

Butch Lewis

Description of the Statutory Basics, PBGC
Interim Guidance,
and Common Questions

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Topics to be Covered

- Introduction to Butch Lewis
- Four questions we've heard from participants
 - Is my plan eligible for relief?
 - Will some eligible plans decide not to seek Butch Lewis grants?
 - Will previously reduced benefits be restored and if so, when?
 - What are the long-term consequences of a plan accepting Butch Lewis Relief?
- Note: we've tried to avoid complex actuarial and other technical detail, and jargon, as much as possible

American Rescue Plan Act:

Butch Lewis Provisions

- Butch Lewis included in American Rescue Plan Act, a budget reconciliation bill
 - not subject to filibuster
 - must not create budget deficits outside budget window
 - provisions can have only incidental non-budget effects
- Butch Lewis intended to preserve approximately 200 most severely distressed multiemployer plans by authorizing PBGC to make lump sum grants to such plans to permit them to survive. (200 plans probably understates the and PBGC current estimates.)

American Rescue Plan Act:

Butch Lewis Provisions

- Butch Lewis provides large, lump sum grants for four categories of multiemployer plans
- Where does the money come from?
 - Government appropriation, estimated by PBGC to be \$93 billion.
- No participant benefit cuts
- MPRA cuts and reduction in benefits for insolvent plan will be restored, prospectively and retroactively

American Rescue Plan Act: Butch Lewis Provisions

- Are plans required to apply for Butch Lewis financial relief?
 - No. But most observers believe that **most** eligible plans will apply for relief
- What happens if a troubled plan does not apply for relief?
 - It can use MPPRA benefit suspensions or continue until it becomes insolvent.

American Rescue Plan Act:

Butch Lewis Provisions

- How large will the grants be?
 - The statute is unclear:
 - “The amount of financial assistance . . . shall be such amount required for the plan to pay all benefits due during the period beginning on the date of payment of the special financial assistance payment under this section and ending on the last day of the plan year ending in 2051 . . .”
 - We will discuss PBGC guidance in response to question 2

American Rescue Plan Act:

Butch Lewis Provisions

- When can plans begin applying for grants?
 - Insolvent plans and plans that are projected to become insolvent by March 11, 2022, can currently submit an application for relief
 - Plans that cut benefits under MPRA can submit an application for relief beginning January 1, 2022
 - Central States can file its application on April 1, 2022
 - Plans that are projected to become insolvent by March 11, 2023, can file applications beginning July 1, 2022
 - Schedule for other plans not yet announced

American Rescue Plan Act: Butch Lewis Provisions

- When will an application be approved after submission?
 - PBGC must reject an application within 120 days of submission or the application is approved

American Rescue Plan Act:

Butch Lewis Provisions

- Conditions for plans awarded grants:
 - Butch Lewis requires that the grant to a plan be invested in investment grade bonds or other assets approved by PBGC
 - A plan that receives a grant will remain in critical status until 2051
 - Butch Lewis gives the PBGC authority to set reasonable conditions in certain identified areas:
 - withdrawal liability
 - reduction in contributions
 - increases in benefits
 - investment allocations
 - PBGC cannot impose other conditions on plan governance, hiring, or change plan funding requirements as a condition for a grant.

American Rescue Plan Act:

PBGC Guidance

- The PBGC issued interim guidance on Butch Lewis financial assistance on July 12, 2021
- The guidance, which PBGC is reviewing in light of comments, included several controversial positions regarding
 - the calculation of aid and in particular whether plans accepting aid would likely become insolvent by 2051
 - the adequacy of special conditions on the calculation of withdrawal liability
 - rules on how plans that receive assistance can invest their assets
 - these aspects of the guidance will be explored as part of the discussion of question 2

Question 1: Can my plan apply for a Butch Lewis Grant?

- The Butch Lewis Act provides that four categories of plan may apply for financial aid The plans that were approved for benefit cuts under MPPRA
 - Plans that became insolvent after the passage of MPPRA in 2014 but before passage of Butch Lewis
 - 42 plans in this category
 - Plans that were approved for MPRA benefit suspensions
 - 18 plans in this category
 - Plans in critical and declining status before the end of 2022
 - 125 to 150 plans in this category
 - Plans in critical status that are
 - less than 40% funded and have 3 or more inactive participants for each active employee
 - 75 to 100 plans in this category

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 - less than 40% funded and have 3 or more inactive participants for each active employee
 - 75 to 100 plans in this category

Question 2: Will some eligible plans decide not to seek Butch Lewis grants?

- The trustees of at least one plan (Cleveland Iron Workers Local 17) have communicated to participants their concern about PBGC guidance on Butch Lewis relief and indicated that they may decide to forego it and keep MPRA cuts in place.
- The concerns of the Local 17 trustees are shared by other plan trustees, although we are not aware of any other plan that has suggested to its participants that they might not apply for Butch Lewis assistance

Question 2: Will some eligible plans decide not to seek Butch Lewis grants?

- Four concerns about PBGC interim guidance
 - 1. PBGC guidance will give the plan sufficient “resources” to allow plan to pay benefits only through 2051
 - Plan resources include Butch Lewis grants, existing plan assets, and all future contributions through 2051
 - Plan are thus likely to exhaust assets by 2051 unless it raises employer contributions, cuts future benefit accruals, obtains at least moderately aggressive investment returns.

Question 2: Will some eligible plans decide not to seek Butch Lewis grants?

- Four concerns about PBGC interim guidance
 - 2. Butch Lewis investment restrictions
 - The Butch Lewis Act limits the assets in which the financial assistance can be invested
 - investment-grade fixed bonds and
 - such other investments as permitted by the corporation
 - interim guidance asked for comments on what other assets permitted by corporation
 - Trustees and others have made comments asking for the corporation to provide flexibility so that plans can invest in riskier assets

Question 2: Will some eligible plans decide not to seek Butch Lewis grants?

- Four concerns about PBGC interim guidance
 - 3. Negative arbitrage
 - In determining the plan interest rate for purposes of calculating amount of assistance, a plan will in almost all cases use a rate on investment grade securities, plus 200 basis points
 - this is because that is a statutory cap on the interest rate
 - but financial assistance money, to extent it must be invested in investment-grade bonds, will have much lower interest rate
 - for many if not most plans, this would mean that the plan will be unable to obtain a rate of return on investments that will equal or exceed their interest rate used to determine the value of benefits

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- Four concerns about PBGC interim guidance
 - 4. Withdrawal Liability
 - Withdrawal liability is an obligation imposed on employers who cease participating in the plan
 - in theory, it is equal to the the employer's share of the plan's unfunded liabilities, with certain caps related to the employer's contribution rate and a 20-year cap
 - The financial assistance under Butch Lewis will substantially reduce withdrawal liability, making it less expensive for contributing employers to leave the plan
 - PBGC created rules for plans taking relief requiring use of conservative assumptions, which will mitigate the reduction in withdrawal liability, but in some cases the reduction will still be a powerful incentive for employers to withdraw from the plan

Question 3: Will previously reduced benefits be restored and if so, when?

- Will previously reduced benefits be restored?
 - Yes, in two situations:
 - when benefits were reduced because a plan became insolvent
 - when benefits were suspended under a MPRA application
 - But no if the reduction came from a reduction of benefits under the Pension Protection Act of 2006
 - Certain troubled multiemployer plans could eliminate certain subsidized benefits under the PPA
 - a plan that accepts Butch Lewis relief is prohibited from restoring benefits eliminated under the PPA

Question 3: Will previously reduced benefits be restored and if so, when?

- Benefits restored prospectively
 - A plan accepting Butch Lewis financial assistance must restore benefits going forward
 - A plan can, if it chooses, restore benefits even before submitting an application for assistance
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Question 3: Will previously reduced benefits be restored and if so, when?

- Benefits restored retroactively
 - A plan that accepting Butch Lewis financial assistance must also restore participant benefit losses that occurred prior to PBGC approval of plan's application for assistance
 - But plan cannot make retroactive payments until it receives assistance
 - PBGC interim guidance requires plan to choose to
 - Make a lump sum payment within three months of when plan receives assistance, or
 - Make monthly payments over five years (without interest)

Question 3: Will previously reduced benefits be restored and if so, when?

- When will a plan receive assistance?
 - PBGC has up to 120 days to consider an application
 - If application is approved, PBGC must pay assistance as “as soon as practicable” following approval
 - interim guidance says that this will occur no later than 90 days after application’s approval
 - If application is denied, it can be resubmitted, which will restart the 120-day clock

Question 4: What are the long-term consequences of a plan accepting Butch Lewis Relief?

- Depending on what changes PBGC makes to interim guidance, some plans will become insolvent by 2051
 - Benefits reduced to PBGC guarantee levels in most situations
- Plans accepting relief may not use MPRA in future
- Severe restrictions on a plan's future ability to increase benefits or reduce employer contributions
- Depending on what changes PBGC makes to interim guidance, some plan sponsors will be incentivized by reduction in potential withdrawal liability to seek to withdraw from plan

Bonus Question: Does the PBGC priorities for considering applications mean that my plan will not get relief?

- Nothing sinister here
- PBGC would not be able to process all applications, so statute allowed PBGC to establish priorities
 - insolvent plans get first priority, because they are out of money and their participants have suffered cuts to guarantee levels
 - MPRA cut plans get second priority, because their participants have suffered benefit cuts (but not down to PBGC guarantee levels)
 - Central States gets third priority it is the largest troubled plan
 - Plans that will become insolvent by March 11, 2023, get fourth priority

Important Review Point

- Who will *not* be helped by Butch Lewis?
 - Participants in eligible plans whose trustees do not apply for financial relief
 - Participants in plans not eligible for relief
 - Participants whose benefits were reduced under the rules created by the Pension Protection Act of 2006
 - but note that if such participants also had MPRA benefit reductions, they will have the MPRA suspended benefits restored