's implementation and administration of the special partition relief program. PBGC's Inspector General would receive funding to audit the special partition relief program to prevent against waste, fraud, and abuse. PBGC would be 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. Because PBGC currently receives no appropriations, the legislation includes additional funding to cover the costs of the program.

By stabilizing these pensions, the special partition relief program would protect retirees who worked for decades to earn their benefits. It would also help businesses avoid crushing liabilities and support communities around the country.

Sec. 102. Repeal of Benefit Suspensions for Multiemployer Plans in Critical and Declining Status.

Upon date of enactment, no plan would be permitted to apply, or be approved, for a suspension of benefits under the Multiemployer Pension Reform Act ("MPRA"). This restores the promise of a secure retirement for millions of workers currently in danger. Going forward, no participant or beneficiary in a multiemployer pension plan would suffer a cut to their earned benefits under MPRA.

Sec. 103. Temporary Delay of Designation of Multiemployer Plans as in Endangered, Critical, or Critical and Declining Status.

Under the legislation, a plan could 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 would not have to update its plan or schedules until the plan year beginning March 1, 2021. This would provide a plan with flexibility and ease an administrative burden given the economic and financial turmoil resulting from the COVID-19 public health crisis.

Sec. 104. Temporary Extension of the Funding Improvement and Rehabilitation Periods for Multiemployer Pension Plans in Critical and Endangered Status for 2020 or 2021.

Under the bill, a plan in endangered or critical status for a plan year beginning in 2020 or 2021 could extend its rehabilitation period by five years. This would give a plan additional time to improve its contribution rates, limit benefit accruals, and maintain plan funding—all on its own terms. This provision is effective for plan years beginning after December 31, 2019.

Sec. 105. Adjustments to Funding Standard Account Rules.

Funding shortfalls as a result of investment losses are generally required to be made up 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. Now, the market downturn resulting from the COVID-19 pandemic is already damaging the funding of multiemployer pension plans. Under the legislation, for investment losses in plan years beginning in 2019 and 2020, a plan could use a 30-year amortization base to spread out losses over time. Pension plans, participants, and plan sponsors need more stability and a longer period over which to pay for long-term liabilities that can stretch out for decades. This would help a plan weather this economic and financial storm. This provision is effective for plan years ending on or after February 29, 2020.

Sec. 106. PBGC Guarantee for Participants in Multiemployer Plans.

PBGC provides a maximum guaranteed benefit of $12,870 to a participant in a multiemployer plan, if that participant had 30 years of service. The guarantee is 100% of the first $11 of the monthly benefit rate, plus 75% of the next $33 of the monthly benefit rate, multiplied by the participant's years of credited service. This legislation would double 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 service, and indexes it thereafter. This would help participants and beneficiaries receive more of the benefits they earned through their hard work and service. All plans receiving financial assistance beginning December 16, 2014, would see the improved guarantee take effect. A plan that becomes insolvent in the future would be subject to the increased guarantee in the calendar year in which it becomes 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 and market volatility due to the COVID-19 public health crisis, the current law requirement to amortize funding shortfalls over seven years is no longer appropriate. Pension plans, participants, and plan sponsors need more stability and a longer period over which to pay for long-term liabilities that can stretch out for more than 50 years. Accordingly, under the bill, the following rules would apply to all single employer pension plans, effective for plan years beginning after December 31, 2019:

All shortfall amortization bases for all plan years beginning before January 1, 2020 (and all shortfall amortization installments determined with respect to such bases) would be reduced to zero.
All shortfalls would be amortized over 15 years, rather than seven 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 in order to address concerns that historically low interest rates were creating inflated pension funding obligations, diverting corporate assets away from jobs and business recovery.

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 would 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. Because of this phase- out, smoothing would soon cease to have much effect. In order to preserve the stabilizing effects of smoothing:

- The 10% interest rate corridor would be reduced to 5%, effective in 2020.
- The phase-out of the 5% corridor would be delayed until 2026, at which point the corridor would, as under current law, increase by 5 percentage points each year until it attains 30% in 2030, where it would stay.

A 5% floor would be put on the 25-year interest rate averages. This floor would establish stability and predictability on a longer-term basis, so that interest rate variations do not create excessive volatility. In addition, this floor would protect funding rules from the extremes of interest rate movements.

This provision is effective for plan years beginning after December 31, 2019.

Title III – Other Retirement Related Provisions

Sec. 301. Waiver of Required Minimum Distributions for 2019.

Under current law, generally at the age of 72, individuals must take a required minimum distribution ("RMD") from their defined contribution plans and IRAs. Due to the market downturn resulting from the COVID-19 pandemic, the balances in these accounts have sharply decreased – in many instances, the market has reduced taxpayers' accounts more than what their RMD would have been. Therefore, the recently enacted CARES Act waived RMDs for 2020, allowing individuals to keep funds in their retirement plans. This provision expands this relief further by providing that 2019 RMDs would be waived for defined contribution plans and IRAs.

Sec. 302. Waiver of 60-Day Rule in case of Rollover of Otherwise Required Minimum Distributions in 2019 and 2020.

This provision further expands the 2020 RMD relief in the CARES Act by providing that:

- The RMDs made for 2019 would be permitted to be rolled back to a plan or IRA without regard to the 60-day requirement if the rollover is made by November 30, 2020.
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Sec. 303. Employee Certification as to Eligibility for Increased CARES Act Loan Limits from Employer Plan.

The CARES Act permits eligible retirement plans to rely on an employee's certification that the employee qualifies to receive a coronavirus-related distribution. Technically, it appears that a plan cannot rely on such a certification for purposes of determining whether an employee is eligible for the special loan rules. In past disaster relief, the IRS has generally permitted reliance on reasonable representations by an employee in a similar context, absent actual knowledge to the contrary. But in the past, the statute has not had a specific employee certification provision that applies for distributions but not loans. This provision provides a statutory clarification.

Sec. 304. Exclusion of Benefits Provided to Volunteer Firefighters and Emergency Medical Responders Made Permanent.

Almost 70 percent of firefighters and emergency medical services ("EMS") personnel are volunteers, 71 percent of fire departments are exclusively staffed by volunteers, and 91 percent of all US fire department use volunteer firefighters and EMTs to some degree. Therefore, at the end of last year, the SECURE Act reinstated for one year the exclusion f or qualified State or local tax benefits and qualified reimbursement payments provided to members of qualified volunteer emergency response organizations and increases the exclusion for qualified reimbursement payments to $50 for each month during which a volunteer performs services. This would allow volunteer fire and EMS personnel for 2020 to receive nominal recruitment and retention incentives without those incentives being considered as taxable income.

The COVID-19 pandemic places an enormous amount of strain on these volunteer personnel as they are exposing themselves to COVID-19 and are responding to a much higher than normal call volume. Therefore, the provision would make permanent these amendments to Code Section 139B.

Sec. 305. Application of Special Rules to Money Purchase Pension Plans.

The CARES Act provided for early distribution and loan relief for retirement plans during the coronavirus relief period. While this relief was intended to apply to all qualified retirement plans, there were questions as to whether it would apply to money purchase pension plans ("MPPP"). MPPPs are a type of defined-contribution retirement plan offered by some employers. This provision would clarify that MPPPs would benefit from the legislation.

Sec. 306. Grants to Assist Low-Income Women and Survivors of Domestic Violence in Obtaining Qualified Domestic Relations Orders.

Certain states under stay-at-home orders have seen domestic violence rates rise as much as 30 percent since the beginning of the COVID- 19 pandemic. This provision directs the Secretary of Labor, acting through the Director of the Women's Bureau in conjunction with the Assistant Secretary of the Employee Benefits Security Administration, to award grants of at least $250,000 to established community-based organizations on a competitive basis to assist low-income women and survivors of domestic violence in obtaining qualified domestic relations orders to ensure that these women actually obtain the benefits to which they are entitled through those orders.

Sec. 307. Modification of Special Rules for Minimum Funding Standards for Community Newspaper Plans.

Community newspapers are generally family-owned, non-publicly traded, independent newspapers. The recently enacted SECURE Act provided pension funding relief for a number of community newspaper plan sponsors by increasing the interest rate to calculate those funding obligations to 8%. Additionally, the SECURE Act provided for a longer amortization period of 30 years from 7 years. These two changes enable struggling community newspapers to stretch out their required pension plan contributions over a longer time period. The legislation would expand the SECURE Act relief to additional community newspapers.

Sec. 308. Minimum Rate of Interest for Certain Determinations Related to Life Insurance Contracts.

In order to qualify as life insurance contracts for tax purposes, permanent life insurance policies must meet several requirements under Internal Revenue Code section 7702. These requirements include two interest rate assumptions for determining the premiums that can be used to fund the contracts. The interest rate assumptions were set by statute at 4 percent and 6 percent when the requirements were put in place in 1984. At the time, the average long-term Treasury rate was around 12 percent. The recent public health and economic crisis has prompted the Federal Reserve to reduce already persistently low interest rates to around 0 percent, and the daily long-term Treasury rate has hovered at 1 percent. Without adjusting the section 7702 interest rates to reflect economic realities, consumer access to financial security via permanent life insurance policies—which represent approximately 60 percent of the individual life insurance market—could decrease significantly. This legislation updates section 7702 to reflect the interest rate environment that has been exacerbated by the current crisis, and ensures that the rates will continue to appropriately reflect economic conditions, by tying the rates to either a floating rate prescribed in the National Association of Insurance Commissioners' Standard Valuation Law or a floating rate based on the average applicable Federal mid-term rates over a 60-month period.

Miller & Chevalier Coronavirus Task Force

The outbreak of COVID-19 is creating significant business and legal challenges for companies throughout the world. In response to client demand, the firm has formed an interdisciplinary task force to help businesses navigate these issues.

COVID-19 Resource Library

We also maintain a resource library of legislative responses and regulatory guidance related to COVID-19.
