



# Multiemployer Program Update

NCCMP's 2022 Lawyers and Administrators Meeting – March 22, 2022

*Bruce Perlin, Assistant General Counsel*

*John Ginsberg, Assistant General Counsel*

*All remarks are off-the-record and not for attribution. The speaker's opinions do not necessarily reflect PBGC's.*

# PBGC's Regulatory Agenda

## Agency Rule List - Fall 2021

Pension Benefit Guaranty Corporation

<u>Agency</u>	<u>Agenda Stage of Rulemaking</u>	<u>Title</u>	<u>RIN</u>
PBGC	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	<a href="#">1212-AA55</a>
PBGC	Proposed Rule Stage	Multiemployer Plan Guaranteed Benefits	<a href="#">1212-AB37</a>
PBGC	Proposed Rule Stage	Improvements to Rules on Recoupment of Benefit Overpayments	<a href="#">1212-AB47</a>
PBGC	Proposed Rule Stage	Penalties for Failure to Provide Certain Notices or Other Material Information	<a href="#">1212-AB50</a>
PBGC	Proposed Rule Stage	Miscellaneous Updates, Clarifications, and Improvements	<a href="#">1212-AB51</a>
PBGC	Proposed Rule Stage	Actuarial Assumptions for Determining an Employer's Withdrawal Liability	<a href="#">1212-AB54</a>
PBGC	Final Rule Stage	Benefit Payments and Allocation of Assets	<a href="#">1212-AB27</a>
PBGC	Final Rule Stage	Examination and Copying of Pension Benefit Guaranty Corporation Records	<a href="#">1212-AB44</a>
PBGC	Final Rule Stage	Adjustment of Civil Penalties	<a href="#">1212-AB45</a>
PBGC	Final Rule Stage	Special Financial Assistance by PBGC	<a href="#">1212-AB53</a>

# Multiemployer Program Rulemaking

## Final Rule Published 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.

## 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).

## 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.

- **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 implementing the Special Financial Assistance program under ARP, 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
  - mergers of multiemployer plans
  - transfers of assets and liabilities between multiemployer plans
- Requests for approval of alternative rules for allocating withdrawal liability

# 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
  - Deemed contributions – Allocation of UVBs reflect contribution obligations suspended while plan relatively well funded
  - 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



# Thank You!

For official PBGC statements, please contact  
PBGC Public Affairs at 202-229-4343 or  
[PBGCExternalAffairs@PBGC.gov](mailto:PBGCExternalAffairs@PBGC.gov).