How the COVID relief bill saves union pensions

The just-passed COVID relief bill will rescue and restore over 100 declining union pension plans.

By Don McIntosh

It didn't get a lot of fanfare, but tucked into the just-passed COVID relief bill is a new program that will make a life-changing difference for over a million current and future union retirees.

Section H of the American Rescue Act is a modified version of the Butch Lewis Act, a stand-alone bill that the labor movement has been promoting as a top priority for years. It would prevent declining union pension plans from failing, and it would restore benefits to pension plan participants who previously suffered benefit cuts.

The rescue is aimed at the roughly one in 10 multiemployer pension plans that are running out of money to pay benefits. Multiemployer plans are jointly sponsored by unions and union employers, and most of the time they're able to provide retirement benefits at an affordable cost to employers, funded by employer contributions and the investment returns on those contributions. But in the last two decades, a number of those plans have gotten into difficulty, mostly through no fault of the union and employer trustees who oversee them. Nearly everything about the plans is heavily regulated under federal law. Typically, plans that get into trouble are in industries where the number of union workers has declined. That decline makes them vulnerable, because if the plan suffers significant investment losses, there aren't enough contributions being made on behalf of active employees to catch up by the time pension promises come due.

How the rescue works

Under the new law, plans that are running out of money (those deemed "critical and declining" in pension law parlance) can apply to the Pension Benefit Guaranty Corporation (PBGC)— the government's pension insurance agency—for a one-time grant of enough money to pay all promised retirement benefits through 2051. The funds are to be kept separate and invested in investment-grade bonds or other low-risk investments allowed by the PBGC.

BUTCH LEWIS, 1951-2015

HIS WORK LIVES ON

Estil "Butch" Lewis, Jr., was a a Vietnam veteran, a dedicated Teamster truck driver, and president of Teamsters Local 100 in Cincinnati. Until he died of a stroke in December 2015, he had worked tirelessly to defend the Teamsters Central States Pension, and his widow Rita Lewis continued the fight. In his honor, U.S. Sen. Sherrod Brown (D-Ohio) named his pension rescue bill the Butch Lewis Emergency Pension Plan Relief Act Of 2021.

The Congressional Budget Office estimates the rescue would cost about $86 billion. About 185 union pension plans are likely to receive assistance, but the number could be as high as 336.

Reversing pension benefit cuts

The grants are available not just to pension funds that are underfunded and declining, but also those that in the last few years made the hard choice to reduce promised benefits for current and future retirees in order to stop their slides to insolvency. For decades, cutting benefits was against federal law, but a 2014 law called the Multiemployer Pension Reform Act (MPRA) let multiemployer pension plans cut benefits even to existing retirees to some extent if doing so could prevent the plans from running out of money.

Eighteen pensions have received U.S. Treasury Department approval to make pension benefit cuts so far, including two pension plans that have participants in Oregon and Southwest Washington. The Western States Office and Professional Employees Pension fund, which includes members of OPEIU Local 11, cut benefits 30% for most of its 7,400 current and future retirees. And the Plasterers Local 82 Pension Plan cut benefits 22% to 31% for its roughly 250 current and future retirees.

All pensions that cut benefits under MPRA would be eligible for rescue under the American Rescue Act. Once they receive the government grant, they would have to reinstate within a month any benefits that were suspended, and pay back the retirees any benefits they lost, either in a lump sum check within three months or in equal monthly installments over five years. Pension plans can apply for the grants through the end of 2025, and all grants will be made by 2030.

Pension plans that receive assistance will face a number of restrictions, the details of which will be worked out by the PBGC in consultation with the Secretary of Labor. The new law gives them 120 days (starting March 11) to write regulations putting conditions on plans that receive assistance. Those conditions could include whether and how pension plans may increase future accrual rates, make retroactive benefit improvements, or reduce employer contribution rates, how they allocate plan assets, and details about withdrawal liability.

Will a Trump appointee set rules for union pension rescue?

For now, that means the decision will be in the hands of Trump appointee Gordon Hartogensis, who has three years left in his term as director of the PBGC. Critics faulted the Hartogensis appointment for the appearance of nepotism: A money manager with no experience in government or pension fund management, Hartogensis is a Republican donor and the brother-in-law of Senate Majority Leader Mitch McConnell. But close observers say he's done a reasonably good job at PBGC. Still, Hartogensis got the job after Trump fired his Obama-appointed predecessor Tom Reeder in 2018, half-way through Reeder's five-year term. That means Biden could do the same, replacing Hartogensis. The White House hasn't given any indication whether it intends to replace Hartogensis.

Even if it falls to Hartogensis to write the rules, he's overseen by a board of directors that includes the secretaries of Labor, Commerce, and Treasury. And the board is chaired by the Secretary of Labor. Biden's nominee for Labor Secretary, expected to get Senate confirmation on March 22, is Boston Mayor Marty Walsh, a longtime building trades union leader and member of the Laborers Union.

The new law also gives troubled pension plans more time to make up unfunded liabilities: It lengthens the "funding improvement" or "rehabilitation" period by five years, meaning that participating employers can pay down a pension plan's funding shortfall over 15 or 20 years instead of the current 10 or 15.

If there's any logjam as PBGC considers applications for the rescue grants, the law says it can prioritize applications from pension plans that have already cut benefits, that have over $1 billion in unfunded liabilities.

How Butch Lewis got inserted

How the pension rescue section got into the COVID relief package is a story in itself, and not without controversy.

About 125 multiemployer pension plans have been sliding toward insolvency in recent years, and the looming failure of the biggest—Central States Teamster Pension—threatened to wipe out the PBGC's insurance program for multiemployer pensions. In response, Congress held hearings and haggled over several proposed pieces of reform legislation, most notably the Butch Lewis Act, sponsored by Sen. Sherrod Brown (D-Ohio), which would have loaned failing pension plans money to invest their way back into paying promised benefits.

That was one of several proposals discussed in two weeks of high-level talks in December 2020 to see if a bipartisan agreement on multiemployer pension reform could be achieved. Another was a Republican proposal first floated in November 2019 by Sen. Chuck Grassley (R-Iowa) and former Sen. Lamar Alexander (R-Tennessee) that would have greatly increased the insurance premiums paid by multiemployer pensions and allowed distressed plans to spin off unfunded promises from employers that left the pension into new plans that would be taken over by the PBGC. A deal was reportedly close to being reached, but on Dec. 17, Republicans led by Grassley walked out of the talks.

So when the Jan. 5 Georgia runoff elections gave Democrats control of the Senate, staff working for top House and Senate Democrats started crafting a modified version of the Butch Lewis Act that could pass under the Senate's "reconciliation" rules, which allow budget-related measures to pass with a simple majority instead of the filibuster-ridden 60% supermajority that other legislation has to achieve under the Senate's self-imposed rules. Those rules meant they had to turn the loan program into a grant program, and the bill's policy reform elements were dropped.

The product of their work was added to the COVID relief bill HR 1319 as Section H. When the bill came to the Senate floor, Sen. Grassley objected to the pension rescue and introduced a motion to refer the bill back to the Senate Finance Committee. The motion failed 49-50 on straight party lines, with 49 Republican senators voting to send it back to committee.

Republican critics in Congress called the pension rescue a union bailout. But in fact, the rescue helps active and retired union members and their communities—and union employers. That's why it had the backing of some of America's biggest companies. A March 2 Chamber of Commerce letter to Senate leaders in support of the pension relief was signed by 54 companies, including Albertsons, Bimbo Bakeries USA, Kellogg, Kroger, Penske Truck Leasing, Roth IGA, Sodexo, and UPS.

"Employers recognize the multiemployer crisis began before the COVID-19 pandemic," the letter said. "However, the economic consequences of COVID-19 have exacerbated the challenges facing many multiemployer plans, employers, and essential workers—making immediate relief absolutely essential."

Michael Scott, executive director of the National Coordinating Committee for Multiemployer Plans (NCCMP), says further reforms are needed to the multiemployer pension system to further restore them to health and to prevent future problems. NCCMP is an industry group that lobbies for the Taft-Hartley funds. Scott says the passage of this bill makes future reforms more likely.

"This takes away the most contentious issue out there, which is the money," Scott said.