Multiemployer Review

Update on issues affecting multiemployer plans

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PBGC proposed rule: Methods for computing withdrawal liability

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On February 6, 2019, the Pension Benefit Guaranty Corporation (PBGC) issued a proposed rule to amend and simplify the calculation of withdrawal liability for plans with rehabilitation plans or funding improvement plans that have made certain benefit or contribution changes.

Overview

In general, the proposed withdrawal liability rules:

- Reflect previous guidance on disregarding adjustable benefit reductions
- Provide simplified methods for complying with the Multiemployer Pension Reform Act of 2014 (MPRA) requirements to disregard benefit suspensions
- Provide new guidance on which contribution increases should be reflected when determining an employer's withdrawal liability assessment and annual payment amount

The PBGC will accept comments on these proposed rules through April 8, 2019. A detailed review of these proposed rules is provided below.

Background

Under the Multiemployer Pension Plan Amendment Act of 1980 (MPPAA), an employer that withdraws from a multiemployer pension plan may be assessed withdrawal liability. In general, when assessing withdrawal liability, the withdrawing employer is assigned a share of the plan's unfunded vested benefits (the excess of the value of nonforfeitable benefits over the value of plan assets) at the time of withdrawal. The employer may pay the assessment in a lump sum, or can make periodic payments. MPPAA defined the calculations of both the assessment and the periodic payment schedule. The assessment is generally based on "allocation fractions," comparing employer contributions to total plan contributions over a period of time (generally five years).[1] The annual payment calculation is generally designed to approximate the employer's highest annual contribution in the last 10 plan years, in part by applying the highest contribution rate it was obligated to pay during that time.

However, both the Pension Protection Act of 2006 (PPA) and the Multiemployer Pension Reform Act of 2014 (MPRA) contained certain law changes that complicated withdrawal liability calculations for some plans that were in endangered or critical status. The changes impacted calculations for plans that:

- Reduced "Adjustable Benefits" as part of a rehabilitation plan
- Were approved by Treasury to suspend benefits under MPRA
- Required employer surcharges or contribution increases that did not result in increased benefit accruals as part of a funding improvement or rehabilitation plan

Adjustable Benefit reductions

The PPA generally required that Adjustable Benefit reductions under a rehabilitation plan must be disregarded when calculating withdrawal liability. The PBGC previously issued Technical Update 10-3 providing a simplified method to comply with this requirement. In general, the simplified method allowed a plan to measure the reduction in liability in the year following the adjustable benefit reductions, and then amortize that amount over a 15-year period. A portion of the outstanding balance, according to the amortization schedule, is then assessed to a withdrawing employer in addition to any unfunded vested benefit assessment.

1 There are other less common allocation methods or periods used, but an exhaustive description of all possibilities is beyond the scope of this article.

The proposed rule essentially incorporates the rules described in Technical Update 10-3, with the exception of not including an adjustment for receivable withdrawal liability payments that was available to plans with the Rolling-5 method.

Benefit suspensions

MPRA stipulated that benefit suspensions would be disregarded in withdrawal liability calculations for a period of 10 years. The proposed regulation clarifies that this requirement would only apply to employers that withdraw within the first 10 plan years after the benefit suspension was effective. Further, during this 10-year period, the unfunded vested benefits allocable to the employer would include the value of the suspended benefits. The example below shows how the 10-year period is applied and whether the value of the suspended benefits is included in the unfunded vested benefits.

EXAMPLE ASSUMING BENEFITS SUSPENSIONS BEGIN IN 2017	
2018-2027	Include Value of Suspended Benefits
2028	Do not Include Value of Suspended Benefits

The proposed regulation provides two simplified methods for reflecting the value of benefit suspensions in withdrawal liability calculations.

Static Value Method

If elected, the Static Value Method calculates the present value of the suspended benefits as of a single calculation date that would be used for all withdrawals in the 10-year period. The “single calculation date” can be either (1) the effective date of the benefit suspension, or (2) the last day of the plan year coincident with or following the date of the benefit suspension. This value is allocated to a withdrawing employer using an allocation fraction based on the most recent five plan years ending *before the plan year in which the benefit suspension takes effect*. Using this method an employer that requests an estimate of its withdrawal liability in each year of the 10-year period will likely see the value of suspended benefits allocated to it remain the same during the whole period.

Adjusted Value Method

If elected, the Adjusted Value Method determines the present value of the suspended benefits on the last day of the plan year before the employer’s withdrawal, meaning the value changes annually. This value is allocated to a withdrawing employer using an allocation fraction based on the most recent five plan years ending *before the employer’s withdrawal*. Using this method, an employer that requests an estimate of its withdrawal liability in each year of the 10-year period will see annual fluctuations in the value of suspended benefits allocated to it.

Surcharges and contribution increases

MPRA provided clarification to some of the changes introduced by PPA by requiring that the following contribution amounts are disregarded from the allocation fraction and the annual payment calculation:

- Employer surcharges
- Contribution increases required under a funding improvement or rehabilitation plan that do not generate increased benefit accruals and are effective in plan years beginning after December 31, 2014

The proposed rule provides guidance for complying with this requirement.

Current law states that contribution increases required under a funding improvement plan or a rehabilitation plan should be disregarded from the allocation fraction. The proposed rule defines contribution increases that *should not* be considered part of a funding improvement plan or rehabilitation plan, and therefore should be reflected in some or all withdrawal liability calculations. The following should be included in both the allocation fraction and annual payment calculation:

- Increases in contributions associated with increased levels of work, employment, or periods for which compensation is provided
- Contribution increases used to provide an increase in benefits (referred to in the proposed regulation as “benefit-bearing” contribution increases), and which must generally be actuarially determined

The proposed rule states that, in general, all contribution increases due to funding improvement plans and rehabilitation plans will no longer be excluded when a plan is no longer in endangered or critical status. However, the annual payment calculation will continue to disregard these amounts.

The proposed rule establishes simplified methods for meeting these requirements.

DISREGARDING CERTAIN CONTRIBUTION INCREASES IN THE ALLOCATION FRACTION

One simplified method for the numerator and two simplified methods for determining the denominator of the allocation fraction are included in the proposed rule.

Numerator

This simplified method allows the sponsor to determine the contribution amount for a given year by multiplying the employer’s contribution base units (hours, payroll, etc.) in that year by an adjusted contribution rate in effect at the end of that plan year. The adjusted contribution rate is generally the contribution rate in effect as of the “freeze date” (December 31, 2014, for calendar year plans or the last

day of the first plan year that ends on or after December 31, 2014), plus any increases providing additional benefits after that date.

Denominator Method 1 uses the 2014 plan year contribution rate for each employer
This method is identical to the simplified method for the numerator, but instead of completing the calculation for just the withdrawing employer, it is done for all participating employers and those resulting individual contribution amounts are summed together.

Denominator Method 2 uses the Proxy Group Method
Some plans offer multiple contribution schedules, which can have varying contribution rate increases. Such plans may find that compliance with Denominator Method 1 would be administratively burdensome. In an effort to recognize this, the proposed rule contains another method for computing the denominator. The process described under the Proxy Group Method weights employers by the size of their contributions. Major employers have greater impact on the adjusted contributions than smaller employers. The proxy group is established once and it may change only to reflect new or changed circumstances such as a new funding improvement schedule or the withdrawal of a large employer. The initial setup of the proxy group happens in the first plan year beginning after the "freeze date" (i.e., for a calendar year plan, December 31, 2014) and should have both:

- Employers from large rate groups (rate groups are groups of employers that have similar histories of both contribution rate increases and disregarded rate increases)
- Enough employers so that at least 10% of the plan's active participants are represented

It should be noted that the above description of the Proxy Group Method is a brief summary and more details are contained in the proposed rule.

WHEN A PLAN LEAVES ENDANGERED OR CRITICAL STATUS

When a plan is certified as no longer in endangered or critical status, contribution increases due to a funding improvement or rehabilitation plan are included in determining the allocation fraction and continue to be disregarded when determining the highest contribution rate used to calculate the annual payment.

The proposed rule provides two simplified methods for determining the denominators in the allocation fraction for plans that had been endangered or critical and have since emerged.

Method 1
Under the first method, contribution increases that were previously disregarded *would be included* as of the expiration date of the first collective bargaining agreement requiring contributions that expires after the plan is no longer in endangered or critical status.

Method 2
Under the second method, contribution increases that were previously disregarded *would be included* when calculating withdrawal liability for a withdrawal that occurs after either:

- The first full plan year after a plan is no longer in endangered or critical status
- The plan year including the expiration date of the first collective bargaining agreement requiring contributions that expires after the plan is no longer in endangered or critical status, if later

HIGHEST CONTRIBUTION RATE

The proposed rules provide one simplified method for determining the highest contribution rate for plans that had been endangered or critical and have since emerged. Under the proposed rule, the highest contribution rate is:

GREATER OF:	
SUM OF:	▪ The employer's contribution rate as of the first plan year that ended coincident with or after December 31, 2014. ▪ Any contribution increases (not attributable to a funding improvement plan or rehabilitation plan or that funded additional benefits) occurring after that date and before withdrawal
OR:	**Highest negotiated contribution rate after the plan is no longer in endangered or critical status**

Please contact a Milliman consultant to better understand how these new proposed rules may impact your multiemployer pension plan.

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