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## Of Politics and the Pension-Saving 'Butch Lewis Act'

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By Kerry Pechter    Thu, Mar 25, 2021

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*If you empathize with retired truckers, coal miners and their unions, you'll love the American Rescue Act's \$86 billion provision for patching up their underfunded pensions. Otherwise you might not.*

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An \$86 billion provision in the new \$1.9 trillion [American Rescue Act](#) should soon bring some relief to the walking-wounded of the retirement income world: retirees from or participants in financially distressed multiemployer pension plans (MEPs), who have faced or could face deep cuts in their promised pension benefits.

The provision, known as the [Butch Lewis Emergency Pension Relief Act of 2021](#), would give enough money to the Pension Benefit Guaranty Corporation, which backstops MEPs, to help fund the pensions of more than a million members of hundreds of troubled MEPs. Some MEPs, like the United Mine Workers pension and the Central States Teamsters pension, are huge.

“As of 2017, more than 300 plans were classified as critical and more than 100 of those were classified as critical and declining,” the Congressional Budget Office [reported](#) last month, noting that 18 “critical and declining plans” have suspended benefits to avert insolvency under the Multiemployer Pension Reform Act of 2014.

### **Divisive issue**

As political wedge-issues go, union pensions with public backing (from the underfunded PBGC, in this case) are among the most toxic. They are also emotional, with retirees and widows testifying to the hardships caused by the loss of benefits. Republicans and Democrats have failed for years to resolve the MEP shortfall in bipartisan fashion.



Butch Lewis

The Biden administration decided to put MEP funding into the American Rescue Act, which the president signed March 11. The bill had passed the Senate with no Republicans voting in favor. Democrats, unions, the Pension Rights Center, and pension experts like [Alicia Munnell](#) of Boston College and [Joshua Gotbaum](#) (director of the of the PBGC from 2010 to 2014) have praised the Butch Lewis Act in recent web posts.

Conservatives have called it as a taxpayer bailout of poorly managed pension funds, a counter-productive invitation to further employer withdrawals from MEP sponsorship, and a prelude to federal bailouts of underfunded public-sector pensions in the US (which the federal government, however, doesn't insure). Some objected to the inclusion of the provision in the American Rescue Act because it was unrelated to COVID-19.

#### **Changes in the Senate**

To complicate matters, the Butch Lewis Act (named for the late Ohio trucker, Teamster union official, Vietnam veteran, and one-time Pittsburgh Pirate baseball prospect) ran into an eleventh-hour political snag. According to Littler, a Philadelphia labor law firm,

“The original version of the bill the House first passed provided that for 15 years after the fund received the grant, the calculation of an employer’s withdrawal liability would not take into account that subsidy. Thus, for 15 years, if an employer withdrew, it would still owe the same amount as it would have owed had the fund never received the financial assistance.

“The bill changed in the Senate, however. The Senate Parliamentarian determined that the change to the withdrawal liability calculation was not about revenue, and thus could not be included in the bill under the Byrd rule. The law President Biden signed is therefore silent as to what this funding does to an employer’s calculation of withdrawal liability.”

This led to a guest [blogpost](#) at the website of Wharton School's Pension Research Council, in which Aharon Friedman, a former senior tax counsel to the House Ways and Means Committee, characterized the bill as an invitation to moral hazard. The bill would use "byzantine mechanics to preserve plans that may backfire unpredictably, leaving plans to resemble Weekend at Bernie's, astronomically higher costs, and years of litigation," he wrote.

If the bailout makes plans healthier, he argued, it would reduce the penalties that employers would face if they withdrew from a plan. Ergo, more employers would abandon plans.

"Under the Senate changes, plans receiving bailouts will be dramatically better funded for purposes of calculating withdrawal liability, allowing employers to wash their hands of the union pension mess for good at low or no cost and terminate the plans," Friedman wrote, adding that the full cost of the bailout could run to trillions not billions of dollars.

#### **Good but not perfect**

For Gotbaum, this puts too cynical a spin on the Butch Lewis Act, which he believes will make retirement more secure for millions of workers.

"The real factor that keeps most employers in plans was and is that the union must agree to withdrawal," Gotbaum told *RIJ*. "Prior to passage of the law, participating employers faced the prospect of steadily increasing underfunding and could make a case for being allowed to withdraw.

"A major employer could demand and get agreement from a union to withdraw, generally by making commitments outside the plan or improving the labor agreement in other respects. Butch Lewis completely changes this calculus. While it is true that financial assistance will reduce the calculated withdrawal penalty, it also eliminates the near-term risk of plan insolvency, so both the employer's need for withdrawal and the union's willingness to allow withdrawal will be dramatically reduced."

While Gotbaum praised the new law, he conceded that it was less than he and others had hoped for. "The bill did none of the reforms that most of us would like," Gotbaum told *RIJ*. Munnell wrote recently that the legislation didn't define the appropriate interest rate for calculating liabilities or replace the traditional defined benefit structure with some shared-risk arrangement. Perhaps its flaws will be addressed when the PBGC and the Treasury Department begin writing regulations around it.

*Editor's note: MEPs covered by the Butch Lewis Act should not be confused with the multiple employer 401(k) plans (also known as MEPs), where employees in unrelated companies can participate in a single Pooled Employer Plan.*

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