Relief ahead for multi-employer pension plans in the Butch Lewis Emergency Pension Plan Relief Act

Maria G. Carr, Shawn M. Riley, John M. Wirtshafter | Thursday, March 11, 2021

The recently re-introduced Butch Lewis Emergency Pension Plan Relief Act of 2021 (Butch Lewis Act), originally passed by the House in 2019 and re-introduced in February 2021, is Congress' most recent effort to direct funds to assist troubled multi-employer pension plans. Unlike previous legislative efforts in 2019 and 2020 which never made it through the Senate, with the recent change in the administration and control of the Senate, the Butch Lewis Act progressed rapidly through Congress. On March 1, the Senate Finance Committee Chair Ron Wyden released a statement confirming that the provisions of the Butch Lewis Act had the necessary budget impact to be included in the $1.9 trillion American Rescue Plan (the latest proposal for a COVID-19 relief plan). Senator Wyden noted that "the economic crisis has hit already struggling pension plans like a wrecking ball, and the retirement security of millions of American workers depends on getting this package across the finish line." As a result, the multi-employer pension plan relief provided in the Butch Lewis Act was included in the final relief bill passed by the Senate, and the House of Representatives passed the American Rescue Plan on March 10, 2021. President Biden signed the bill into law on March 11, 2021.

Recent multi-employer pension plan problems

Addressing the problems of multi-employer plans is consistent with Congress' efforts to address the problems of pension plans generally. In 2008 and 2010, Congress enacted legislation intended to shore up the finances of single employer plans as well as the Pension Benefit Guaranty Corporation (PBGC), the quasi-governmental agency that insures single employer and multi-employer pension plans and is responsible for paying benefits for retirees in plans that are unable to pay benefits. Somewhat like single employer defined benefit plans (traditional pension plans sponsored by a single company), multi-employer pension plans have been hit even harder over the past 15 years by a number of economic and demographic factors. In particular, historically low interest rates, aging union population, improved mortality, and reductions in certain industry and geographic union participation have resulted in severe financial distress for many multi-employer pension plans. Some form of the protections offered under the Butch Lewis Act was the next logical step to address the sever underfunding of obligations to retirees.

By definition, multi-employer pension plans are jointly sponsored by a union and the employers that have entered into collectively-bargained agreements with the union requiring participation in the plan. Participating employers make regular contributions to the plan on behalf of their covered employees as provided for under the collective-bargaining agreement. The plan holds and invests the contributions and uses the funds to pay retirement benefits to the covered retirees who have accrued benefits under the plan. If the plan does not have enough funding to cover its obligations for the future, however, the plan may be in “critical” or “critical and declining” status, meaning that it is currently insolvent or expected to become insolvent within 20 years. Several years ago, many multi-employer pension plans were in financial trouble. However, through a number of changes (e.g., consistently strong financial markets, freezes, reductions or changes in benefit accruals, increased contributions and surcharges, etc.), a large number of these plans have been able to improve their financial status to the point they are no longer in immediate jeopardy. As a result, a significant majority of multi-employer pension plans have been able to build up their assets to the point where they are or are almost fully funded (as of the end of 2020, the aggregate funding status of all such plans is predicted to have increased to approximately 88% of the accrued benefit liability of all such plans).

Nonetheless, the funding status in about 10-15% of multi-employer plans (covering over 1.3 million workers) has remained in what could be classified as “critical and declining status.” If a plan is in “critical and declining status,” it has less than 60% of the funds required to meet its accrued future obligations. As previously mentioned, the PBGC is the insurance company that provides financial assistance to insolvent single employer and multi-employer pension plans. However, unless Congress steps in with funding or other changes, this insurance program is also likely to become insolvent within a few years. A number of proposed legislative efforts have previously been introduced to provide assistance to the PBGC and multi-employer plans to assist with this expected financial crisis in the past few years, but none have previously passed. The recent economic crisis due to COVID-19 makes these issues all the more relevant now.

The Butch Lewis Act

The Butch Lewis Act establishes a special fund at the PBGC to provide special financial assistance to struggling multi-employer plan that would not need to be repaid. After meeting certain financial requirements regarding the plan’s insolvency or expected insolvency in the near future, eligible plans will be able to receive financial assistance up to the amount needed to pay participants’ full plan benefits through 2021. This money will be provided in a lump sum and kept separate from other plan assets.

Under the act, for the first two years, the PBGC will be able to set specific additional limits as to which underfunded multi-employer pension plans may apply for assistance under the new relief. Thereafter, a multi-employer pension plan will be eligible to receive “special financial assistance” provided it meets one of the following criteria:

- The plan is in “critical and declining status” in any plan fiscal year beginning in 2020 through 2022.
- The plan imposed a suspension of benefits in accordance with the process set forth in revisions to the legislation enacted in 2014.
- The plan is certified by its actuary to be in critical status in any plan year beginning in 2020 through 2022, has a current value of plan assets of less than 40% of the current value of accrued benefit liabilities, and has a ratio of active participants compared to retirees and terminated vested participants which is less than 2 to 3.
- The plan was not previously terminated, became “insolvent” after December 16, 2014, and has remained insolvent since then.

If a plan receives special financial assistance under the Butch Lewis Act, it will remain classified as being in “critical” financial status until 2051 and will be subject to certain regulations, including, but not limited to: paying beneficiaries previous benefits that they had not received because of the plan’s financial distress; reinstating all benefits for beneficiaries; and complying with additional regulations that the PBGC could impose relating reductions in employer contribution rates or suspension of benefits. Unfortunately, despite the public funding, these requirements do not change how withdrawal liability is calculated. Thus, employers that incur a partial or complete withdrawal from a multi-employer pension plan receiving the special financial assistance will still be subject to withdrawal liability.

Economically, there are no other provisions in the Butch Lewis Act to share the cost of this proposed financial assistance among the plans or stakeholders (with the exception of an increase of the increase in premiums for multi-employer pension plans (from $31 to $52 per participant beginning in 2030)). Unlike other proposals along the same lines, the financial assistance will not be made in the form of a loan or required to be repaid or partially paid back. The source of funding for this proposal will be straight from the Treasury Department – and is likely to be very expensive (present estimates are that the funding will cost $86 billion). Nevertheless, the significant financial assistance allotted to pension plans in the Butch Lewis Act and the American Rescue Plan will provide substantial relief to troubled pension plans and the hundreds of thousands of retirees enrolled in these plans.

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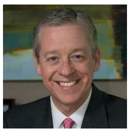
Team member bio



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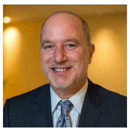

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