

# Butch Lewis Guidance and Multiemployer Plan Participants

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## Butch Lewis: Brief History

- Multiemployer funding problems and pending Multiemployer PBGC Trust insolvency
- Congress enacts MPRA in 2014
  - 18 Plans “suspended” benefits
  - Retirees, older active participants, and participants with deferred vested benefits received disproportionate benefit “suspensions”
- Congress enacts Butch Lewis Act in 2021
  - Potentially provides over \$90 billion in financial support for as many as 250 multiemployer plans
  - Also requires plans that apply for relief to restore benefits suspended under MPRA
    - Prospectively and retroactively

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## Regulatory Guidance

- PBGC issues interim final regulations in 2021
  - Regulations were subject to criticism
    - The formula and assumptions used to calculate the amount of assistance would have resulted in less aid than anticipated and some plans would have become insolvent within 20 years
    - Calculation of withdrawal liability treated financial assistance as a plan asset
    - Questions on permissible investments using financial assistance payments
    - Other issues
- New Regulations issued
  - Changed financial assistance calculations so that many plans will receive additional funds
  - Changed withdrawal liability rules and asked for further comments
  - Other changes
- IRS issues guidance on various topics, including whether retroactive lump sum payments are rollover eligible

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## Guidance and Participants—likely or possible questions

- For plans with MPRA cuts,
  - When will my benefits be restored?
    - After the application process, when the financial assistance is received, but plans have some flexibility to restore before application if the plan chooses to do so (few if any plans have done so)
    - Participant or beneficiary must be alive when PBGC pays financial assistance (more on this on next slide)
  - When will I receive back payments for benefits suspended before my plan receives financial assistance?
    - No later than 90 days after the plan receives the financial assistance
  - How will back benefits be paid?
    - Either in a lump sum or in periodic installments over 5 years
    - Plan chooses method, but one approved method is to permit participants to choose
  - Will payments reflect interest?
    - No
  - Can I roll over a lump sum retroactive payment?
    - Probably, but it is complicated. Your plan will let you know.

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## Guidance and Participants—likely or possible questions

- For plans with MPRA cuts
  - What happens if my benefit has been suspended but I die before my plan receives financial assistance? Do my retroactive payments go to my spouse? My beneficiaries?
    - No. The regulations, following reasonably clear statutory language, says a participant or beneficiary must be alive to receive retroactive.
    - But assume these facts:
      - Participant has pre-MPRA benefit of \$2,000 per month, with a 50% spousal survivor annuity.
      - Plan uses MPRA to reduce benefits to \$1,000 per month on January 1, 2020.
      - Participant dies on December 31, 2020; spouse begins collecting \$500 per month.
      - Plan receives financial assistance on January 1, 2022.
      - Participant's MPRA benefit reduction was \$12,000 (\$1,000 per month). No retroactive payment.
      - Beneficiary's survivor MPRA benefit reduction was \$6,000 (\$500 per month).
        - Spouse's benefit going forward is increased from \$500 to \$1,000 per month.
        - Spouse receives \$6,000 retroactive payment.

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## Guidance and Participants—likely or possible questions

- For all plans
  - When can my plan apply?
  - Will my plan apply?
    - Generally yes, In MPRA and post-MPRA insolvencies, we believe all plans will apply.
  - Why hasn't my plan applied yet?
  - Will the financial assistance assure that my plan will survive indefinitely?
    - Unclear, but for most plans the assistance should enable the plan to survive until at least 2051.
    - Withdrawal liability issue
  - Can a plan take assistance and later reduce benefits under MPRA?
    - No.
  - Was MPRA repealed?
    - No.
  - Any restraints on how plans can invest assets going forward?
    - Financial assistance must be invested in safe, fixed income securities, although 33% may be invested in certain "return-seeking" assets

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## Guidance and Participants—likely or possible questions

- For all plans
  - Can my plan reapply after its application is withdrawn or declined?
    - Yes.
  - My plan has already received Butch Lewis assistance. Can my plan now reapply to take advantage of the new formulas and permissible assumptions, etc., to increase the amount of assistance it has received?
    - Yes.
  - Will there be Butch-Lewis related lawsuits?
    - Possibly.