PBGC Update on Proposed Withdrawal Liability Regulations

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NCCMP Lawyers and Administrators Meeting
April 11, 2019

The opinions of Mr. French do not necessarily reflect the views of the PBGC.

PBGC

Presentation Overview / Highlights

- Proposed Regulations on Withdrawal Liability issued February 6, 2019

- Comment Period ended April 8, 2019

- As of April 4, one comment letter received

Simplified Methods for Computing Withdrawal Liability

- Brief Summary -- Under MPRA:
  - Benefit Suspensions (accrued benefit cutbacks) are disregarded for withdrawals within the first ten years when determining unfunded vested benefits (UVBs)
  - Certain Rehabilitation Plan and Funding Improvement Plan increases in contribution rate or contribution requirements are disregarded in:
    - The allocation of UVBs to individual employers
    - The calculation of withdrawal liability payments

WDL Rules for Benefit Suspensions

- For withdrawals that take place within the 10-year period following the end of the plan year in which a Benefit Suspension takes place, plan must disregard the suspension
  - that is, the withdrawal liability must be calculated as if the benefit suspension never occurred

- The statute requires PBGC to provide simplified methodologies
  - Two simplified methods are proposed:
    - Static value method
    - Adjusted value method
  - Other methods that meet statutory requirements are still permitted

- Note that *Partition* has separate rules – the withdrawal liability must include the liabilities under the Successor Plan (the plan under which PBGC pays the benefits), and the Partition Order will indicate how this must be calculated

Simplified Rules for Benefit Suspensions

- Static value method
  - Value of the benefit suspension is calculated once – the same value applies for the full 10-year period
  - Calculated as of suspension date or last day of the plan year coincident with or following the date of the benefit suspension
  - Allocated based on contributions for the five-year period ending before the *suspension date*

- Adjusted value method
  - Present value is re-calculated each year during the ten-year period
  - No adjustment to assets for benefits not paid due to the suspension in years before the withdrawal
  - Allocated based on contributions for the five-year period ending before the *withdrawal date*

Simplified Rules for Benefit Suspensions

- Under either simplified method, “A + B” calculation required:
  - “A” is the employer’s allocable share of UVBs determined under section 4211 (reflecting the reduced benefits resulting from the benefit suspension)
  - “B” is the employer’s allocable share of value of the benefit suspension (under either the static or adjustable value methods)
- If there has also been an adjustable benefit reduction accounted for per Tech Update 10-3 (or under similar rules in the proposed reg), there would also be a “+ C” component
- 20-year cap and de minimis rules are applied to the total only

Pension Benefit Guaranty Corporation

Treatment of Red Zone / Yellow Zone Plan Contribution Increases

- Except as noted below, contribution increases after the “Freeze Date” are excluded from all withdrawal liability calculations

- Freeze Date is the last day of the first plan year that ends on or after December 31, 2014

- Exceptions:
  - Increases related to levels of CBUs, etc.
  - Increases for which additional contributions are used to provide an increase in benefits (the proposed reg clarifies some situations that are unclear under the statute)
  - For purposes of the UVB allocation under the Direct Attribution Method
  - After the plan exits Yellow/Red zone status

Treatment of Red Zone / Yellow Zone Plan Contribution Increases (cont.)

- Under the proposed reg, contributions that are used to provide an increase in benefits include both:
  - Contributions associated with a plan amendment, and
  - Contributions that provide an increase in benefits as an integral part of the plan formula (a “benefit bearing” increase)

- The portion of the “benefit bearing” contribution increase that is funding the increase in benefits must be reflected in the WDL calculations and must be determined actuarially (this is not an optional provision like the simplified methods are)

- The treatment of the contribution increase in the determination of the allocation of UVB must be consistent with the treatment in the determination of the highest contribution rate (except after exit from the zone)

Simplified Rules for Allocation Fraction

- Simplified method for the numerator – generally, the numerator is based on the withdrawing employer's contribution rate at the Freeze Date times the CBUs for the applicable future year.
  - If any contribution increase required to be counted has occurred after the Freeze Date, the total sum of such increases at the end of each plan year must be added to the rate at the Freeze Date

- Simplified method #1 for denominator – same calculation as for the numerator, but done separately for each employer still contributing at the end of each applicable period

- Simplified method #2 for denominator (proxy group method) – this method recognizes that some plans may have multiple contribution increase schedules and many contributing employers that would make method #1 not practicable

Proxy Group Method

- Proxy group method – adjust actual denominator in each year (as otherwise permitted to be calculated) downward based on percentages calculated for a sample group – or “proxy group”

- Concept is to approximate what individual calculations for all employers would result in and ratio actual contributions down for each year of the denominator

- Section III.B.3 of the preamble shows a detailed example

- Attempt was made to balance simplicity with accuracy and provide a flexible model

What Happens when Red Zone / Yellow Zone Plans Emerge?

- Under § 305(g)(4) of ERISA:
  - For UVB allocation purposes: for withdrawals after a certain date, all contribution increases are included (even for years while in Red / Yellow zone)
  - For annual payment purposes: only contribution increases still in effect in plan years after the plan emerges from endangered or critical status are counted

- The specified cross-over date in the statute is: the expiration date of the CBA in effect “when the plan emerges from endangered or critical status” – what does THAT mean?

- Regs provide simplified methods to determine such dates

Simplified Methods for Determining Change Date (when Red Zone / Yellow Zone Plans Emerge)

- Simplified Date for ***UVB Allocation Purposes***:

  - Method 1: as of the expiration date of the *first* CBA requiring contributions that expires after the plan's emergence from critical or endangered status

  - Method 2: for withdrawals beginning AFTER the first full plan year after a plan is no longer in critical or endangered status, or,
    - IF LATER, the plan year containing the expiration date of the first CBA requiring contributions that expires after emergence

  - Emergence from status presumably occurs within 90 days of the beginning of the plan year (when the actuary's certification for the plan year has been filed)

Simplified Methods for Determining Change Date (when Red Zone / Yellow Zone Plans Emerge)

- Simplified method for ***withdrawal liability payment purposes*** – for any calculation date after a plan is no longer in critical or endangered status, the highest rate is the greater of:

  - (1) The rate in effect on the Freeze Date for the withdrawing employer plus required increases due to associated increases in benefit accruals, or

  - (2) The highest contribution rate for the withdrawing employer for the plan year after the first expiration date of a CBA (covering that employer) occurring after emergence, or
    - IF EARLIER, the date as of which the withdrawing employer negotiated a new contribution rate following emergence

Questions?