

Multiemployer Review

Update on issues affecting multiemployer plans

MARCH 2021

Butch Lewis Emergency Pension Plan Relief Act of 2021

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The Butch Lewis Emergency Pension Plan Relief Act of 2021 (Butch Lewis EPPRA) was passed in the House on February 27, 2021, as part of a larger COVID-19 relief bill. If it becomes law in its current state, the Butch Lewis EPPRA would be the most notable multiemployer legislation enacted since the Multiemployer Pension Reform Act of 2014 (MPRA). This *Review* provides an overview of the provisions of the Butch Lewis EPPRA as they may apply to multiemployer defined benefit plans.

As of the date of this publishing, the bill had been received in the Senate and placed on the legislative calendar. The relief provisions described in this *Review* may change as the bill progresses.

Temporary relief provisions

The Butch Lewis EPPRA would provide temporary relief for multiemployer plans that have been adversely impacted by COVID-19. The proposed relief provisions are similar to those provided by the Worker, Retiree and Employer Recovery Act of 2008 (WRERA) and the Pension Relief Act of 2010 (PRA) in response to the 2008 financial crisis, and include the following:

1. One-time “freeze” of PPA zone status

Trustees would be allowed to elect to freeze their plan’s PPA zone status for one year to the zone status from the immediately preceding plan year. Plans in endangered or critical status that elect to freeze their zone status would not be required to update their funding improvement or rehabilitation plans during the freeze year. In addition, plans that would have been certified in critical status without regard to the freeze election would be exempt from excise taxes associated with any failure to meet minimum funding standards for that plan year.

The one-time freeze option is available for either the first or second plan year beginning on or after March 1, 2020. If a plan remains in the green zone via this election, then a special notice must be provided within 30 days of the election to plan participants and beneficiaries, the bargaining parties, the Pension Benefit Guaranty Corporation (PBGC), and Secretary of Labor. If the plan would have been certified in critical status but elects to remain in endangered status, the required notice for endangered status plans would apply.

2. Five-year extension of funding improvement or rehabilitation periods

Trustees of plans certified in endangered or critical status for the 2020 or 2021 plan year would be allowed to elect to extend their funding improvement or rehabilitation periods from 10 to 15 years (or from 15 to 20 years for seriously endangered plans).

This provision is effective for plan years beginning after December 31, 2019.

3. Longer amortization of experience losses due to COVID-19

Eligible plans would be allowed to amortize experience losses sustained during either or both of the first two plan years ending after February 29, 2020, due to COVID-19 over 29 years (current law amortizes such losses over 15 years). In addition to any investment losses, losses due to reductions in contributions and/or employment, and deviations from assumed retirement rates can be recognized over the extended period.

4. Extended asset smoothing period

Eligible plans would be allowed to smooth any asset losses incurred during either or both of the first two plan years ending after February 29, 2020, over a period of up to 10 years in determining the actuarial value of assets.

5. Widened asset corridor

For the first two plan years beginning after February 29, 2020, eligible plans would be allowed to widen the asset corridor for determining the actuarial value of assets from 80% to 120% to 80% to 130% of the market value of assets. By law, the actuarial value of assets may not fall outside this asset corridor.

Trustees would be allowed to elect relief provisions 3, 4, or 5 above if their plan is not receiving special financial assistance (as described below) and passes a solvency test. The solvency test is met only if the plan is projected to remain solvent throughout the amortization period described below as extended. In addition, the plan would be subject to restrictions on benefit improvements for a period of two plan years immediately following the plan year in which the relief applies, unless the actuary certifies that the benefit improvement is paid for with additional contributions, and the plan's projected funded percentage and credit balance for the two years are "reasonably expected to be at least as high" as if benefits were not increased.

Also, provisions 3, 4, and/or 5 would generally take effect on the first day of the first plan year ending on or after February 29, 2020, except that any elections affecting the credit balance would be disregarded for the first plan year beginning after February 29, 2020.

Special financial assistance program for financially troubled plans

The Butch Lewis EPPRA would establish a special financial assistance program to be administered by the PBGC and funded by transfers from the Treasury through September 30, 2030. Under this program, eligible plans would be able to apply to receive a one-time cash payment in the amount required for the plan to pay all benefits through the plan year ending in 2051. The payment received under this special financial assistance program would not be considered a loan and would not need to be paid back in the future. However, the financial assistance and earnings on financial assistance must be segregated from other plan assets and invested in investment-grade bonds or other investments permitted by the PBGC.

Plans in the program must reinstate any benefits suspended under MPRA or benefits suspended due to plan insolvency. In addition, these plans must pay participants and beneficiaries the benefits that were suspended. However, any reductions to adjustable benefits provided by the plans' rehabilitation plans would remain in effect.

Plans are eligible for the special financial assistance program if they meet any one of the following four eligibility criteria:

1. Plans in critical and declining status in any plan year beginning in 2020 through 2022
2. Plans with an approved suspension of benefits under MPRA
3. Plans in critical status in any plan year beginning in 2020 through 2022, with a **current liability** funded percentage below 40%, and which have an active to inactive participant ratio of less than 2 to 3
4. Plans currently insolvent that became insolvent after December 16, 2014, and have not been terminated

A plan's **current liability** is measured using an interest and mortality table prescribed by the IRS. The prescribed interest rates for the last three years have been around 2% to 3%, likely much lower than the discount rate plans are using for determining their PPA funded percentage. Using a lower interest rate may increase a plan's current liability significantly, resulting in a lower funded percentage.

Observation. We estimate that about 200 to 225 plans may be initially eligible for the special financial assistance program. A total of 124 plans in critical and declining status were included in our [December 2020 Multiemployer Pension Funding Study](#). To date, 18 plans have received approval for benefit suspensions under MPRA, according to the [Department of Treasury](#). Some 75 to 100 plans in critical status (40% to 55% of all plans in critical status included in the December 2020 Multiemployer Pension Funding Study) may meet the eligibility requirements above. Finally, we estimate that about 10 plans that went insolvent after December 16, 2014, and have not terminated received PBGC [financial assistance](#) in fiscal year 2020.

Applications for financial assistance must be submitted no later than December 31, 2025. The PBGC may restrict applications for the first two years after the law is enacted to plans they consider to be priority, which include:

- Plans that are currently insolvent or projected to become insolvent within five years after the law is enacted
- Plans where the present value of financial assistance exceeds \$1 billion if the special financial assistance is not ordered
- Plans that have implemented a suspension of benefits under MPRA as of the law's enactment
- Plans that do not meet any of the above criteria but the PBGC deems to be priority

The PBGC is required to issue regulations or guidance related to the special financial assistance within 120 days of enactment. This may include regulations that impose conditions related to "increases in future accrual rates and any retroactive benefit improvements, allocation of plan assets, reductions in employer contribution rates," and withdrawal liability. PBGC premiums will continue to apply, and plans in the program will be considered in critical status each year through the 2051 plan year. Withdrawal liability will be calculated without regard to the special financial assistance until the plan year beginning 15 calendar years after the date the financial assistance goes into effect.

PBGC premium increase

Butch Lewis EPPRA would increase the PBGC premium rate to \$52 per participant beginning with the 2031 plan year and would be adjusted annually based on the Social Security national average wage index. The current PBGC premium rate for the 2021 plan year is \$31 per participant, similarly indexed.

For more information

For more information on how this legislation may impact your multiemployer pension plan(s), please contact your Milliman consultant.



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