42 Years in the Making: PBGC Proposes Regulation on Interest Rate for Withdrawal Liability Calculations

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A hotly debated (and litigated) issue for multiemployer pension plans in recent years has been the appropriate interest rate to determine a multiemployer pension plan's liabilities when calculating the plan's underfunding for withdrawal liability purposes. The Pension Benefit Guaranty Corporation (the "PBGC") is now poised to end the debate. The PBGC proposes to allow multiemployer pension plans to use ***any*** interest rate for withdrawal liability calculations as long as it is not below the PBGC's conservative mass withdrawal interest rate or greater than the pension plan's investment return assumption.

This story starts back in 1980. While the rest of us were dancing to Blondie's "Call Me," Congress was busy authorizing the PBGC to issue regulations on the actuarial assumptions and methods used to calculate withdrawal liability. Congress also provided that, absent any regulations by the PBGC, multiemployer pension plans must use actuarial assumptions and methods that "in the aggregate, are reasonable (taking into account the experience of the plan and reasonable expectations) and which, in combination, offer the actuary's best estimate of anticipated experience under the plan."

For 42 years, the PBGC has not issued regulations on the appropriate actuarial assumptions and methods for withdrawal liability calculations. In the meantime, the alternative codified by Congress has been interpreted in a number of ways, leading to a high degree of variability in how withdrawal liability is calculated from plan to plan and, more recently, the possibility of split courts on the issue. The interest rate used is a key driver in the calculation of withdrawal liability because the lower the interest rate used to calculate the present value of a pension plan's future benefit liabilities, the higher the present value of those liabilities and, consequently, the higher the withdrawal liability.

In the summer of 2021, the PBGC indicated that regulations on this issue were forthcoming, and the proposed regulations finally landed on October 14. The proposed regulations, if finalized in their current form, would allow pension plans to use any rate within the permitted spectrum – rates as low as the PBGC's mass withdrawal interest rate and as high as the pension plan's investment return assumption – without any specific methodology or constraints on how the rate is selected.

All other actuarial assumptions and methods are acceptable under the proposed regulations as long as "(1) [e]ach is reasonable (taking into account the experience of the plan and reasonable expectations), and (2) [in] combination, they offer the actuary's best estimate of anticipated experience under the plan." The proposed regulations do not change the PBGC-mandated conservative interest rate that must be used for mass withdrawal liability calculations.

Importantly, however, the proposed regulations do not (and likely could not) modify how an employer's withdrawal liability payment schedule is calculated or the 20-year cap that applies even if the employer will not fully pay its nominal liability in 20 years under the payment schedule. Thus, even if a pension plan lowers the interest rate it uses for withdrawal liability calculations in accordance with the proposed regulations, employers that are already subject to the 20-year cap on installment payments should not see any change in their effective withdrawal liability exposure. The impact of these proposed regulations is, therefore, plan and employer-specific.

Although the changes in the proposed regulations would apply only to the calculation of withdrawal liability that is triggered after the final regulations are effective, the PBGC specifically noted that the proposed rule does not preclude the use of an interest rate permitted by the regulations before the final regulations are effective. As a result, we may continue to see disputes between plans and employers withdrawing prior to the proposed rule's effective date.

Comments on the proposed regulations are due by November 14, 2022.

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