What the Butch Lewis Act Will and Will Not Do

Date Published: Tuesday, April 27, 2021
On March 11, 2021, as part of the American Rescue Plan Act, President Biden signed the Butch Lewis Emergency Pension Relief Act into law. The law will preserve and restore the pensions of more than one million retirees and workers in an estimated 200-225 severely underfunded multiemployer pension plans.[i] It is the result of many years of persistent and passionate advocacy by tens of thousands of retirees, national retiree, worker, and consumer organizations, unions, employers and many others. This fact sheet summarizes what the law will and will not do.

Who will be helped by the new law?

There are four categories of underfunded multiemployer pension plans that will be able to apply for money to continue to pay promised pensions and to restore benefits that have been cut. If you are in one of these categories, there is a good chance the law will help you. ***But it is important to note that your plan trustees must file an application with the government to in order to receive this money.*** Applications must be filed before the end of 2025.

In all four categories, plans that receive money from the government should be able to pay full benefits to retirees and to their widows and widowers and divorced spouses entitled to benefits for at least 30 years.

- ***Category 1*:** If you are in a multiemployer pension plan that is now in "critical and declining status" or that is certified to be in critical and declining status before the end of 2022 and your plan receives money under the new law, the pension you have earned will continue to be paid. There are currently at least 124 plans that are in critical and declining status. Without the financial relief provided by the new law, plans in critical and declining status were predicted to run out of money in less than 20 years.
    - Examples of plans in this category that will be eligible to apply for relief include the Central States Pension Plan, the Bakery and Confectionary Union and Industry International Pension Fund, and the American Federation of Musicians and Employers Pension Fund. See **this list** of plans certified to be in critical and declining status.

- ***Category 2*:** The new law will restore the pensions of retirees whose benefits were cut as the result of a law passed in 2014 called the Multiemployer Pension Relief Act (MPRA). If you are in this category, you will also receive back payments for the periods that your benefits were "suspended." Plan trustees will decide whether the back payments will be made all at once as a single lump sum or spread out in monthly payments over 5 years. Payments must start 3 months after the plans receive money from the government. There are 18 plans where benefit reductions requested by plan trustees were approved by the U.S. Department of the Treasury.

    - Examples of plans where benefits were reduced include Iron Workers Local 17 Pension Fund, IBT Local 805, and Southwest Ohio Regional Council of Carpenters Pension Plan. **Here** is a list of the plans that were approved to cut benefits.

- ***Category 3*:** The new law will also help other plans that are severely underfunded. These are plans that have been certified to be in "critical" status, have less than 40% of the money they need to pay promised benefits, and have 3 or more retirees for every 2 active workers. There are an estimated 75-100 plans in this category.
    - Until rules are issued, it will be difficult to know exactly which plans will be able to apply under this category. However, you may be able to get a rough idea of how many retirees there are compared to active workers and how well funded your plan is by looking at Schedule MB of the most recent financial form your plan filed with the government. It is called Form 5500 and can be found **here**.

- ***Category 4*:** The fourth category of plans that will be able to apply for relief under the new law are those that became "insolvent" after 2014 and did not terminate before March 11, 2021. An "insolvent" plan is one that does not have enough money to pay all the benefits that would otherwise be payable in a particular year. There are 10 plans in this category
    - You will know if your plan is in this category if your benefits were reduced to the very low amounts guaranteed by the federal pension insurance program's "guarantee level" after December 16, 2014 and the plan is still operating. If the PBGC awards money to your plan, you will not only receive your full pension, but you will also get back payments for the period that your benefits were reduced. The plan trustees will choose whether to give you the back payments all at once as a single lump sum or as monthly payments over a 5-year period. Payments must be made (or start being made) within 3 months of after your plan receives the money.
        - An example of a plan that became insolvent after 2014 and has not terminated is the Road Carriers Local 707 Pension Fund.

Where will the money to pay benefits come from and how will it be paid?

- The money to pay retiree and other benefits will be transferred from the U.S. Department of the Treasury to the federal pension insurance program, the Pension Benefit Guaranty Corporation. The PBGC will then pay the money to plans in the form of one-time lump sum cash payments.
- Plans will be required to keep this money in a separate fund that must be invested in investment grade bonds or other approved investments. It can only be used for the benefits and expenses that are payable by this fund.

- The PBGC must make all payments plans that are required by the law by September 2030.
- The total amount that will be paid to plans is estimated at $86 billion. However, there are no limits on the amount. It may be more or less.

When will plans that apply for money receive it? How long will it take for benefits that were cut to be restored?

- The law says that the Pension Benefit Guaranty Corporation must issue rules that will, among other things, tell plan trustees how to apply for the money. Those rules must be issued within 120 days after the law's March 11, 2021 enactment date, which will be July 9, 2021.
- Because so many plans are expected to apply, the law also says that in the first two years the PBGC may choose to give priority to three groups of plans. (1) Those where benefits were reduced under the 2014 MPRA law or because of insolvency; (2) Plans that are expected to run out of money within 5 years; and (3) plans whose projected costs to the PBGC if assistance is not given would exceed one billion dollars. The PBGC can also choose to give priority to other plans within the first 2 years. Other plans will be able to apply after this period.
- Once a plan applies for financial help, the PBGC must accept or reject the application within 120 days or ask the trustees to modify the application. If the PBGC does nothing, the application will be treated as having been approved.
- The law says that the PBGC must pay out all money awarded to plans by September 2030.

Can the government impose any requirements on plan trustees?

- As a condition of awarding money to plans, the PBGC will be able to impose certain conditions if it chooses. These include conditions limiting future benefit increases and retroactive benefit improvements. PBGC rules can also place limits on: how the plan's investments can be allocated; reductions of employer contributions; and transfers of assets between employee benefit plans. The PBGC will also be able to specify reasonable conditions for how the plan calculates the amount an employer must pay if it withdraws from a plan that is not fully funded.

- The law does not allow the PBGC to set rules governing how plans are operated, such as who can serve as a trustee or a consultant to a plan. The PBGC is also not allowed to tell plans what interest rates they should use to figure out how to calculate how the plan is funded in the future.

Will plans be required to pay additional amounts?

- Currently multiemployer plans pay $31 a year in premiums for each plan participant. That figure is adjusted to reflect increases in the national average wage index, which experts project will result in premiums rising to $44 by 2030. The new legislation provides that in 2031, the premium will increase automatically to $52, with continuing annual adjustments.

Who will not be helped by the new law?

- If your plan does not apply to the PBGC for financial relief or applies and is rejected, the plan trustees will be able to seek approval from the Treasury Department to cut benefits under the 2014 MPRA law. However, if your plan receives financial relief under the new law, it will not be able to cut benefits under MPRA.
- Your plan will not be required to restore special early retirement benefits, disability and other benefits that were eliminated as the result of a "rehabilitation plan" authorized by the 2006 Pension Protection Act. Also, plans in critical status that did not reduce the benefits of active workers under the PPA (or only reduced the benefits of certain workers) will still be able to do this in the future.
- Plans that run out of money – become insolvent – in the future would be required to reduce benefits to the very low PBGC guarantee levels for multiemployer plans. (The guarantee level for single-employer plans are more than five times higher than for multiemployer plans.) While plans that receive aid under the Butch Lewis Act are expected to be able to pay benefits for at least 30 years, if any of these plans were to fail in the far future, they would also be required to reduce benefits to the PBGC guarantees at that point.

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[i] 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*