

PBGC Multiemployer Update

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September 29, 2021
NCCMP Conference*

All remarks are off-the-record and not for attribution.



PBGC's Regulatory Agenda

Agency Rule List - Spring 2021

Pension Benefit Guaranty Corporation

<u>Agenda Stage of Rulemaking</u>	<u>Title</u>	<u>RIN</u>
Proposed Rule Stage	Valuation Assumptions and Methods: Interest and Mortality Assumptions for Asset Allocation in Single-Employer Plans and Mass Withdrawal Liability Determination in Multiemployer Plans	1212-AA55
Proposed Rule Stage	Multiemployer Plan Guaranteed Benefits	1212-AB37
Proposed Rule Stage	Improvements to Rules on Recoupment of Benefit Overpayments	1212-AB47
Proposed Rule Stage	Penalties for Failure to Provide Certain Notices or Other Material Information	1212-AB50
Proposed Rule Stage	Miscellaneous Updates, Clarifications, and Improvements	1212-AB51
Final Rule Stage	Benefit Payments and Allocation of Assets	1212-AB27
Final Rule Stage	Examination and Copying of Pension Benefit Guaranty Corporation Records	1212-AB44
Final Rule Stage	Adjustment of Civil Penalties	1212-AB45
Final Rule Stage	Special Financial Assistance by PBGC	1212-AB53

Multiemployer Program Rulemaking

Final Rule Published Earlier in 2021 (removed from Reg Agenda)

Simplified Methods for Computing Withdrawal Liability/MPRA

- Final rule published January 8, 2021, applicable to withdrawals occurring in plan years beginning on or after February 8, 2021.
- Provides simplified methods to:
 - Disregard reductions and suspensions of nonforfeitable benefits in determining the plan's unfunded vested benefits for purposes of calculating withdrawal liability.
 - Disregard certain contribution increases if the plan is using the presumptive, modified presumptive, or rolling-5 method for purposes of determining the allocation of unfunded vested benefits to an employer.
 - Disregard certain contribution increases for purposes of determining an employer's annual withdrawal liability payment.

Multiemployer Program Rulemaking

Final Rule Stage

- **Special Financial Assistance Provided by PBGC**

- On July 9, 2021, PBGC released an interim final rule (published in the Federal Register on July 12, 2021) to implement the Special Financial Assistance Program for financially troubled plans under the American Rescue Plan Act.
- PBGC received over 100 comments on the interim final rule. PBGC is reviewing the comments.

Proposed Rule Stage

- **Valuation Assumptions and Methods:** Interest and Mortality Assumptions for Asset Allocation in Single-Employer Plans and Mass Withdrawal Liability Determination in Multiemployer Plans

- This rulemaking would update the interest, mortality, and expense load assumptions used to determine the present value of benefits under the asset allocation regulation (for single-employer plans) and for determining mass withdrawal liability payments (for multiemployer plans).

Multiemployer Program Rulemaking

Proposed Rule Stage (continued)

- Proposed Rule on Multiemployer Guaranteed Benefits
 - This rulemaking would clarify and codify policies on the determination of guaranteed benefits for participants in multiemployer plans.

Additional Future Rulemaking (not yet listed on Reg Agenda)

- Actuarial Assumptions for Determining Withdrawal Liability
 - Section 4213(a) of ERISA authorizes PBGC to prescribe assumptions that an actuary may use in determining withdrawal liability.
 - In a footnote to PBGC's interim final rule under the American Rescue Plan, PBGC stated that it intends to propose a rule under section 4213(a).

PBGC continues to receive and process requests for determinations unrelated to the new Special Financial Assistance Program

- Requests for compliance determinations (4231)
 - mergers of multiemployer plans
 - transfers of assets and liabilities between multiemployer plans
- Requests for approval of alternative rules for allocating withdrawal liability (4211(c)(5)(a))
- Requests for approval of “special withdrawal liability rules” = construction-industry-like withdrawal liability rules for plans in other industries (4203(f))

Withdrawal Liability Rule Requests

- **Alternative Withdrawal Liability Rules:** PBGC rules provide a procedure for approval of plans' alternative methods for allocating unfunded vested benefits to employers that withdraw
 - Two-pool methods – to attract or retain participating employers
 - Special contribution by employer – plan rules enabling a sizable employer contribution in excess of CBA requirements that does not increase the employer's potential withdrawal liability
- **Special Withdrawal Liability Rules:**
 - PBGC has authority to approve plan withdrawal liability rules comparable to the construction and entertainment industry rules if the industry, or a portion an industry, has "construction-like" characteristics and if these rules do not pose a significant risk to PBGC's multiemployer insurance program.
 - PBGC publishes notices of plan requests in the Federal Register

Withdrawal Liability Rule Requests

- **Alternative Terms and Conditions to Satisfy Withdrawal Liability:** PBGC Guidance issued in 2018 (sec. 4224)
 - Plan may adopt alternative payment rules that can reduce amounts employers would otherwise pay upon withdrawal under ERISA
 - Plan may, but is not required to, seek assurance from PBGC that an alternative rule is consistent with ERISA, as 4224 requires. PBGC can only address compliance with Title IV.

- PBGC is concerned about a kind of transaction that we've been seeing over the last several years in which:
 - An underfunded multiemployer plan is amended to freeze benefit accruals,
 - The bargaining parties establish a new multiemployer plan under which active participants accrue future benefits, and
 - Contribution rates are allocated between the two plans (whether by trustees or under the terms of CBAs).
- PBGC is aware of some half-dozen such transactions, which we refer to as SPILLS:

Split • Plan arrangements that • Isolate • Legacy • Liability

- Why is PBGC concerned about SPILLs?
 - The new plan may be funded at the expense of the legacy plan.
 - That may worsen over time, as employers and active participants have a decreasing stake in the legacy plan, because all future accruals for active workers are under the new plan.
 - Reduced contribution rates to the legacy plan, if sustained over time, may reduce the amount of contributing employer's prospective withdrawal liability payments.
 - Reduced legacy-plan income from contributions and withdrawal liability may increase the burden on others in the system by increasing the amount of PBGC financial assistance needed at insolvency by both:
 - accelerating plan insolvency, and
 - reducing the plan's post-insolvency income.
 - Accelerated insolvency is bad for participants and beneficiaries because it hastens the day when plan benefits must be cut back to PBGC guaranteed amounts.
 - Generally, the bargaining parties' objectives can be achieved without creating a new plan except the systematic reduction in the contributing employers' exposure to withdrawal liability.

- What is PBGC doing about SPILLS?
 - On December 31, 2020, PBGC entered into a settlement agreement with the sponsor of one legacy plan involved in a SPILL. You can learn more about that settlement on PBGC's website.
 - In that case, the plan's withdrawal liability rules provided that the amount employers' withdrawal liability payments would not decrease from what they would have been pre-SPILL, and the employers agreed to that in their CBAs.
 - PBGC has made information requests to plans that we know have engaged in SPILLS.

Resources on PBGC.gov

- You can sign up to receive news updates from PBGC on the Special Financial Assistance Program at [PBGC.gov/arp-sfa](https://pbgc.gov/arp-sfa).
- You can sign up to receive other news updates from PBGC for employers and plan professionals at [PBGC.gov/prac/whatsnew](https://pbgc.gov/prac/whatsnew).



Thank You!

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