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PBGC Proposed Regulations Would Simplify Multiemployer Plan Withdrawal Liability Calculations

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PBGC has proposed regulations to amend their rules on allocating withdrawal liability and determining payments owed by employers withdrawing from multiemployer plans. The proposed regulations reflect revisions adopted by Congress in the Multiemployer Pension Reform Act of 2014 (MPRA).

Background

Employers who withdraw from multiemployer plans are assessed a share of the plan's unfunded vested liabilities at the time of withdrawal. ERISA offers four methods for allocating unfunded vested benefits (UVBs) — the value of nonforfeitable benefits minus the value of plan assets — to employers that withdraw: the presumptive method, the modified presumptive method, the rolling-5 method, and the direct attribution method. Employers make withdrawal liability payments to satisfy any allocated withdrawal liability.

The withdrawal liability calculation must be made without considering changes made in PPA and MPRA to address financial difficulties faced by some multiemployer plans. These include:

- Adjustable Benefit Reductions: Reductions in adjustable benefits (e.g., post-retirement death benefits, early retirement benefits) and reductions arising from a restriction on lump sums and other benefits
- Benefit Suspensions: Temporary or permanent suspension of any current or future payment obligation of the plan to any participant or beneficiary under the plan, whether or not in pay status at the time of the benefit suspension
- Surcharges: Surcharges, calculated as a percentage of required contributions, that certain underfunded plans are required to impose on contributing employers
- Contribution Increases: Contribution increases that plan trustees may require under a funding improvement or rehabilitation plan

PBGC had previously provided regulations to reflect the PPA-enacted changes above, prior to the additional changes made by MPRA.

Proposed changes

PBGC has proposed further changes to reflect the statutory "disregard" rules under MPRA and to provide simplified methods for applying those rules. In general, under the proposal an employer's withdrawal liability is determined in two steps. First, the plan sponsor determines withdrawal liability payments based on the reduced plan benefits after taking into account the benefit reductions and benefit suspensions. Next, the plan sponsor adds to this the employer's proportional share of the value of the benefit reductions and benefit suspensions.

Benefit suspensions and adjustable benefits

MPRA limited the requirement to disregard benefit suspensions (i.e., include the suspended benefits in liabilities) to a period of 10 years after the end of the plan year in which the suspension occurs. After this 10-year period, the benefit suspensions are no longer disregarded (i.e., the liabilities are excluded) when determining the amount of unfunded vested benefits allocable to an employer for a withdrawal after this period. This 10-year limitation does not apply to adjustable benefits. PBGC's proposal includes a "static method" and an "adjusted value method" for determining the benefit value of suspended benefits. The static method reflects values calculated as of a single calculation date based on the suspension date while the adjusted value method uses a revaluation date reflecting the time an individual employer withdraws from the plan.

For adjustable benefits, the addition to the base withdrawal liability is determined using the unamortized balance of the value of adjusted benefits during the 15-year period over which the liability is amortized.

Costs are allocated to withdrawing employers using employer required contributions over a five-year period divided by the amount of total employer contributions over the same five-year period.

Surcharges and contribution increases

Surcharges and contribution increases that are required by a funding improvement or rehabilitation plan are not taken into account for the five-year contribution allocation fractions and an employer's annual withdrawal liability payment. PBGC believes plan sponsors do not need any simplified methods for dealing with surcharges, but the proposal would provide options for certain contribution increases that go into effect during plan years beginning after December 31, 2014 that are deemed to be required or made to enable the plan to meet the requirement of the funding improvement plan or rehabilitation plan.

Emerging from endangered or critical status

Once a plan is no longer in endangered or critical status, the "disregard" rules for contribution increases change. Plan sponsors are required to: (1) Include contribution increases in determining the allocation fraction used to calculate withdrawal liability; and (2) continue to disregard contribution increases in determining the highest contribution rate used to calculate the annual withdrawal liability payment amount. PBGC's proposed regulation would offer one simplified method for determining the numerator and two simplified methods for determining the denominator of the allocation fraction. These methods would relieve the plan sponsor's burden of year-by-year determinations to reflect varying expiration dates of bargaining agreements.

Effective date

The changes to regulatory simplified methods for determining withdrawal liability payments would apply to withdrawals that occur on or after the effective date of the final rule. PBGC invites comments and asks that they be submitted on or before April 8, 2019.

In closing

Multiemployer plan sponsors will want to review these proposed changes with the plan's actuary to assess the value of adopting the simplifications to reduce complexity and more easily communicate how withdrawal liability may be calculated. Employers participating in multiemployer plans will want to consider how these simplified rules might affect their potential withdrawal liability allocations, if implemented.

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