

PBGC Issues Final Rule with Simplified Methods for Withdrawal Liability Calculations

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The Pension Benefit Guaranty Corporation (“PBGC”) issued a final [rule](#) on January 7, 2021 that impacts the calculation of withdrawal liability by multiemployer pension plans in endangered or critical status. The final rule applies to withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021.

The final rule contains amendments to implement the requirements under the Pension Protection Act of 2006 (“PPA”) and the Multiemployer Pension Reform Act of 2014’s (“MPRA”) requirements that benefit reductions, benefit suspensions, surcharges, and contribution increases under a funding improvement or rehabilitation plan must be disregarded when determining a withdrawing employer’s total withdrawal liability and withdrawal liability payment amount (the “disregard rules”). The final rule also provides optional simplified withdrawal liability calculation methods for applying the disregard rules in determining withdrawal liability and the annual payment calculation for withdrawal liability, and adds examples illustrating how the methods are applied.

The preamble to the final rule notes that, “similar to a safe harbor, a plan sponsor that adopts one of the simplified methods satisfies the requirements of the applicable statutory provision and regulations.” However, the preamble is clear that plan sponsors are not required to use the simplified methods. Although the PBGC will not approve any alternative methods on a plan-by-plan basis, the preamble notes that plan sponsors are welcome to informally consult with the PBGC on the use of alternative methods.

The final rule is generally consistent with the PBGC’s prior proposed [rule](#) from 2019 on these issues, which we reviewed in detail in our [prior client alert](#). Highlights of the final rule and the key changes from the proposed rule are described below.

Adjustable Benefit Reductions and MPRA Benefit Suspensions

Like the proposed rule, the final rule provides optional simplified methods for plans to disregard adjustable benefit reductions and MPRA benefit suspensions. Using the simplified framework, a plan would first calculate an employer's withdrawal liability using the plan's withdrawal liability method and taking into account any adjustable benefit reductions and benefit suspensions. The plan's second step would then be to add to the employer's withdrawal liability the employer's proportional share of the value of any adjustable benefit reductions or MPRA benefit suspensions. The final rule includes the same three simplified methods as the proposed rule for the second step: one method applies to adjustable benefit reductions (and is based on the guidance previously provided in PBGC Technical Update 10-3) and two apply to MPRA benefit suspensions (referred to as the "static value method" and the "adjusted value method").

Contribution Increases

MPRA requires plans to disregard contribution increases that are required or made under a funding improvement plan or rehabilitation plan when determining the contribution amounts of a withdrawing employer that are used to determine the employer's allocable share of the plan's unfunded vested benefits and the employer's highest contribution rate for withdrawal liability payment calculation purposes unless due to increased levels of work, employment, or periods for which compensation is provided. An increase in the contribution rate is deemed required or made to enable the plan to meet its funding improvement or rehabilitation plan requirements except as noted in the prior sentence or where additional contributions are used to provide an increase in benefits. MPRA's changes apply to contribution increases that went into effect in plan years beginning after December 31, 2014.

After MPRA's enactment, certain underfunded plans that tie a participant's accrued benefit to the amount of the employer contribution made on his or her behalf have continued to take into account contribution increases, even when expressly required by a funding improvement or rehabilitation plan, to the extent that the contribution increases result in higher benefit accruals for plan participants. These plans have reasoned that the increases are not solely required by the funding improvement or rehabilitation plan because the contribution increases increase participants' benefit accruals. The proposed rule arguably supported this position because it provided that the portion of any contribution increases that increase benefit accruals as an integral part of the benefit formula (referred to in the preamble to the proposed rule as "benefit bearing increases") are to be taken into account for calculating withdrawal liability. However, this language was removed in the final rule, and replaced with a reference to the portion of the statute which permits a plan subject to a funding improvement or rehabilitation plan to be amended to increase benefits or benefit accruals if the plan actuary certifies that such increase is paid for out of additional contributions not contemplated by the funding improvement or rehabilitation plan.

For those contribution increases which are required to be disregarded, the final regulation provides simplified methods for meeting this requirement when determining an employer's withdrawal liability allocation fraction: one method for determining the numerator, and two alternatives for determining the denominator. The simplified methods in the final rule are generally consistent with the proposed rule.

- **Simplified method for determining the numerator.** A plan using this method would first start with the employer's contribution rate as of the "employer freeze date," which is the later of (i) the last day of the first plan year that ends on or after December 31, 2014 and (ii) the last day of the plan year the employer first contributed to the plan. If the plan has a contribution rate increase after the freeze date that provides an increase in benefits which the plan actuary has certified is paid for out of additional contributions not contemplated by the funding improvement or rehabilitation plan, the rate increase is added to the contribution rate for each year to which the increase applies. The product of the employer's contribution rate on the employer freeze date (adjusted to reflect the foregoing increase(s) as appropriate) and the employer's contribution base units forms the numerator of the allocation fraction. A comparable amount determined for all employers would then be used for the denominator unless the plan uses the "proxy group method" for determining the denominator as described below.

- **Simplified methods for determining the denominator.** As noted above, the final rule allows a plan to use the same principles as the simplified method for determining a specific employer’s numerator to determine the contributions by all employers for the denominator. Alternatively, the plan can use the “proxy group method.” Under the proxy group method, a plan must determine “adjusted contributions,” which is the amount of contributions that would have been made excluding contribution rate increases that must be disregarded for withdrawal liability purposes, based on the exclusion that would apply for a representative “proxy” group of employers, rather than performing calculations for each of the employers in the plan. Unlike the proposed rule, the final rules does not require that the proxy group of employers be named in the plan in the order to use the proxy group method.

Calculating Withdrawal Liability after Plan Exits Endangered or Critical Status

Once a plan exits endangered or critical status, the disregard rules for contribution increases change. Specifically, in determining the allocation fraction a plan sponsor is required to include contribution increases (previously disregarded) as of the expiration date of the CBA in effect when a plan is no longer in endangered or critical status. However, contribution increases continue to be disregarded in determining an employer’s highest contribution rate for withdrawal liability payment calculations. The final rule includes simplified methods to comply with the foregoing requirements which are substantially consistent with the methods provided in the proposed rule.

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As noted above, the final rule applies to withdrawals from multiemployer plans that occur in plan years beginning on or after February 8, 2021 (i.e., withdrawals on or after January 1, 2022 for plans with calendar plan years).

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