



Government-Mandated Project Labor  
Agreements Result in Lost and Stolen  
Wages for Employees and Excessive Costs  
and Liability Exposure for Employers  
**Instead of Reform, Policymakers  
Want to Perpetuate the Broken System**



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## Table of Contents

EXECUTIVE SUMMARY .....	1
I. OBJECTIVE .....	2
II. BACKGROUND .....	3
III. METHODOLOGY .....	4
1. Identify annual federal construction spending potentially subject to Government-Mandated Project Labor Agreements.....	4
1a. Calculate labor costs of applicable federal contracts.....	4
2. Federal construction market share for nonunion contractors.....	4
3. Financial impact of government-mandated PLAs on nonunion employees' take-home pay .....	5
3a. Pensions.....	5
3b. Union dues.....	5
3c. Health Insurance .....	6
3d. Summary of lost benefits and expenses for nonunion employees on PLAs .....	6
4. Estimate of additional costs to employers for employees on PLA projects.....	6
5. Total impact of government-mandated PLAs on nonunion employees and employers .....	7
5a. Total impact of government-mandated PLAs on nonunion employees .....	7
5b. Total impact of government-mandated PLAs on nonunion employers.....	7
6. Withdrawal liability exposure for nonunion employers .....	8
6a. Interviews with key experts in the field.....	8
6b. When is withdrawal liability triggered? .....	8
6c. Calculating a plan's unfunded vested benefits liability .....	8
6d. Determining withdrawal liability from Form 5500 .....	9
7. A snapshot of multiemployer pension plans in the construction industry .....	9
7a. Number of underfunded plans .....	10
7b. Underfunded plans with the largest number of employees .....	10
7c. Plans in critical and declining status .....	10
7d. Share of total Pension Benefit Guaranty Corporation liabilities.....	10
8. A snapshot of the entire MEPP system .....	10
8a. Financial management of MEPPs.....	11
9. Congress and Biden administration initiatives for the MEPP system bailout .....	11
9a. Special financial assistance for financially troubled plans (Sec. 9704) .....	11
9b. Eligibility and application process .....	12
9c. Amount of financial assistance available .....	12
9d. No requirement to repay financial assistance received.....	12
9e. Temporary delay on funding status designations.....	12
9f. Projected costs of the MEPP system bailout .....	12
IV. CONCLUSION.....	14

## EXECUTIVE SUMMARY

The central finding of this study is that government-mandated project labor agreements harm the economic welfare of nonunion construction employees, impose significant costs and liability exposure on nonunion contractors and discourage competition for qualified contractors.

Nonunion employees who work under government-mandated PLAs lose wages and benefits after they pay into union pension funds and often receive no benefits due to union membership and vesting requirements. In addition, union health insurance premiums are significantly higher than the average cost of health care coverage in the private sector, especially for single workers.

Next, nonunion contractors often double pay pension and health insurance fringe benefits into both existing company plans and union plans if their employees are permitted to work under short-term projects subject to government-mandated PLA contracts. Finally, nonunion contractors are reluctant to work under PLA mandates as they may lead to substantial multiemployer pension plan withdrawal liability upon the completion of work and/or withdrawal from the plan agreement.

Specifically, the report found that nonunion employees lose an estimated 34% of their total compensation package when working on a construction project subject to a government-mandated PLA. These lost wages and benefits should be considered “wage theft,” as nonunion employees on PLA contracts are required to pay a portion of their paycheck to unions and union benefits plans as a condition of employment, yet they will not realize any benefit unless they join the union and/or meet certain vesting requirements.<sup>1</sup> This study concludes that nonunion employees could lose an estimated \$159 million to \$530 million in compensation on federal construction contracts depending on how many contracts are subjected to PLAs required by federal government agencies.

This report also found that nonunion employers are forced to pay an extra 35% of total employee compensation cost in the amount of \$163 million to \$546 million in duplicative benefits on federal contracts annually, depending on how many federal contracts migrate to government-mandated PLAs. These additional costs make nonunion contractors

less competitive with respect to price compared to firms without such duplicative benefits costs, which is likely to discourage nonunion contractors from competing for taxpayer-funded construction contracts.

Next, this report assesses the risk of potential MEPP withdrawal liability exposure employers may face as a result of working on government-mandated PLA projects. Using Form 5500 data, we project that the withdrawal liability exposure for each firm could range between \$1 million and \$7 million when construction contractors trigger withdrawal liability. More specifically, the average withdrawal liability for the 10 construction industry MEPPs sampled in this report designated as “endangered” by the U.S. Department of Labor have an average withdrawal liability of \$2.17 million. Moreover, the 10 construction industry MEPPs in “critical” status have an average withdrawal liability of \$2.76 million.

Finally, the overall MEPP system is showing further signs of decay as the number of critical and declining status plans is on the rise. According to data from the Pension Benefit Guaranty Corporation, the construction industry is a major contributor to both current MEPP underfunding and future PBGC insurance program funding shortfalls. According to the PBGC’s 2019 Pension Data Table M-14, the amount of construction industry MEPP underfunding grew to \$368.45 billion (48.7%) of the total PBGC-insured MEPP underfunding of \$756.98 billion.<sup>2</sup> Using the compound annual growth rate formula, this represents an average rate of growth of 8.23%. At this rate of growth, total construction industry underfunding will grow to \$467.2 billion by 2021.<sup>3</sup>

To address the declining financial health of the MEPP system, policymakers enacted an estimated \$86 billion<sup>4</sup> to \$94 billion<sup>5</sup> taxpayer-backed bailout of the MEPP system when the American Rescue Plan Act of 2021 (H.R. 1319) was signed into law on March 11, 2021.<sup>6</sup> Many argue that this policy, currently subjected to a regulatory rulemaking process, is an unprecedented and ill-advised government intervention and support of a privately funded organization and will do nothing to fix systematic flaws in the MEPP system in the long term, and may even expose American taxpayers to a limitless bailout of MEPPs well beyond the \$86 billion to \$94 billion estimated price tag.<sup>7</sup>

1 See Commentary, “IID considers giving outside contracts exclusively to unions,” The Desert Review, Nov. 23, 2020.

2 See Table M-14: [Funding of PBGC-Insured Plans by Industry \(2018\) Multiemployer Program of PBGC 2019 Pension Insurance Data Tables report.](#)

3 The CAGR formula is:  $CAGR = \left( \frac{\text{Ending Value}}{\text{Beginning Value}} \right)^{\frac{1}{\text{# of Years}}} - 1$ .

4 Congressional Budget Office, “Reconciliation Recommendations of the House Committee on Ways and Means,” Feb. 17, 2021, <https://www.cbo.gov/system/files/2021-02/hwaysandmeansreconciliation.pdf>.

5 Special Financial Assistance by PBGC, 86 Fed. Reg., 36,598, 36,614 (July 12, 2021).

6 Text of American Rescue Plan Act of 2021 (H.R. 1319) known as ARPA: <https://www.congress.gov/bill/117th-congress/house-bill/1319/text>.

7 See U.S. House Education and Labor Committee August 11, 2021, comment letter to the Pension Benefit Guaranty Corporation, available at [https://republicans-edlabor.house.gov/uploadedfiles/pbgc\\_letter.pdf](https://republicans-edlabor.house.gov/uploadedfiles/pbgc_letter.pdf)

## I. OBJECTIVE

The objective of this report is to update and expand on the findings of a previous report on the impact of government-mandated PLAs on employers and employees, *The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements* (McGowan 2009).<sup>8</sup> The 2009 report estimated nonunion employees' lost wages and benefits and additional costs facing nonunion employers when working on federal construction contracts subject to government-mandated PLAs.

At the time of the first report's publication, President Obama had recently issued the pro-PLA Executive Order 13502.<sup>9</sup> However, its impact on federal contractors and their nonunion workforce was largely unknown because regulations implementing the executive order's final rule did not take effect until May 2010.<sup>10</sup> This report reflects on the impact of President Obama's pro-PLA order on federal contractors and their employees and attempts to estimate how these populations would be affected if the Biden administration and 117<sup>th</sup> Congress increase the use of government-mandated PLAs on federal construction contracts.

## II. BACKGROUND

The subject of government-mandated PLAs has created a great deal of controversy over the past few decades both in public policy circles and in the construction industry. A PLA is a pre-hire collective bargaining agreement between contractors and one or more labor organizations that establishes the terms of conditions of employment for a specific construction contract. The agreement supersedes any existing collective bargaining agreement and applies to all contractors and subcontractors who bid on the project.

The agreements typically include provisions to discourage strikes, lockouts or other work stoppages for each project. Moreover, PLAs typically mandate that employees for the project are referred and hired through union hiring halls and apprenticeship programs and that nonunion workers, if permitted to work on a PLA project, must join a union and/or pay union dues and other withholdings for the length of the project. Contractors must also follow union rules on pensions, health coverage, work conditions and dispute resolution.<sup>11</sup>

PLAs have been used on some large construction projects in the United States since the 1930s and became the subject of intense public policy debate in the late 1980s and early 1990s as they began to be mandated by lawmakers and governments on publicly procured and taxpayer-funded projects with greater frequency.

The use of government-mandated PLAs on public works projects is opposed by stakeholders,<sup>12</sup> who argue that PLA mandates create a rigged and corrupt bidding process when politicians steer contracts to donors and lobbyists who deny jobs to local construction workers. They maintain government-mandated PLAs discourage competition from quality local contractors and more than 87% of the U.S. construction workforce<sup>13</sup> because they are not affiliated with unions. They claim government-mandated PLAs have led to projects that lack oversight, transparency and accountability. The result is a government contracting system that isn't cost-effective and robs hardworking taxpayers of the value they deserve.

Opponents point to problematic PLA projects and research suggesting that government-mandated PLAs

8 See J. McGowan, "[The Discriminatory Impact of Union Fringe Benefit Requirements on Nonunion Workers Under Government-Mandated Project Labor Agreements](#)," (October 2009).

9 Executive order 13502, signed by President Obama on February 6, 2009, urges federal agencies to consider mandating the use of PLAs on federal construction projects costing \$25 million or more on a case-by-case basis. This act revoked President George W. Bush executive orders 13202 and 13208, signed in 2001, that prohibited government-mandated PLAs on federal and federally funded construction projects. The Obama order indicates that federal agencies may require a PLA if such an agreement would achieve federal goals in economy and efficiency. According to the terms of the order, nonunion contractors may also compete for contracts subject to PLAs, but they must agree to the various terms and conditions contained in each PLA in order to win a federal contract and build a project. The Obama order also permits the use of government-mandated PLAs on federally assisted projects.

10 Federal Register, "[Federal Acquisition Regulation; FAR Case 2009-005, Use of Project Labor Agreements for Federal Construction Projects](#)," April 13, 2010.

11 David G. Tuerck, PhD and William F. Burke, [Beacon Hill Institute](#), "[The Effects of Project Labor Agreements on Public School Construction in Connecticut](#)," (February 2020).

12 Construction and employer groups opposed to government-mandated PLAs include the American Pipeline Contractors Association, American Road and Transportation Builders Association, Associated Builders and Contractors, Associated General Contractors, Construction Industry Round Table, Independent Electrical Contractors, National Association of Home Builders, National Black Chamber of Commerce, National Federation of Independent Business, National Ready Mixed Concrete Association National Roofing Contractors Association, National Utility Contractors Association, Plastics Pipe Institute, Power and Communication Contractors Association, Small Business and Entrepreneurship Council and the U.S. Chamber of Commerce, among many other groups. In addition, government-mandated PLAs are opposed by more than a dozen taxpayer advocate groups. See recent letters to the [White House](#) and [Congress](#) at [www.BuildAmericaLocal.com](#).

13 See [Union Members Summary](#), U.S. Bureau of Labor Statistics, Jan. 22, 2021.

increase the cost of school construction by 12% to 20%.<sup>14</sup> They argue government-mandated PLAs will result in taxpayers paying more for fewer schools, affordable housing, roads, bridges and other infrastructure projects overall. Opponents argue the added costs of government-mandated PLAs will stifle construction industry job creation and improvements to America's underfunded and crumbling infrastructure. Finally, opponents contend that many of the alleged benefits of government-mandated PLAs are already prescribed by existing laws and/or can be achieved through contracting language independent of the anti-competitive and discriminatory provisions at the core of typical government-mandated PLA schemes.

Proponents<sup>15</sup> argue government-mandated PLAs can ensure that large, complex projects are completed on time and on schedule by preventing union strikes/labor unrest and ensuring the use of a well-trained union workforce and quality union-signatory contractors. They point to the inclusion of clauses in PLAs that establish labor management problem-solving committees that deal with scheduling, quality control, health and safety and productivity problems during the project, which translate into project cost savings. Finally, proponents claim PLAs ensure the use of well-trained union workers who are paid family-sustaining wages and benefits, and can be crafted to meet certain workforce and business demographic hiring goals benefitting the community.

Presidential executive orders issued since 1992 have affected the use of government-mandated PLAs for federal construction projects. The most recent order, President Obama's Feb. 6, 2009, Executive Order 13502, encourages federal agencies to consider mandating PLAs on a case-by-case basis for federal projects exceeding \$25 million in total costs. It also permits state and local governments procuring public works projects that receive federal funding to mandate PLAs.

Since the order was issued in 2009, 26 states have enacted Fair and Open Competition Act legislation, which prohibits

government-mandated PLAs on state, local and publicly funded construction projects to some degree.<sup>16</sup> A handful of states have rolled back these laws following Democratic party takeovers of state government, bringing the total number of current states that currently have measures opposed to government-mandated PLAs on the books to 24.<sup>17</sup> In contrast, eight states have enacted measures encouraging the use of government-mandated PLAs on state construction projects to some degree. In addition, numerous localities have enacted measures prohibiting or encouraging the use of government-mandated PLAs on public works projects.

Despite President Obama's pro-PLA order, government-mandated PLAs were not widely used on federal construction projects during the Obama and Trump administrations due to a variety of factors. Research found that of all federal construction contracts exceeding \$25 million from FY 2009 to FY 2020, just 12 contracts worth a total of \$1.25 billion out of 1,889 federal contracts worth \$117.36 billion were subject to government-mandated PLAs.<sup>18</sup>

It is unknown how much the Biden administration and lawmakers from the 117<sup>th</sup> Congress will increase the use of government-mandated PLAs on federal and federally assisted construction contracts. With full Democratic party control of the White House and the U.S. House and Senate, there is a strong likelihood there will be an increase in government-mandated PLAs via legislative requirements or executive actions.<sup>19</sup> For example, the Biden administration's American Jobs Plan, the outline for a multitrillion-dollar spending plan including more than \$1 trillion in investments in America's infrastructure, affordable housing and clean energy projects, calls on lawmakers to pass legislation requiring PLAs and other pro-labor provisions on taxpayer-funded federal and federally assisted construction projects.<sup>20</sup> In addition, the Biden administration has enacted policies through agency rulemaking not prescribed by legislation that encourages state and local governments to mandate

14 See [multiple studies](#) measuring the impact of PLA mandates on public school construction already subject to state prevailing wage laws in Connecticut, Massachusetts, New Jersey, New York and Ohio by the Beacon Hill Institute; an October 2010 report by the New Jersey Department of Labor and Workforce Development, "[Annual Report to the Governor and Legislature: Use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008](#)"; and a 2011 study by the National University System Institute for Policy Research, "[Measuring the Cost of Project Labor Agreements on School Construction in California](#)." Available at <https://buildamericalocal.com/learn-more/>.

15 Proponents of government-mandated PLAs are 14 national construction unions affiliated with North America's Building Trades Unions and their local affiliates, as well as national and local contractor trade associations primarily representing unionized contractors (e.g. [the National Electrical Contractors Association](#)), and other left-of-center/progressive ideological groups and think tanks (e.g. the [Center for American Progress](#)).

16 See list of state Fair and Open Competition Act statutes at: <https://www.abc.org/Portals/1/2021%20Files/Current-State-FOCA-Laws-GMPLA-Bans-through-Virginia%20Repeal-Updated-June-2021.xlsx?ver=2021-06-29-120347-173>.

17 See map of state Fair and Open Competition laws at: [https://www.abc.org/Portals/1/2021%20Files/Map\\_FairCompetition\(June\).PNG?ver=2021-06-29-132759-323](https://www.abc.org/Portals/1/2021%20Files/Map_FairCompetition(June).PNG?ver=2021-06-29-132759-323).

18 See TruthAboutPLAs.com, "[February 2021 Update: ABC's Fight Against Government-Mandated Project Labor Agreements](#)," Feb. 10, 2021.

19 Bruce Buckley, Engineering News Record "[Will Project Labor Agreements Grow in Biden Administration?](#)" December 16, 2020.

20 White House Fact Sheet: The American Jobs Plan, March 31, 2021, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/03/31/fact-sheet-the-american-jobs-plan/>.

PLAs on construction projects receiving federal assistance.<sup>21</sup> These policies are consistent with campaign statements and policy papers issued by the Biden campaign.

### III. METHODOLOGY

This report uses a similar methodology to the 2009 report in an attempt to quantify the financial impact of PLA mandates on employees and contractors engaged on future federal construction contracts under the Biden administration.

The first step in this process is to identify both the population of federal construction contracts over \$25 million potentially subject to government-mandated PLAs along with the labor costs associated with these contracts. Second, the federal construction market share for nonunion contractors is determined. Third, estimates are computed for lost compensation for employees while working on PLA-based federal construction projects. Fourth, an estimate of additional costs to employers is derived. The fifth step is to estimate the total costs based on the volume of PLA mandates. The sixth and final step is to estimate the prospective withdrawal liability faced by employers who separate from the union upon completion of their work on a government-mandated PLA.

#### 1. Identify annual federal construction spending potentially subject to government-mandated PLAs

Based on data from USASpending.gov, Exhibit 1 shows the annual value of public construction projects greater than \$25 million performed in the United States and territories during FY 2015 to FY 2020.<sup>22</sup> The annual average of contracts in this population totals \$10,205,141,881, or 43% of all federal construction contracts totaling \$23.6 billion. This figure of the average annual number of federal projects exceeding \$25 million is needed to project the future construction spending and costs in this model.

#### 1a. Calculate labor costs of applicable federal contracts

Next, I estimate the labor costs typically do not comprise the largest cost element in construction contracts. Previous U.S. Census Bureau data indicates that labor costs are normally 20% to 30% of construction contracts (Phillips 1998).<sup>23</sup> Accordingly, I used 25% to compute labor costs in the original 2009 study.

In 2017, U.S. Census Bureau data pegged labor costs of 32.7% of a project across the entire construction industry.<sup>24</sup> This number includes single family home residential construction, which has a much smaller percentage of labor costs than other types of construction that have higher labor costs. To be conservative, I use 35% in this study. Specifically, estimated total labor costs are \$3,571,799,658 (\$10,205,141,881 x .35) for all federal construction contracts in excess of \$25 million.

#### 2. Federal construction market share for nonunion contractors

Bureau of Labor Statistics data indicate that unions now comprise about 12.7% of the U.S. construction workforce.<sup>25</sup> The percentage used in the original 2009 study was 15%. Since there is no government data disclosing the union contractor market share of federal construction contracts, an assumption is made that the same percentage of 12.7 applies to the federal construction marketplace. Accordingly, the nonunion market share of federal construction contracts is assumed to be 87.3%. The implication for this study is that 87.3% of the construction workforce could be compelled to adopt new fringe benefit rules and experience a reduction in take-home pay under PLAs.

21 See language in the [U.S. Treasury's May 17, 2021, interim final rule on \\$350 billion worth of federal funding for state and local fiscal recovery](#) allocated in the [American Rescue Plan Act](#) that encourages recipients of federal dollars to mandate PLAs on federally assisted water, sewer and broadband projects. In addition, the U.S. Department of Transportation Build America Bureau announced Feb. 17, 2021, that the FY 2021 Infrastructure for Rebuilding America grant program, which provides \$889 million to fund state and locally procured transportation projects of national and regional significance, encourages grant applicants to mandate PLAs. See "[Notice of Funding Opportunity for the Department of Transportation's Infrastructure For Rebuilding America Program for Fiscal Year 2021](#)," and related program announcement: <https://www.transportation.gov/buildamerica/financing/infra-grants/infrastructure-rebuilding-america>.

22 Annual reports accessed Dec. 23, 2020, from USASpending.gov and manually filtered for NAICS 23 contracts exceeding \$25 million performed in the United States and Guam. \$25 million is the threshold designated in President Obama's pro-PLA Executive Order 13502 and related regulations, where PLAs must be considered. See example of pre-filtered raw data from FY20 from USASpending.gov: [https://files.usaspending.gov/generated\\_downloads/All\\_PrimeTransactions\\_2020-01-25\\_H15M21S59841420.zip](https://files.usaspending.gov/generated_downloads/All_PrimeTransactions_2020-01-25_H15M21S59841420.zip).

23 Phillips, Peter. 1998. "[Kansas and Prevailing Wage Legislation](#)." Report prepared for the Kansas Senate Labor Relations Committee. Also cited in Mahalia, N. "[Prevailing wages and government contracting costs: A review of the research](#)," Economic Policy Institute [Report](#), Briefing Paper #215, July 3, 2008.

24 U.S. Census Bureau, "[Construction: Summary Statistics for the U.S., States, and Selected Geographies: 2017](#)," Formula: (Annual Payroll + Total Fringe Benefits) / Net Value of Construction Work = Labor Cost % of Construction Project Cost

25 U.S. Bureau of Labor Statistics, 2021, <https://www.bls.gov/iag/tgs/iag23.htm>.

### 3. Financial impact of government-mandated PLAs on nonunion employees' take-home pay

To measure the potential impact of PLAs on nonunion workers' take-home pay, surveyed nonunion contractors and lawyers were asked to provide data on the amount that nonunion workers stand to potentially lose from joining PLAs on government projects. In each case, respondents identified three major sources of earnings reductions for nonunion workers who join PLA projects. First, the mandatory MEPP contributions were cited as a major source of lost earnings. Most PLAs require contributions to MEPPs that have union membership and vesting requirements that nonunion workers do not meet. Second, union dues and other withholdings required in union collective bargaining agreements are indicated as another major source of lost earnings for nonunion workers on PLA-sponsored contracts. Third, the excessive cost of health insurance premiums charged by union plans was identified as another source of lost earnings.

Exhibit 2 presents data from the wage schedules of current publicly available collective bargaining agreements of 13 construction unions. Column 1 shows taxable wages for each CBA. Since union dues are withheld from employee earnings, taxable wages are reduced by this amount. The total package of compensation includes amounts paid for health care and pensions. In general, prevailing wage laws require the total compensation be paid to workers in a combination of wages and benefits. The average amounts for each column are shown at the bottom of Exhibit 2. The average percentages are also shown for each category. While other union CBAs may have wage schedules with benefits and costs larger or smaller than the ones cited here, these CBAs provide a reasonable sample to estimate the costs of this model.

### 3a. Pensions

The pension contribution for a defined benefit plan pays workers their monthly benefit amount once they are eligible for retirement. A second pension allocation is also commonly made to an annuity fund. These amounts go into an account in the worker's name. Unfortunately, nonunion workers who have contributed to these funds on a PLA project typically never receive any of these funds due to vesting requirements.<sup>26</sup> The total average pension allocation for members of these 13 unions is 19% (\$10.93/\$58.88) of their total compensation package. Accordingly, this pension amount is included among those benefits nonunion workers will never see as they work on PLA projects.

### 3b. Union dues

The average percentage for union dues withholding for all 13 unions is 6% (some unions withhold greater percentages than others). For example, the International Union of Painters and Allied Trades withholds the largest percentages for union dues withholding of all other unions surveyed in this study. First, they withhold administrative dues, which are funds paid to the union for contract negotiations, contract enforcement, overhead in gaining market share and the securing of PLAs. Next, they withhold equality dues, which promote the union's job targeting programs, which subsidize union-signatory contractors' bids against nonunion competitors and help ensure that union contractors win their contract. Third, they withhold organizing dues, which are used to hire, train and run various other union organizing programs and campaigns. Fourth, unity action dues are withheld and used to pay for building and construction trades councils. Fifth, dues are withheld for general administration of the IUPAT union. Sixth, there are dues withheld for the IUPAT political action trust and political campaign. These funds are used to elect local, regional, state and federal politicians who are labor-friendly. Seventh and finally, dues are withheld for the vacation holiday fund.<sup>27</sup> All of these dues add up to more than 7% for the IUPAT painters' union.

26 Vesting is a legal term that means to give or earn a right to a present or future payment as in a pension. According to the IUPAT Plan Description, the vesting schedule requires at least five years of contributions, and under certain conditions may require 10 years of contributions. In addition, one year of vesting service is awarded only when the worker has at least 1,000 hours worked. Because construction projects require certain types of labor only during various phases of a project, this means a nonunion worker would have to be employed for 24 weeks at 40 hours a week on a PLA project to hit year one vesting milestones, which is very unlikely on typical projects for most trades. See: <https://iupat.org/wp-content/uploads/IUPAT-Summary-Plan-Description.pdf>.

27 Unions typically withhold holiday or vacation pay as a way to fund employees' time off. In other words, they receive vacation or time off pay, but it is self-funded. Since these funds are typically placed in a separate fund in the employee's name, it is assumed they will receive these funds. Therefore, they are not included as part of unions dues and withholdings.

### 3c. Health insurance

Deductions for “health and welfare” typically cover medical, dental and vision coverage for workers. The rates are set by the health care providers and approved by the trustees. An inspection of the Form 5500 database shows that many unions have their own health and welfare fund. The average hourly rate for the surveyed union health and welfare deduction is \$9.26, or 16% of the total compensation package.

Most private sector insurance plans have separate rates depending on whether the worker is single, married or married with children. In contrast, many union plans have one “blended” rate they charge all workers.

For example, the Sacramento District Council 16 wage schedule shows the current insurance rate as \$10.55 per hour. When compared with typical market-based insurance costs, IUPAT employee health insurance contributions appear to be exorbitant. For example, assuming 160 work hours in a month, the \$10.55 hourly premium yields a monthly cost of \$1,688 ( $\$10.55 \times 160$ ). A typical open shop rate for good insurance coverage for a single painter is \$4,80 per hour.<sup>28</sup> This particular open shop plan is very competitive, with a \$0 annual deductible and \$1,500 out-of-pocket maximum. Adding in the dental/vision/life coverage comes out to a total of \$5.27 per hour for good insurance coverage. In comparison, when union plans charge all workers one “blended rate” they may be shortchanging their members.

The next question is, what amounts to an average health insurance contribution for workers throughout the economy? The Kaiser Family Foundation conducts an annual survey of employers and provides a detailed look at trends in employer-sponsored health coverage, including premiums, employee contributions, cost-sharing provisions, offer rates, wellness programs and employer practices. For the year 2020, annual premiums for employer-sponsored family health coverage reached \$21,342, up 4% from last year. Of this amount, workers paid \$5,588, on average, toward the cost of their coverage.<sup>29</sup>

This breaks down to an average monthly contribution of approximately \$465. Assuming workers put in 160 hours per month, the monthly amount of \$465 translates into an hourly rate of \$2.90. This means that covered employees in the private sector are purchasing insurance coverage for roughly one-third ( $\$2.90/\$9.26$ ) of what union construction workers are paying. Moreover, using \$2.90 as a percentage of total compensation (\$58.88), the market-based health insurance costs are roughly 5% of total compensation.

Based on these calculations, a good argument can be made that union workers are overpaying significantly for health insurance. If fair market health care premiums are closer to 7% of total compensation, and union health insurance costs are 16% of total compensation, the loss to nonunion workers is actually 9% of total compensation.

### 3d. Summary of lost benefits and expenses for nonunion employees on PLAs

Due to vesting requirements, nonunion workers typically lose their pension contributions. Union dues and withholding further reduce their take-home pay. Their tenure on PLA contracts is normally too short to gain any benefits from these two items unless they join a union and meet vesting and other membership requirements after the PLA project is completed. Nonunion workers also suffer loss as a result of their excessive contributions to the exorbitant, above-market costs of union health care plans.

The sum of these lost benefits and other expenses for nonunion workers on PLA contracts amounts to 34% of total compensation (pensions, 19%; union dues and other withholding, 6%; excess health care contributions, 9%).

### 4. Estimate of additional costs to employers for employees on PLA projects

The next step in the analysis is to determine the average excess fringe benefit costs that nonunion businesses often pay when their employees work on short-term PLA contracts.

For the 13 union CBAs reviewed in this study, the average pension contribution is 19% of an employee’s total compensation. In addition, the average health insurance contribution to the union plans on behalf of employees is 16% percent of an employee’s total compensation.

While employers are not obligated to do so, interviews suggest nonunion employers typically maintain contributions to existing retirement and health insurance plans, in addition to contributing to union plans required under a PLA, for as long as their nonunion employees work on short-term PLA projects. This double payment of benefits increases nonunion employers’ fringe benefit costs by an extra 35% (19%+16%) of a nonunion employee’s compensation when they work on a short-term PLA construction contract. The added costs of paying these duplicative benefits place nonunion contractors at a competitive disadvantage when trying to win bids against unionized firms that are not faced with double benefits costs.

28 Current data provided from open shop painting business in Sacramento, California.

29 See <https://www.kff.org/health-costs/>.



**Summary of Potential Extra Costs for Nonunion Employers and Employees on Government-mandated PLAs**

	Employers	Employees	
Pensions	19%	19%	
Health Insurance	16%	9%	(16% - 7%*)
Union Dues Withholding	0%	6%	
<b>Total</b>	<b>35%</b>	<b>34%</b>	

\* As noted above, 7% is the estimated cost of market-based insurance premiums.

**5. Total impact of government-mandated PLAs on nonunion employees and employers**

The final step in the model is to determine the macro portion of lost wages for nonunion employees and excess costs for nonunion employers while working on federal construction projects with a PLA. As previously noted, an assumption of the model is that union shops perform 12.7% of federal contracts in the data population. Therefore, the nonunion portion of labor costs is \$3,118,181,101 (\$3,571,799,658 x .873). This cost is used to compute both the total lost wages for employees and the total additional costs for employers as they pay certain fringe benefits for employees while they work on short-term PLA contracts.

**5a. Total impact of government-mandated PLAs on nonunion employees**

As explained earlier, 34% of a nonunion employee’s total compensation is lost or stolen when they work on short-term government-mandated PLA projects, which amounts to \$1,060,181,574 (\$3,118,181,101 x .34). Next, the actual loss of nonunion employee compensation depends on how many federal contracts are subject to

government-mandated PLAs. For purposes of this study, I use three estimates for federal contracts that would move to government-mandated PLAs (15%, 30% and 50%) to calculate the range. Accordingly, lost wages are projected to fall into the following range: \$159,209,398 at 15%, \$318,418,796 at 30% and \$530,697,993 at 50%.

**5b. Total impact of government-mandated PLAs on nonunion employers**

Nonunion employers are often exposed to duplicate and excess costs when their employees work on short-term government-mandated PLA contracts. Employers typically maintain pension contributions to existing plans. Also, they maintain health insurance coverage for the employee, expecting them to return after the PLA contract is finished. As discussed above, the estimate of 35% is used to compute duplicate fringe benefit costs for employers while their employees work on short-term PLA projects. As a portion of total wages, that amounts to \$1,092,613,515 (\$3,121,752,901 x .35). Next, applying the same estimates as above yields the following range of additional costs for employers: \$163,892,027 at 15%, \$327,784,055 at 30% and \$546,306,758 at 50%.

**% of Federal Construction Contracts Moving to Government-mandated PLAs**

**Lost Wages and Benefits to Employees**

15%	30%	50%
\$ 159,027,236	\$ 318,054,472	\$ 530,090,787

**% of Federal Construction Contracts Moving to Government-mandated PLAs**

**Excess Fringe Benefit Costs to Employers**

15%	30%	50%
\$ 163,892,027	\$ 327,784,055	\$ 546,306,758

## 6. Withdrawal liability exposure for nonunion employers

The purpose of this section is to explore the potential exposure for nonunion contractors that face increased and unnecessary exposure to pension fund liabilities when they perform work under PLAs. This section is based both on interviews with key players in the field such as labor attorneys and an examination of data from Form 5500s for 20 MEPPs in the construction industry. This data is used to calculate a prospective “pro-rata” withdrawal liability for each of the 20 pensions examined.

As noted earlier, when construction companies sign PLAs, they generally must contribute to defined-benefit multiemployer pension plans sponsored by the union(s). After signing PLAs and/or other union agreements, construction employers may find themselves with unwanted MEPP withdrawal liability they did not bargain for. For small and mid-sized companies, this liability can be enormous, sometimes greater than the value of the company itself.

### 6a. Interviews with key experts in the field

As explained by Thomas Lenz, a prominent labor and employment attorney from Pasadena, California, contractors sometimes stumble into potentially crippling withdrawal liability exposures. For example, before meeting Lenz, one client signed a master labor agreement disguised as a PLA solely in order to make picket lines disappear. He eventually encountered a substantial withdrawal liability.

Another construction contractor received notice of a surprise withdrawal liability when the union told him that it would no longer sign any agreements with him. Lenz related a third case where the union unexpectedly pulled the plug on one of his clients, which had been an equipment rental signatory for more than 20 years. This case also led to a significant withdrawal liability.

Finally, one client in Colorado, a fire sprinkler company, experienced betrayal and a subsequent withdrawal liability after his affiliated union suddenly decided to subsidize one of his competitors and underbid a signatory to their own union contract. Lenz took several of these cases before the National Labor Relations Board seeking, and in many cases securing, relief for his clients.

A second labor and employment law attorney interviewed for this report is Ron Mason, an experienced management labor lawyer in Columbus, Ohio, who specializes in dealings

with the NLRB and unions. Mason has helped many companies navigate away from the potentially enormous cost of being affiliated with union MEPPs.

Mason also emphasized the hazards of membership or affiliation with union MEPPs. According to Mason, any unionized company involved in a MEPP should decertify the union and get out as soon as possible. He explained that this conclusion applies regardless of the funding condition of the pension. His position is that PLA contracts that require union labor are a bad deal for both the public and for nonunion contractors that may get involved. They are a bad deal for the public due to excessive costs. They are a bad deal for nonunion contractors that join PLAs as they lead to substantially greater costs and the employees often never receive any benefits from their pension contributions due to vesting requirements. In addition, he noted that interest expenses typically double the total withdrawal liability costs.

### 6b. When is withdrawal liability triggered?

The withdrawal liability is computed based on the employer’s share of the plan’s underfunded liabilities. The withdrawal liability applies when a contractor either withdraws from the pension or continues working in the same geographical area in a nonunion context. My original 2009 report conjectured that such withdrawal liabilities may reach \$1 million.<sup>30</sup> This report provides more detailed information and calculations concerning the size of prospective withdrawal liabilities for 20 different construction industry MEPPs.

The approach to calculating an employer’s withdrawal liability involves first calculating, and then allocating, the plan’s unfunded valuation benefit or liability among the participating employers. An April 2020 issue brief from the American Academy of Actuaries presents the rules for calculating a withdrawal liability.<sup>31</sup>

### 6c. Calculating a plan’s unfunded vested benefits liability

A plan’s UVB is the difference between the liability for vested benefits under the plan and the value of plan assets. The most significant actuarial assumption for this calculation is the interest rate used to discount future expected liabilities. There are two approaches for selecting the interest rate to estimate the rate of investment returns that plan assets will earn in the future. The first approach typically involves developing expected returns for the various asset classes in the plan’s investment portfolio.

<sup>30</sup> See Supra note 1, p. 24.

<sup>31</sup> See “Determining Withdrawal Liability for MEPPs: A Range of Approaches to Actuarial Assumptions,” [https://www.actuary.org/sites/default/files/2020-04/Withdrawal\\_Liability.pdf](https://www.actuary.org/sites/default/files/2020-04/Withdrawal_Liability.pdf).

This approach usually embraces a discount rate near 7%. The second approach bases the selection of the discount rate on observations of market data. The PBGC publishes interest rates each quarter on its survey of insurers in the annuity marketplace. The actuarial liability calculated used in this market-observed interest rate is typically consistent with an estimate of the cost of settling a pension liability. This discount rate is near the 3% rate customarily used on Form 5500 for multiemployer pensions.

After selecting the discount rate, the next step is to multiply the fund's UVB liability by a fraction. The numerator is the amount of the withdrawing employer's contribution for that plan year. The denominator is the amount of all employers' contributions. In theory, this becomes the foundation for the 20-year cap in place for the payment of the withdrawal liability. However, Wolf and Spangler (2015) point out that the payment period for the withdrawal liability may be as short as five years.<sup>32</sup> They note, "as a practical matter, employers frequently are required to pay withdrawal liability in annual amounts substantially in excess of their pre-withdrawal annual contributions, despite the Multiemployer Pension Plan Amendment Act of 1980 limitations. This occurs, in particular, when the employer's contribution base units have declined over the years while the negotiated contribution rate has increased. Consequently, many withdrawing employers have less than five years to pay the entire liability."<sup>33</sup>

#### 6d. Determining withdrawal liability from Form 5500

As explained above, the total UVB is determined first. The data for this calculation is found on Form 5500 and is based on the current view for both assets and liability values. The UVB is determined by subtracting the current value of the assets from the total RPA '94 liability<sup>34</sup> as reported on Form 5500. The next step would be a determination of the contractor's respective share.

The contractor's share of the UVB is computed as the fraction of its average pension contribution divided by the total contributions from all employers. Form 5500 does not provide this information. However, it does present the total number of employers contributing to the pension. Thus, it is possible to determine a pro-rata withdrawal liability as if each employer pays an equal amount each year. This figure

provides a reasonable average estimate for the withdrawal liability for each employer in that pension.

Exhibit 4 shows the estimated "per-capita" withdrawal liability for the 20 MEPPs in the construction industry included in this study. The first 10 are in the "endangered" category, where the funding ratio is 65% to 80%. The next 10 are in the "critical" zone, where the funding ratio is below 65%. The average per-capita withdrawal liability in the endangered plans is \$2,173,203. The average per-capita withdrawal liability in the critical plan group is \$2,763,869. These figures serve to illustrate the potentially large withdrawal liabilities that employers could face by unwittingly joining certain MEPPs. Virtually every union plan also has considerably more inactive participants than active ones. Similarly, the number of employers is declining over time.

MEPP administrators have also aggressively pursued unpaid withdrawal liability claims against the purchasers of a withdrawing employer's assets, even where traditional criteria of "successor liability" are not present.<sup>35</sup> To avoid multimillion-dollar exposures, companies and contractors are incentivized to avoid signing PLAs that may entangle them with troubled MEPPs. This tends to make the funding situation even worse for existing MEPPs.

#### 7. A snapshot of MEP plans in the construction industry

As noted earlier, the Pension Benefit Guaranty Corporation is the independent agency of the federal government that monitors and privately insures pension benefits in private sector. The PBGC takes over MEP plans when they become insolvent. Once these plans are handed over to PBGC, qualified individual beneficiaries may receive up to \$12,870 per year in defined benefits. According to data from the PBGC, the construction industry is a major contributor to both current MEPP underfunding and future PBGC insurance program funding shortfalls.

MEPP underfunding has been widely discussed. This section focuses on construction industry MEPP underfunding. To put it in context, the amount of construction industry MEPP underfunding grew to \$167

32 See Wolf C. and P. Spangler "Withdrawal Liability to MEPPs Under Erissa," 2015, <https://www.vedderprice.com/-/media/files/vedder-thinking/publications/2015/05/updates-to-withdrawal-liability-to-multiemployer-p/files/2015-withdrawal-liability-to-multiemployer-pension/fileattachment/2015-withdrawal-liability-to-multiemployer-pension.pdf>

33 See *Ibid.* at page 14.

34 See discussion of RPA '94 liability, which is a measure of the current liability that uses a more realistic discount rate and results in a higher value for current value, <https://www.everycrsreport.com/reports/R43305.html>

35 See McGuire-Woods at <https://www.mcguirewoods.com/client-resources/Alerts/2018/7/Purchasing-Assets-Employer-MEP-Withdrawal-Liability-Successor>.

billion or 47% of total underfunding in 2009.<sup>36</sup> According to Table M-14 of the PBGC's 2019 Pension Insurance Data Tables report, which contains the most recent PBGC data on MEPPs, the amount of construction industry MEPP underfunding grew to \$368.45 billion (48.7%) of the total PBGC-insured MEPP underfunding of \$756.99 billion.<sup>37</sup> This represents an average annual rate of growth of 8.23%. At this rate of growth, total construction industry underfunding will grow to \$467.2 billion by 2022.

### 7a. Number of underfunded plans

The 2019 PBGC report indicates that there are 753 unfunded plans in the construction industry. This amounts to 54.8% of the total 1,373 plans insured by the PBGC in the construction industry.<sup>38</sup>

### 7b. Underfunded plans with the largest number of employees

According to the 2018 PBGC report, the largest number of employees in underfunded plans, almost 3.877 million, are from the construction industry. This amounts to 36.7% of the 10.565 million PBGC-insured MEPP participants across all industries.<sup>39</sup>

### 7c. Plans in critical and declining status

In 2020, 30 of 65 MEPPs sending Critical and Declining Status Notices to plan participants (reflecting plan performance through the end of 2019) were from the construction industry, according to a list posted by DOL's Employee Benefits Security Administration. In addition, 81 out of 121 MEPPs sending Critical Status Notices and 47 out of 61 sending Endangered Status Notices were from the construction industry.<sup>40</sup>

### 7d. Share of total PBGC liabilities

According to the 2019 PBGC report, the construction industry made up \$646.8 billion (49.9%) of the PBGC's total liabilities.<sup>41</sup> This data makes it clear that the construction industry was a key contributor to the drastic underfunding of MEPPs. Moreover, they will likely cause dramatic future PBGC insurance program funding shortfalls.

## 8. A snapshot of the entire MEPP system

In any discussion of the financial solvency of the MEPP system, it should be noted that there are two schools of thought for calculating the funding ratio. Actuaries, who officially score the pensions' financial solvency, rely on the traditional view. Both the PBGC and Form 5500 rely on the current view. The traditional view assumes a higher interest rate of around 7% to both calculate the value of assets and to discount liabilities. The current view assumes a lower rate of between 3% and 4%. These two schools of thought produce dramatically different funding ratios for pensions.

Studies have applied both rates to MEP plans to demonstrate dramatically different results. For example, Zion et al. (2012) computed the average funding status for the MEPP system using both views. Under the current view, the portfolio of 1,354 MEPPs had an aggregate funding ratio of 46%. Under the traditional view, the aggregate funding ratio climbed steeply to 81%.<sup>42</sup> Moreover, they estimated a total funding deficit of \$369 billion for all U.S. MEPPs.

An example of an estimate using the traditional view is shown by a study by Miller (2017). Using the traditional view, they projected the much smaller deficit of \$36.4 billion for all MEP plans.<sup>43</sup> Miller also reported that the three MEPPs of Central States, United Mine Workers and the Bakers and Confectionary Union were responsible for 63% of that deficit. The total deficit of \$36.4 billion, broken down among the four pensions above and the rest, is shown in Panel A of Exhibit 4.

As reported by Bradford (2019), the PBGC released a more recent report that showed a record funding deficit of \$65.2 billion for the multiemployer pension system. The report indicated that total liabilities for the MEP system were \$68 billion with only \$2.9 billion in assets as of Sept. 30. The PBGC also indicated that by 2025, the probability is 99% that the PBGC will become insolvent. Since that time, the multiemployer pension system's aggregate funding level is estimated to have declined further from 85% to 75% (using the traditional view) between Jan. 1 and April 7, 2020, due to COVID-19, according to the consulting firm Milliman. That is the equivalent of adding \$21,000 of underfunding per active participant.

36 See [Table M-14: Funding of PBGC-Insured Plans by Industry \(2009, estimated\) Multiemployer Program](#) of PBGC 2010 Pension Insurance Data Tables report.

37 See [Table M-14: Funding of PBGC-Insured Plans by Industry \(2018\) Multiemployer Program](#) of PBGC 2019 Pension Insurance Data Tables report.

38 See [Table M-8: PBGC-Insured Plans and Participants by Industry \(2018\) Multiemployer Program](#) of PBGC 2019 Pension Insurance Data Tables report.

39 See [Table M-8: PBGC-Insured Plans and Participants by Industry \(2018\) Multiemployer Program](#) of PBGC 2019 Pension Insurance Data Tables report.

40 See "[Taxpayer Bailout of Multiemployer Pension Plans and Government-Mandated Project Labor Agreements](#)," TheTruthAboutPLAs.com, March 17, 2021.

41 See [Table M-14: Funding of PBGC-Insured Plans by Industry \(2018\) Multiemployer Program](#) of PBGC 2019 Pension Insurance Data Tables report.

42 See Zion, et. al. p. 26.

43 Miller, S., "[114 Multiemployer Pension Plans Projected to Fail Within 20 Years: Failing Union Pensions May Seek Relief Through Reduced Payouts](#)," SHRM.org, August 29, 2017.

Further evidence of this decline was reflected by an increase in the number of plans in either critical and declining status or insolvent and paying reduced benefits with financial assistance from the PBGC to 130.<sup>44</sup> Milliman also determined that there had been a further decline in the average funding ratio of MEPPs of 10%. Coffing et al. (2020) predicted a similar decline in the MEPP system.<sup>45</sup> They predicted that MEPPs are likely to suffer further declines due to the sudden drop in industry activity due to COVID-19.

### *8a. Financial management of MEPPs*

The two primary objectives of a MEPP are to manage plan assets to maximize earnings and to collect employer contributions and pay employee pension benefits. Ideally, contributions should cover a large share of employee pension benefits. This structure provides more safety for the pension in times of recession when earnings decline. Exhibit 5 shows additional financial characteristics of these construction industry MEPPs. Revenue data is provided for both employer contributions and earnings. Expense data is provided for both employee pension benefit payments and for earnings. The return on assets provides a good picture of how well the MEPP is managed. Especially during this time of record stock market performance, it is important for MEPPs to have solid financial performance.

Ideally, an MEPP will have enough employer contributions to cover employee pension benefit payments. This leaves room for earnings to improve the financial condition of the pension. In fact, there are several plans in the endangered group where employer contributions exceed employee pension benefits. This is a good sign. In the critical plan group, there is only one such pension, the Carpenters Pension Trust Fund for Northern California, where employer contributions exceed employee pension benefits. This shows a higher level of risk intrinsic in these plans.

The pension with the smallest percentage of employer contributions is Local 202 Sheet Metal Workers Pension Fund at 6%. This indicates that 94% of its income was derived from earnings. This suggests that the fund will suffer severe financial consequences when earnings decline. The net income margin also shows an overall

significant loss for 2019 for this MEPP. This is another distressing sign for this MEPP.

Similarly, the Plasterers and Cement Masons Local No. 94 MEPP reveals a significant loss for the year. If these pensions cannot perform well in a record stock market, what will they do during the next downturn? Finally, the return on assets displays the ratio of total earnings from investment over total assets. The variance in returns indicates different levels of financial performance for managers of each MEPP. These results also suggest that the financial management of a MEPP has a significant impact on the plan's solvency and financial health.

### *9. Congress and Biden administration initiatives for the MEPP system bailout*

Prior to the election, the Biden presidential campaign promoted relief measures for the MEPP system. This relief was presented by Congress in the form of the Butch Lewis Act.<sup>46</sup> On March 11, 2021, language in the American Rescue Plan Act incorporated aspects of the Butch Lewis Act. The law seeks to preserve and restore the pensions of more than one million retirees and workers in an estimated 200 to 225 severely underfunded multiemployer pension plans.<sup>47</sup> The MEPP system bailout is estimated to cost \$86 billion<sup>48</sup> to \$94 billion,<sup>49</sup> although the total may be much more.

#### *9a. Special financial assistance for financially troubled plans (Sec. 9704)<sup>50</sup>*

The ARPA established a new financial assistance fund under the PBGC to support select MEPPs on the verge of insolvency. The ARPA allows the following broad categories of MEPPs to apply for financial assistance under the new PBGC program:

- The MEPP is in critical and declining status for any plan year beginning in 2020 through 2022;
- Benefit cuts or suspensions have already been approved by the U.S. Treasury as of the date of the ARPA's enactment;

44 Lantz N., R. Barker, T. Connor, S. Kliternick, J. Steward, and W. Wade, "Multiemployer Pension Funding Study": December 2019, February 2020.

45 Coffing K., T. Connor, and N Lantz, "COVID-19 to Leave Multiemployer Pension System More Distressed Than Ever," *Multiemployer Review*, April 2020.

46 The Butch Lewis Act of 2017, S. 2147, 115th Congress, 1st Sess., <https://www.congress.gov/115/bills/s2147/BILLS-115s2147is.pdf> (accessed November 15, 2020). Also see S. Miller, "Biden Proposals Could Alter Retirement Planning Landscape," *Society for Advancement of Human Resource Management (SHRM)*, November 16, 2020.

47 Estimates of number of plans affected overall and in each category come from a March 2021 article published by Milliman, a consulting firm. Nina Lantz, Yutaro Saki, Aaron Shapiro, "Butch Lewis Emergency Pension Relief Act of 2021," *Multiemployer Review*.

48 Congressional Budget Office, "Reconciliation Recommendations of the House Committee on Ways and Means," Feb. 17, 2021, <https://www.cbo.gov/system/files/2021-02/hwaysandmeansreconciliation.pdf>.

49 Special Financial Assistance by PBGC, 86 Fed. Reg., 36,598, 36,614 (July 12, 2021).

50 <https://www.jdsupra.com/legalnews/struggling-multiemployer-pension-plans-7223095/>

- In any plan year beginning in 2020 through 2022, the plan is certified by the plan's actuary to be in critical status, has a modified funding percentage of less than 40%, and has a ratio of active to inactive participants which is less than two to three; or
- MEPPs that became insolvent after Dec. 16, 2014, have remained insolvent and have not been terminated as of the date of the ARPA's enactment.

### 9b. Eligibility and application process

PBGC is authorized to limit applications for the first two years following the ARPA's enactment to:

- MEPPs that are insolvent or likely to become insolvent within five years of the date of the ARPA's enactment;
- MEPPs where the PBGC projects that the present value of financial assistance payments as otherwise available to the MEPP through existing PBGC programs exceeds \$1 billion;
- MEPPs that have implemented benefit suspensions as of the date of the ARPA's enactment; or
- MEPPs that satisfy similar circumstances approved by the PBGC.

### 9c. Amount of financial assistance available

The ARPA specifies that there is *no cap* on the amount of financial assistance that can be granted by the PBGC to the MEPP. The PBGC will provide the amount required for the MEPP to pay *all benefits* due during the period beginning on the date of the special financial assistance payment and ending on the last day of the MEPP's plan year ending in 2051. ARPA also obligates MEPPs receiving special financial assistance to reinstate benefits that were previously suspended and to use a portion of the special financial assistance to make participants and beneficiaries in pay status whole for reductions caused by previous suspensions.

The ARPA also restricts an MEPP's use of special financial assistance payments by making these payments available only for payment of benefits and plan expenses, requiring that the payments be segregated from other plan assets and obligating the MEPP to invest the financial assistance solely in investment-grade bonds or other investments approved by the PBGC. Essentially, the ARPA is making these special financial assistance payments available solely for the purpose of paying benefits and expenses, not to resolve MEPP underfunding either directly or by chasing greater returns through riskier investment strategies.

### 9d. No requirement to repay financial assistance received

The ARPA explicitly states that MEPPs receiving financial assistance under the ARPA are *not* required to repay the PBGC for any amount of the financial assistance payment. However, MEPPs must use their financial assistance payments for benefit payments and plan expenses. MEPPs that fail to adhere to these limitations may be forced to repay some or all of the financial assistance payment.

The ARPA specifies that receipt of a special financial assistance payment does not relieve MEPPs from making payment of PBGC premiums otherwise applicable to underfunded plans. Moreover, the ARPA mandates that MEPPs receiving special financial assistance payments be deemed to be in critical status until the last plan year ending in 2051.

### 9e. Temporary delay on funding status designations

MEPP sponsors generally must certify the plan's funding status on an annual basis. The plan is certified as being either in endangered (generally, 65% to 79% funded), critical (generally, less than 65% funded), or critical and declining status (generally, less than 65% funded and projected to become insolvent within ten plan years), or none of the above (generally, more than 80% funded). Entry into endangered, critical or critical and declining status requires plan sponsors to implement certain adjustments to optional benefits and to adopt supplemental benefit contribution requirements for contributing employers. These requirements include a funding improvement plan for MEPPs in endangered status and a rehabilitation plan for MEPPs in critical or critical and declining status.

Under the ARPA, a MEPP may also elect that its funding status for the first plan year beginning on or after March 1, 2020, and ending on Feb. 28, 2021, or the next succeeding plan year be *the same funding status* as reported by the MEPP for the plan year preceding the designated plan year. For example, a MEPP that was in endangered status for the plan year ending on Dec. 31, 2020, can elect to *retain* its endangered status for either the plan year beginning in January 2021 or January 2022. This relief allows MEPPs to avoid implementing long-term changes (e.g., mandatory adoption of a rehabilitation plan) due to funding changes that may be short term and resulting from the COVID-19 public health emergency.

### 9f. Projected costs of MEPP system bailout

This new law has a number of critics who raise important objections to this government bailout. Aharon Friedman, former senior tax counsel to the House Ways and Means

Committee, asserts that the legislation will saddle taxpayers with unfunded pension promises made by MEPPs, which are underfunded by more than \$100 billion. Moreover, the new law also provides perverse incentives for other MEPPs to subsequently qualify. According to benefits attorney Frank Berrodin, “One of the most interesting and unfair things about the new law is that the plans that will receive the most benefit are the ones that have been managed the most irresponsibly.” Finally, Sen. Chuck Grassley, R-Iowa, criticized the measure as a bailout with no strings attached. “It’s just a blank check, with no measures to hold mismanaged plans accountable.”

The impending bankruptcy of the PBGC in 2026 raises further questions about the propriety of this bailout at this time.<sup>51</sup> According to a 2016 CBO estimate,<sup>52</sup> the fair-value estimate of PBGC’s future obligations was \$101 billion, meaning the cost of backstopping the PBGC, should it completely fail, could be as much as \$101 billion.<sup>53</sup>

The most recent CBO estimate of this legislation is \$86 billion<sup>54</sup> to \$94 billion.<sup>55</sup> Even this figure is a major understatement of the long-term costs of bailing out the MEPP system. There are numerous other variables and factors that could eventually push the actual cost of this new scheme to even larger sums. Examples of these factors include the fact that numerous MEPPs are already in a deficit position. For example, the three pensions mentioned earlier have a combined net income deficit of more than \$1.3 billion for 2019.<sup>56</sup> These pensions are representative of many who will run a deficit for 2020. The fact that many MEPPs show substantial deficits in the face of record stock market returns suggests that the MEPPs will suffer devastating losses during the next stock market downturn.

Other important factors not considered in current government estimates are the fact that the number of employers paying into most pensions is declining. This means that employer pension contributions will continue to fall. As shown earlier in this report, a number of critical and declining pensions no longer have any active

participants left in the pension. For most all the rest of the plans, the number of inactive participants relative to active participants continues to grow.

Finally, as pointed out by Greszler, this bill incentivizes plans to become even more underfunded rather than improving the solvency of plans and preventing future underfunding.<sup>57</sup> In other words, this bill allows them to “push their broken promises onto taxpayers.” It should be noted that the PBGC has never been financed with taxpayer money. The PBGC gets its funding from the payment of annual insurance premiums paid by each multiemployer plan based on the number of participants covered by the plan.

Policymakers continue to escalate their spending programs and seem oblivious to such impending fiscal calamities as the bankruptcy of Medicare (2026) and Social Security (2035).<sup>58</sup> Among other things, this report on the future of America’s entitlements projects that over the next 75 years, Social Security will owe nearly \$14 trillion more than it is projected to take in. Medicare’s annual cash shortfall in 2018 was \$363 billion. Since 1965, the cumulative cash shortfall in Medicare has been \$5.1 trillion. Medicare covers these cash shortfalls by “borrowing” unrelated tax revenues from other programs.

It should be noted that these projections were made prior to the fiscal damage created by COVID-19. According to Statista, the national debt mushroomed to \$28 trillion by the end of February 2021.<sup>59</sup> The portion of this debt financed by the Federal Reserve continues to climb and now is just over \$8 trillion.<sup>60</sup> This means that almost 30% of the total national debt is financed with fiat money created by the Federal Reserve. One wonders where the tipping point will be when investors around the world lose confidence in the U.S. dollar. In light of this accelerating and unhealthy financial metric, a policy that adds the bailout of the privately financed and maintained MEPP system seems like an irresponsible acceleration of an approaching fiscal calamity.

51 See: <https://www.gao.gov/highrisk/pension-benefit-guaranty-corporation-insurance-programs>.

52 Congressional Budget Office, “[Options to Improve the Financial Condition of the Pension Benefit Guaranty Corporation’s Multiemployer Program, 51356](#),” August 2016.

53 See Congressional Research Service report, “[Policy Options for Multiemployer Defined Benefit Pension Plans](#),” October 2020.

54 Congressional Budget Office, “[Reconciliation Recommendations Of the House Committee on Ways and Means](#),” Feb. 17, 2021.

55 Special Financial Assistance by PBGC, 86 Fed. Reg., 36,598, 36,614, July 12, 2021.

56 Central States reported a net income deficit of \$858,136,661 in 2019. The United Mine Workers 2019 deficit was \$242,014,636. Similarly, the 2019 Form 5500 deficit for the Bakery and Confectionary Union \$195,683,081.

57 Commentary, R. Greszler, “[Pension Bailout Bill Would Only Worsen the Underfunding Crisis](#),” Sep. 12, 2019.

58 O’Neill Hayes T. and G. Gray, “[The Future of America’s Entitlements: What You Need to Know About the Medicare and Social Security Trustees Reports](#),” April 22, 2019.

59 <https://www.statista.com/statistics/273294/public-debt-of-the-united-states-by-month/>.

60 [Federal Reserve Board - Recent balance sheet trends](#).

## IV. CONCLUSION

The economic disadvantages faced by nonunion employees and employers related to government-mandated PLA benefit requirements explain why many nonunion construction companies choose not to participate in the bidding process for government-mandated PLA projects. If PLAs were imposed on a significant percentage of federal construction work, hundreds of millions of dollars of compensation would be taken from nonunion workers and distributed to union pension funds and union benefits programs, which do not benefit nonunion workers.

There are five primary conclusions in this study:

1. Employees of nonunion contractors who are forced to perform work under government-mandated PLAs on prevailing wage construction projects suffer a reduction in their take-home pay estimated at 34%. More specifically, lost wages, otherwise referred to as “wage theft,” are now projected to range from \$159 million to more than \$530 million, depending on the assumptions made for companies executing contracts through government-mandated PLAs.
2. The study finds that nonunion employers (contractors) will be forced to pay approximately 35% in extra costs to work under government-mandated PLAs on federal construction projects. Evidence is provided that total extra employer costs would range from \$163 million to just over \$546 million, which would make them less competitive with contractors that do not face these extra benefits costs.
3. Nonunion contractors face increased withdrawal liability exposure when they work under PLAs. This exposure includes possible withdrawal liability when the PLA project is completed. This study uses data from Form 5500 to compute per-capita withdrawal liability for 20 MEPPs in the construction industry. The first group of MEPPs in the endangered category has an average per-capita withdrawal liability of \$2.1 million. The average per-capita withdrawal liability in the next group of critical MEPP plans in the construction industry is \$2.7 million. It is unlikely that any employers in these MEPPs will voluntarily leave and risk becoming subject to such large potential withdrawal liabilities. These large potential penalties also serve as disincentives for employers to join PLAs and MEP plans.
4. This study also considered the current health

of 20 struggling MEP plans in the construction industry. The average funding status for the 10 plans in endangered status was just over 38%. Moreover, the average funding status of the 10 pensions in critical status was 40%. Several of the plans are benefitting from the strong stock market. If the market declines, many plans are slated to experience losses.

5. This study takes a brief look at the overall MEPP system. Prior to 2020 and the start of COVID-19, the MEPP system had been showing signs of improvement and growth. Funding ratios for several MEP plans improved over the 10-year period ending in 2019. Despite the progress in the financial health of certain MEPPs over this period, the total number of plans in the entire MEPP system in critical and declining status increased from 114 in 2017 to 130 in 2019. Similarly, by conservative estimates, the total funding deficit in the MEPP system grew from \$36.4 billion in 2017 to \$65.2 billion in 2019. Moreover, using Form 5500 data from the three largest MEPPs in critical status, it was determined that the current funding deficit in the MEPP system has grown from \$93 billion in 2019 to \$102.3 billion in April 2020.

Since the Biden administration took office, a major MEPP relief initiative was passed by Congress and other MEPP policy options will no doubt be considered. The primary policy proposal enacted to date is the American Rescue Plan Act, which was passed on March 11, 2021. This new law provides for direct cash assistance and forgivable loans to MEP plans. The promise is that there will be no further benefit cuts. Pegged at close to \$100 billion, the cost of this legislative bailout may even be understated as the true costs of this bailout will continue to escalate into the future without additional reforms by Congress. The PBGC has always been privately funded. It has not involved government funds. With the ARPA, this will change. The idea of a government bailout of the pension system is unprecedented and ill-advised. Sen. Grassley criticized the measure as a bailout with no strings attached. “It’s just a blank check, with no measures to hold mismanaged plans accountable.”

A large number of policymakers now assert that MEPPs should follow the private sector and replace defined benefit plans with defined contribution plans. As noted by Lee, a substantial move in this direction has already taken place.<sup>61</sup> Since the 1980s, 401(k) accounts have effectively replaced pensions to become one of the most popular retirement plans for American workers. Moreover, Americans have

61 Lee, N., “[How 401\(k\) accounts killed pensions to become one of the most popular retirement plans for U.S. workers](#),” March 24, 2021.



saved about \$6.5 trillion in 401(k) accounts, representing nearly one-fifth of the U.S. retirement market. Finally, in 2020, there were about 600,000 401(k) plans, with approximately 60 million Americans participating in them.

Lawmakers and stakeholders are often persuaded to require government-mandated PLAs because proponents argue they will result in better economic outcomes for construction trades workers employed on PLA projects that will benefit from increased wages and participation in union benefits and retirement plans. However, this report suggests that is not the case for nonunion workers.

In addition, this report demonstrates how government-mandated PLAs result in considerable increased costs and potential MEPP withdrawal liability exposure that negatively impact the ability of contractors to compete and win construction contracts against union firms that are not subjected to these disadvantages.

Lawmakers and industry stakeholders should be aware of the negative economic effect of government-mandated PLAs on nonunion employees and employers when considering their controversial use on taxpayer-funded construction projects.

## EXHIBIT 1 U.S. Federal Construction Contracts > \$25 million

Fiscal Year	U.S. Fed. Construction Contracts > \$25M	Total \$, U.S. Fed. Construction Contracts
2015	\$ 6,576,148,121	\$ 22,548,000,000
2016	\$ 3,543,468,900	\$ 22,242,000,000
2017	\$ 6,839,031,533	\$ 21,267,000,000
2018	\$ 9,610,513,761	\$ 21,979,000,000
2019	\$ 16,049,261,164	\$ 25,263,000,000
2020	\$ 18,612,427,804	\$ 28,376,712,200
<b>Annual Average</b>	<b>\$ 10,205,141,881 43%</b>	<b>\$ 23,612,618,700</b>

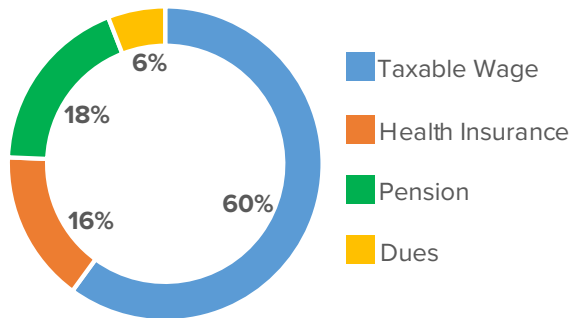
## EXHIBIT 2 Collective Bargaining Agreement Wage and Fringe Benefits Data<sup>†</sup> 13 Construction Unions

	Union Name	State	Taxable Wage	Health Insurance	Pension	Dues	Total Package	Dues as % of Total Package
1	IUPAT Northern CA Painters	CA	\$33.16	\$10.55	\$9.83	\$4.16	\$57.70	7.2%
2	IUPAT Northern CA Drywall	CA	\$46.26	\$10.55	\$15.58	\$4.58	\$76.97	6.0%
3	IUPAT Northern CA Flooring	CA	\$38.42	\$10.55	\$12.14	\$4.50	\$65.61	6.9%
4	IBEW 110 Electrical Workers	MN	\$42.28	\$11.11	\$9.32	\$3.24	\$65.95	4.9%
5	IBEW 292 Electrical Workers	MN	\$45.90	\$12.60	\$12.42	\$3.70	\$74.62	5.0%
6	AGC* of Minnesota	MN	\$40.65	\$8.91	\$12.85	\$2.34	\$64.75	3.6%
7	WI Laborers District Council	WI	\$31.30	\$8.40	\$11.95	\$2.04	\$53.69	3.8%
8	Local 113 Wisconsin Laborers	WI	\$32.96	\$8.55	\$11.45	\$3.61	\$56.57	6.4%
9	AGC Carpenters of Michigan	MI	\$31.50	\$7.96	\$19.76	\$3.09	\$62.31	5.0%
10	AGC of WA and Carpenters	WA	\$41.67	\$7.86	\$6.60	\$3.05	\$59.18	5.2%
11	Heat & Frost Insulators Local 82	WA	\$33.74	\$9.24	\$9.55	\$2.71	\$55.24	4.9%
12	Laborers District Council of MN	MN	\$23.24	\$7.75	\$6.83	\$2.52	\$40.34	6.2%
13	Cement Masons Local 692 KY	KY	\$21.45	\$6.35	\$3.80	\$2.67	\$32.50	8.2%
	<b>Average</b>		<b>\$35.58</b>	<b>\$9.26</b>	<b>\$10.93</b>	<b>\$3.25</b>	<b>\$58.88</b>	
	<b>Average % of Total Package</b>		<b>60%</b>	<b>16%</b>	<b>19%</b>	<b>6%</b>		

<sup>†</sup> Prevailing wage laws require the total wages (package) amount be paid to workers in the form of taxable wages and benefits. Union dues and other withholding are generally subtracted from taxable wages to arrive at take-home pay. Percentages above are based on total package amount.

\* Associated General Contractors for building and highway construction

### EXHIBIT 3 Pension, Health, Union Dues, Taxable Wages Average % for 13 Construction CBAs



### EXHIBIT 4 20 Construction Industry MEPPs “Per Capita” Withdrawal Liability

Endangered Plans	Employers	Active/ Inactive	Unfunded	Per Capita Withdrawal Liability
Greater Pennsylvania Carpenters’ Pension Fund	649	84%	\$ 1,627,377,839	\$ 2,507,516
IBEW Local 688 Pension Plan	24	47%	\$ 24,231,730	\$ 1,009,655
Insulators Local No.27 Pension Plan	19	73%	\$ 49,296,158	\$ 2,594,535
Ironworkers Local Union No.167 Pension	30	49%	\$ 64,016,955	\$ 2,133,899
Local Union 373 U.A. Pension Plan	46	58%	\$ 73,792,925	\$ 1,604,194
Michigan Carpenters Pension Fund	380	57%	\$ 1,084,507,758	\$ 2,853,968
Sheet Metal Workers National Pension Fund	3846	72%	\$ 10,022,185,202	\$ 2,605,872
Southern California IBEW-NECA Pension Plan	461	99%	\$ 2,069,363,960	\$ 4,488,859
Southern Illinois Bricklayers Pension Plan	35	55%	\$ 25,407,625	\$ 725,932
Twin City Carpenters and Joiners Pension Plan	2200	62%	\$ 2,656,716,397	\$ 1,207,598
<b>Average</b>	<b>769</b>	<b>65%</b>	<b>\$ 1,769,689,655</b>	<b>\$ 2,173,203</b>
<b>Critical Plans</b>				
Asbestos Workers Philadelphia Pension Plan	52	38%	\$ 370,665,862	\$ 7,128,190
Carpenters Pension Trust Fund for Northern California	1147	82%	\$ 6,041,347,726	\$ 5,267,086
Colorado Cement Masons Trust Funds	32	31%	\$ 9,752,323	\$ 304,760
IBEW Local 150 Pension Fund	256	96%	\$ 322,141,414	\$ 1,258,365
Ironworkers Local Union 16 Pension Fund	53	24%	\$ 85,601,291	\$ 1,615,119
Kansas Construction Trades Fringe Benefit Funds	100	20%	\$ 276,304,999	\$ 2,763,050
Laborers National Pension Fund	792	40%	\$ 2,317,531,236	\$ 2,926,176
Local 202 Sheet Metal Workers Pension Fund	3	2%	\$ 13,390,528	\$ 4,463,509
Plasterers and Cement Masons Local No.94 Pension Plan	8	43%	\$ 3,107,243	\$ 388,405
Sheet Metal Workers Local 44 Retirement Income Plan	30	64%	\$ 45,720,924	\$ 1,524,031
<b>Average</b>	<b>247</b>	<b>44%</b>	<b>\$ 948,556,355</b>	<b>\$ 2,763,869</b>

## EXHIBIT 5 20 Construction Industry MEPPs Financial Characteristics

Endangered Plans	Funding Ratio	Employer Contribution	% of total Revenue	Benefits	Benefits as a % of Total Expenses	Net Income Margin	Return on Assets
Greater Pennsylvania Carpenters' Pension Fund	34.9%	\$ 82,003,364	35%	\$ 92,239,960	95%	58%	14%
IBEW Local 688 Pension Plan	38.4%	\$ 1,595,734	80%	\$ 1,239,379	90%	30%	1%
Insulators Local No.27 Pension Plan	44.2%	\$ 3,750,160	36%	\$ 3,625,505	92%	62%	17%
Ironworkers Local Union No.167 Pension	43.3%	\$ 2,180,827	20%	\$ 4,409,914	95%	58%	18%
Local Union 373 U.A. Pension Plan	36.9%	\$ 4,920,693	36%	\$ 4,400,665	89%	64%	21%
Michigan Carpenters Pension Fund	34.1%	\$ 57,474,330	85%	\$ 63,600,355	94%	-0%	2%
Sheet Metal Workers National Pension Fund	32.7%	\$ 606,859,427	42%	\$ 515,332,653	95%	63%	16%
Southern California IBEW-NECA Pension Plan	35.8%	\$ 105,726,706	69%	\$ 117,417,865	93%	17%	4%
Southern Illinois Bricklayers Pension Plan	43.1%	\$ 817,030	47%	\$ 1,406,526	90%	11%	5%
Twin City Carpenters and Joiners Pension Plan	38.7%	\$ 101,230,089	28%	\$ 151,857,827	95%	56%	16%
<b>Average</b>	<b>38%</b>	<b>\$ 96,655,836</b>	<b>48%</b>	<b>\$ 95,553,065</b>	<b>93%</b>	<b>42%</b>	<b>11%</b>
<b>Critical Plans</b>							
Asbestos Workers Philadelphia Pension Plan	37.6%	\$ 17,701,007	57%	\$ 27,850,737	94%	4%	5%
Carpenters Pension Trust Fund for Northern California	39.0%	\$ 341,679,728	72%	\$ 260,147,956	93%	41%	3%
Colorado Cement Masons Trust Funds	40.4%	\$ 322,841	20%	\$ 935,370	85%	31%	19%
IBEW Local 150 Pension Fund	39.3%	\$ 10,164,359	60%	\$ 15,094,256	94%	6%	3%
Ironworkers Local Union 16 Pension Fund	44.4%	\$ 3,524,570	27%	\$ 9,043,718	93%	25%	14%
Kansas Construction Trades Fringe Benefit Funds	33.9%	\$ 8,059,347	24%	\$ 16,610,347	94%	47%	18%
Laborers National Pension Fund	36.4%	\$ 69,068,410	23%	\$ 153,225,269	93%	46%	18%
Local 202 Sheet Metal Workers Pension Fund	62.2%	\$ 64,112	6%	\$ 1,692,073	92%	-62%	5%
Plasterers and Cement Masons Local No.94 Pension Plan	36.9%	\$ 124,246	60%	\$ 267,426	74%	-75%	4%
Sheet Metal Workers Local 44 Retirement Income Plan	31.9%	\$ 1,979,893	35%	\$ 2,001,322	90%	60%	17%
<b>Average</b>	<b>40%</b>	<b>\$ 45,268,851</b>	<b>38%</b>	<b>\$ 48,686,847</b>	<b>90%</b>	<b>13%</b>	<b>11%</b>

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