

PBGC Finalizes Rules for Simplified Withdrawal Liability Calculations

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On January 7, 2021, the Pension Benefit Guaranty Corporation (“PBGC”) issued final regulations updating its guidance under sections 4211 and 4219 of the Employee Retirement Income Security Act of 1974 (“ERISA”), which govern the calculation of an employer’s withdrawal liability and the payment of that liability, respectively. Specifically, the regulations provide simplified methods for calculating withdrawn employers’ allocable share of the plan’s unfunded vested benefits disregarding certain benefit reductions and contribution increases, as required by law. The final regulations closely follow proposed regulations that PBGC issued on February 6, 2019.

Background

The Pension Protection Act of 2006 (“PPA”) permits plans in critical status to reduce “adjustable benefits”, which most commonly include early retirement subsidies for participants not in pay status and benefit improvements that have been in effect for less than 5 years. In certain circumstances, PPA also provides for mandatory employer contribution rate increases and contribution surcharges. The law requires that plans disregard cuts to adjustable benefits when calculating an employer’s withdrawal liability, and directs PBGC to provide simplified methods for implementing this requirement. Additionally, PPA specifies that employer surcharges are disregarded when allocating unfunded vested benefit liabilities to a withdrawn employer.

On July 15, 2010 PBGC issued Technical Update 10-3, which provides a simplified procedure for calculating withdrawal liability after a plan imposes cuts to adjustable benefits. Under this procedure, the plan actuary calculates the present value of the adjustable benefits that were cut (measured as of the plan year in which the cuts occurred), and then amortizes this liability over a 15-year period. If an employer subsequently withdraws, its withdrawal liability is first calculated without including any liability associated with the adjustable benefit reductions, and then the employer’s allocable share of

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the unamortized adjustable benefit liability is added to the employer's share of the unfunded vested benefits.

The Multiemployer Pension Reform Act of 2014 ("MPRA") allows certain distressed plans to implement benefit suspensions, subject to a variety of conditions and limitations. Under MPRA, benefit suspensions must be disregarded for withdrawal liability purposes for withdrawals that occur within a 10-year period following the implementation of suspensions. MPRA directs PBGC to prescribe simplified methods for this purpose. MPRA also provides that contribution rate increases required by a funding improvement or rehabilitation plan are generally disregarded for withdrawal liability purposes. Additionally, surcharges are disregarded not only for the purpose of allocating unfunded vested benefit liabilities to a withdrawn employer, but also for the purpose of determining the annual or quarterly withdrawal liability payment amount.

Simplified Methods Under the Final Regulations

In the final regulations, PBGC provides simplified methods for the calculation and payment of withdrawal liability while excluding, as required by law, (1) adjustable benefit reductions, (2) benefit suspensions, and (3) certain contribution increases. The effective date of the final regulations is February 8, 2021.

1. Exclusion of Adjustable Benefit Cuts From Withdrawal Liability

The final regulations codify the simplified approach for excluding adjustable benefit cuts from withdrawal liability assessments that is contained in Technical Update 10-3. Under this procedure, an employer's withdrawal liability is calculated by first determining the employer's allocable share of the plan's unfunded vested benefits reflecting the adjustable benefit cuts, and then adding the employer's allocable share of the unamortized liability associated with the adjustable benefit reduction. The regulations clarify that this calculation is performed before any adjustments—such as a *de minimis* reduction or the 20-year payment cap—are applied by ERISA 4201(b)(1).

In determining an employer's allocable share of the unamortized adjustable benefit liability, an allocation fraction—which is comprised of the withdrawing employer's contribution history over a period of time divided by the total contribution histories of all employers over that same period of time—is applied. Both Technical Update 10-3 and the final regulations provide that the period of time considered for the allocation fraction is the 5-year period preceding the employer's withdrawal. In response to a comment received on the proposed regulations, the final regulations include an alternative method under which plans may use the 5-year period preceding the implementation of the adjustable benefit reductions to calculate this allocation fraction.

The simplified approach under the regulations is optional, and plans may use other approaches that are consistent with the statutory language. While PBGC will not formally approve alternative approaches, it invites sponsors to discuss such approaches with PBGC on an informal basis.

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2. Exclusion of Benefit Suspensions from Withdrawal Liability

The final regulations provide a simplified framework for excluding benefit suspensions from withdrawal liability assessments during the 10-year period following the implementation of the suspensions. Under this framework, plans may use either the “static value method” or the “adjusted value method”.

Under the static value method, the present value of the suspended benefits is determined when the suspensions are approved. This value applies to all withdrawals that occur during the following 10-year period, and is allocated to a withdrawn employer using the contribution histories over the 5-year period preceding the plan year in which the suspensions take effect.

Under the adjusted value method, the present value of the remaining suspended benefits is determined annually during the 10-year period following approval of the benefit suspension. This present value is allocated to a withdrawn employer using the contribution histories over the 5-year period preceding the plan year of withdrawal.

The final regulations also provide that construction industry plans with no unfunded vested benefits may elect a fresh start of the plan’s benefit liabilities for withdrawal liability purposes even if liabilities for suspended benefits or adjustable benefit cuts are still in effect.

As with the simplified method that applies to adjustable benefit cuts, this framework is optional and plans may use other approaches that are consistent with the statutory language.

3. Exclusion of Contribution Increases and Surcharges from Withdrawal Liability Assessments

The final regulations provide simplified methods that, consistent with section 305(g)(3) of ERISA, disregard contribution increases required by funding improvement or rehabilitation plans that go into effect after December 31, 2014 for the purpose of calculating withdrawal liability. These methods generally rely on reasonable approximations in place of rigorous data and analysis.

All contribution rate increases to plans that are in endangered or critical status are generally deemed to be required by a funding improvement or rehabilitation plan, though there is an exception for increases that are used to provide additional benefit accruals. In the case of contribution increases that are not excluded from withdrawal liability calculations because they provide benefit accruals, the final regulations do not provide any guidance on how to determine whether all or a portion of the increases are included in the calculations.

The final regulations do not provide any simplified methods for the required exclusion surcharges because, as explained in the preamble, PBGC believe plans have been able to implement this statutory requirement without needing a simplified rule.

GROOM INSIGHT. The final regulations largely appear to codify the approaches to calculation of withdrawal liability that many plans have already adopted following the

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enactment of PPA and MPRA. With the publication of the final regulations, plan sponsors should review their withdrawal liability practices with their legal and actuarial advisors to ensure compliance.

The simplified methods provided in the new rules are generally optional, and plans using other methods for computing withdrawal liability may want to weigh the benefits of continuing past practice versus adopting one of the safe harbor methods under the regulations.

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