

## CLIENT BULLETIN

### ***Multiemployer Pension Loan Program Bill Reintroduced***

The [Rehabilitation for Multiemployer Pensions Act](#) was recently reintroduced into the House as [House Bill 397](#) (H.R. 397). It was originally introduced in the past congressional session as The Butch Lewis Act.

The Bill amends the Internal Revenue Code of 1986 (Code) to create a Pension Rehabilitation Trust Fund, to establish a Pension Rehabilitation Administration within the Treasury Department to make loans to eligible multiemployer defined benefit plans, and for other purposes. Even if it passed in the House, the Bill faces little chance of passage in the Senate.

#### **Summary – Broad Overview**

The proposed Bill would create an agency in the Treasury Department known as the “Pension Rehabilitation Administration” (PRA) and a trust fund to be known as the “Pension Rehabilitation Trust Fund” (Fund). The PRA would make low interest rate loans to multiemployer *defined benefit* plans which are in critical and declining status. The Treasury Department will issue bonds in an amount necessary to fund the loan program. The loan would be limited to the amount needed to purchase annuity contracts or to implement a “portfolio” (or a combination of the two) sufficient to provide benefits to participants and beneficiaries of the plan that are in pay status at the time the loan is made.

Plans that have had *MPRA* suspensions and insolvent but not terminated plans *must* apply for loans. The recipient plan would make interest-only payments for 29 years and a final balloon payment of interest and principal the 30<sup>th</sup> year. Plans receiving loans will be required to file detailed annual reports. Special rules will apply for calculating withdrawal liability for plans with such loans through the program.

The idea is that the plans receiving loans could earn enough money from the plan’s asset investments to pay back the loan and stabilize the plan and multiemployer system. See [Benefit News Briefs 2018-73](#), discussing the Pension Benefit Guaranty Program’s (PBGC’s) annual report and the dire financial straits its multiemployer program faces.

The Bill is comprised of the following eight sections:

Section 1. *Short Title. "Rehabilitation for Multiemployer Pensions Act"*

Section 2. *Pension Rehabilitation Administration; Establishment; Powers*

Section 3. *Pension Rehabilitation Trust Fund*

Section 4. *Loan Program For Multiemployer Defined Benefit Plans*

Section 5. *Coordination With Withdrawal Liability And Funding Rules*

Section 6. *Issuance Of Treasury Bonds*

Section 7. *Reports Of Plans Receiving Pension Rehabilitation Loans*

Section 8. *PBGC Financial Assistance*

**A version of the Bill, with a table of contents added, is available by ["clicking here."](#) We will take a closer look at each Section below.**

### **Section One - Short Title "Rehabilitation for Multiemployer Pensions Act"**

When originally introduced in 2018, the Bill was named after Butch Lewis, the former retired head of [Teamsters Local 100](#) in Evendale, Ohio who passed away in 2015. Butch Lewis was a Vietnam War veteran who worked for 40 years as a trucker and Teamster. The Bill has been renamed the Rehabilitation for Multiemployer Pensions Act.

### **Section Two - Pension Rehabilitation Administration**

Section Two establishes an agency in the Treasury Department to be known as the "Pension Rehabilitation Administration". The President will appoint a Director with a five-year term.

### **Section Three - Pension Rehabilitation Trust Fund**

Section Three adds a new Section 9512 to the Code establishing a trust fund in the Treasury Department to be known as the "Pension Rehabilitation Trust Fund" (hereafter referred to as the "Fund"). The Fund shall consist of such amounts as may be appropriated or credited to the Trust Fund under law.

### **Section Four - Loan Program For Multiemployer Defined Benefit Plans**

Section Four grants the PRA authority to make loans to multiemployer defined benefit plans which are in critical and declining status. This includes any plan with a *MPRA*-approved suspension of benefits or a plan which is insolvent, if the plan became insolvent after December 16, 2014, and has not been terminated. This Section also establishes appropriate terms for such loans and sets out the following rules:

#### **➤ Consultation Among Agencies**

The PRA Director shall consult with the Secretary of the Treasury, the Secretary of Labor and the PBGC Director before making any such loans, and shall share with such persons the application and plan information with respect to each such loan.

➤ **Establishment of Loan Program and Guidance Deadlines**

The Loan Program is to be established by April 30, 2019. Guidance regarding the program is to be issued by the PRA Director, in consultation with the PBGC and the Department of Labor (DOL), by July 1, 2019.

➤ **Application May Be Made Before Establishment Of Loan Program**

A plan may apply for a loan under the Loan Program before April 2019, even if the Loan Program has not been established yet. The PRA shall approve the application and make the loan before establishment of the program if necessary to avoid any suspension of the participants' accrued benefits.

A plan receiving a loan shall make interest-only payments on the loan for a period of 29 years beginning on the date of the loan. The final balloon payment of *principal and interest* shall be due in the 30th year after the date of the loan. As a condition of the loan, the plan sponsor stipulates that:

1. except as allowed, the plan will not (a) increase benefits, (b) allow any employer participating in the plan to reduce its contributions or (c) accept any collective bargaining agreement which provides for reduced contribution rates, during the 30-year loan period;
2. if a plan has been approved for a suspension of benefits under *MPRA*, or is insolvent under [Code Section 418E](#) (before the loan), the plan will reinstate the suspended benefits (or will not carry out any suspension which has been approved but not yet implemented);
3. the plan sponsor will comply with the requirements of Code Section 6059A (*NOTE- Code Section 6059A is the reporting requirement added by Section 7 of the Bill*); and
4. the plan and plan administrator will meet such other requirements as the PRA Director provides in the loan terms.

In applying for a loan, the plan sponsor must demonstrate the loan will allow the plan to avoid insolvency for at least the 30-year loan period. In the case of a plan which is already insolvent, the loan must allow the plan to both emerge from insolvency and avoid insolvency for the remainder of the 30-year period. The plan sponsor must also demonstrate that the plan is *reasonably expected* to be able to *pay benefits and the interest* on the loan during such period and to accumulate sufficient funds to *repay the final balloon payment of principal when due in the 30<sup>th</sup> year*.

The plan sponsor is required to provide any information necessary to determine the loan amount allowed under the Loan Program and to state: (1) in what manner the loan proceeds will be invested, (2) the person from whom any annuity contracts will be purchased and (3) the person who will be the investment manager for any portfolio implemented under the Loan Program.

➤ **Applications to be Approved Unless “Clearly Erroneous”**

In evaluating the plan sponsor’s application, the PRA Director shall accept the determinations and demonstrations in the application *unless* the Director, in consultation with the Director of the PBGC and the Secretary of Labor, concludes that the determinations and demonstrations in the application were **clearly erroneous**. This “clearly erroneous” standard may remove some complaints about the proper standard of review after complaints arose about the *MPRA* review process.

An application shall be *deemed approved* unless, within 90 days, the Director notifies the plan sponsor that the determinations or demonstrations in the application were deemed *clearly erroneous*. Any approval or denial of an application shall be treated as a **final agency action** for purposes of seeking judicial review.

➤ **Plans with *MPRA* Suspension or Insolvent Plans Required To Apply**

Plans that have been approved for suspensions under *MPRA* or are insolvent under **Code Section 418E**, before the date of the enactment of the law **must** apply for a loan under the Loan Program, using a simplified application, before the date of the enactment of the law.

➤ **Loan Amount And Use**

The loan shall be limited to the amount needed to purchase annuity contracts or to implement a “portfolio” (or a combination of the two) sufficient to provide for benefits of participants and beneficiaries of the plan in pay status at the time the loan is made.

Special rules apply to calculating loan amounts for plans with *MPRA* suspensions or which are already receiving financial assistance from the PBGC due to insolvency.

The “annuity contracts” shall be issued by an insurance company which is licensed to do business under the laws of any State and which is rated “A” or better by a nationally recognized statistical rating organization, and the purchase of such contracts shall meet all applicable fiduciary standards under *ERISA*.

A “portfolio” described above is—

1. a cash matching portfolio or duration matching portfolio consisting of investment grade (as rated by a nationally recognized statistical rating organization) fixed income investments which are tradeable in United States currency and are issued at fixed or zero coupon rates; or
2. any other portfolio prescribed by the Secretary of the Treasury in regulations.

Once implemented, the portfolio shall be maintained until all liabilities to participants and beneficiaries in pay status at the time of the loan are satisfied.

Such portfolios are subject to oversight by the PRA. This oversight shall include a mandatory *triennial* review of the adequacy of the portfolio to provide the benefits and approval of any decision by the plan sponsor to change the investment manager of the portfolio.

The Participant and Plan Sponsor Advocate established under [ERISA Section 4004](#) shall act as ombudsperson for participants and beneficiaries on behalf of whom *annuity contracts* are purchased or who are covered by a portfolio.

➤ ***In the Event of a Loan Default***

If a plan is unable to make any payment on a loan when due, the PRA shall negotiate revised terms for repayment with the plan sponsor reflecting the plan's ability to make payments, which may include installment payments over a reasonable period. If the PRA deems it necessary to avoid any suspension of the accrued benefits of participants, it may forgive a portion of the loan principal.

**Section Five - Coordination With Withdrawal Liability And Funding Rules**

Section Five amends the Code and *ERISA* by adding new subsections with special rules for calculating EWL for plans with loans.

**Section Six - Issuance Of Treasury Bonds**

Section Six directs the Secretary of the Treasury to issue bonds in an amount necessary to fund the Loan Program. This shall be done in consultation with the PRA Director. The proceeds from the bonds shall from time to time be transferred from the general fund of the Treasury to the Fund. The Congressional Budget Office's cost estimate is not available yet.

**Section Seven - Reports Of Plans Receiving Pension Rehabilitation Loans**

Section Seven requires plans receiving pension rehabilitation loans to file reports electronically with the Treasury. The reports are shared with the Secretary of Labor and the PBGC Director.

The reports shall be filed the first plan year beginning after the date of the loan and each of the 29 succeeding plan years, not later than the 90th day of each such plan year. The plan sponsor shall file a report with the Secretary of the Treasury (including appropriate documentation and actuarial certifications from the plan actuary, as required) that contains—

1. the funded percentage as of the first day of such plan year, and the underlying actuarial value of assets (determined with regard, and without regard, to annuity contracts purchased and portfolios implemented with proceeds of such loan) and liabilities (including any amounts due with respect to such loan) taken into account in determining such percentage;

2. the market value of the assets of the plan (determined as provided as of the last day of the plan year preceding such plan year);
3. the total value of all contributions made by employers and employees during the plan year preceding such plan year;
4. the total value of all benefits paid during the plan year preceding such plan year;
5. cash flow projections for such plan year and the nine succeeding plan years, and the assumptions used in making such projections;
6. funding standard account projections for such plan year and the nine succeeding plan years, and the assumptions relied upon in making such projections;
7. the total value of all investment gains or losses during the plan year preceding such plan year;
8. any significant reduction in the number of active participants during the plan year preceding such plan year, and the reason for such reduction;
9. a list of employers that withdrew from the plan in the plan year preceding such plan year, and the resulting reduction in contributions;
10. a list of employers that paid withdrawal liability to the plan during the plan year preceding such plan year and, for each employer, a total assessment of the withdrawal liability paid, the annual payment amount, and the number of years remaining in the payment schedule with respect to such withdrawal liability;
11. any material changes to benefits, accrual rates or contribution rates during the plan year preceding such plan year, and whether such changes relate to the terms of the loan;
12. details regarding any funding improvement plan or rehabilitation plan and updates to such plan;
13. the number of participants and beneficiaries during the plan year preceding such plan year who are active participants, the number of participants and beneficiaries in pay status, and the number of terminated vested participants and beneficiaries;
14. the amount of any financial assistance received under ERISA Section 4261 to pay benefits during the preceding plan year, and the total amount of such financial assistance received for all preceding years;

15. the information contained on the most recent annual funding notice submitted by the plan under ERISA Section 101(f);
  16. the information contained on the most recent annual return of the plan under Code Section 6058 and actuarial report of the plan under Code Section 6059; and
  17. copies of the plan document and amendments, other retirement benefit or ancillary benefit plans relating to the plan and contribution obligations under such plans, a breakdown of administrative expenses of the plan, participant census data and distribution of benefits, the most recent actuarial valuation report as of the plan year, copies of collective bargaining agreements, and financial reports, and such other information as the Secretary, in consultation with the PRA Director, may require.
- **Report To be Provided To Participants, Beneficiaries And Employers**  
Each plan sponsor that is required to file a report shall also provide a summary (written in a manner so as to be understood by the average plan participant) of the information in such report to participants and beneficiaries in the plan and to each employer with an obligation to contribute to the plan by the 90<sup>th</sup> day of the plan year.

There is a penalty for not reporting which may not be paid from plan assets.

### **Section Eight - PBGC Financial Assistance**

Section Eight has special rules for insolvent but not terminated plans applying for financial assistance from both the PBGC and the Loan Program.

We will report on any developments regarding this Bill. Interested parties may sign up to get alerts on the [Bill's webpage](#)

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