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April 8, 2019

Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026

**Re: Proposed Rule Regarding Methods for Computing Withdrawal Liability,
Multiemployer Pension Reform Act of 2014**

RIN 1212-AB36

Filed via Federal eRulmaking Portal: <http://www.regulations.gov>

Dear Sir or Madam:

This is in response to the Pension Benefit Guaranty Corporation's ("PBGC") Proposed Rule regarding Methods for Computing Withdrawal Liability, Multiemployer Pension Reform Act of 2014 ("Proposed Rule"), published in the Federal Register on February 6, 2019 (84 FR 2075). We appreciate PBGC's efforts to both provide guidance and to attempt to simplify the methodologies for calculating and allocating withdrawal liability by plans that have adopted benefit suspensions, reduced benefits pursuant to a Rehabilitation Plan ("RP"), or required employer contribution increases pursuant to a Funding Improvement Plan ("FIP") or RP. Our concern, however, is that the Proposed Rule does not sufficiently simplify these matters, and in many cases increases the complexity. This added complexity may result in impeding plans' ability to enforce withdrawal liability assessments. For these reasons, as we explain below, we urge modification to and clarification of the Proposed Rule.

The National Coordinating Committee for Multiemployer Plans ("NCCMP") is the only national organization devoted exclusively to protecting the interests of the job-creating employers of America and the more than 20 million active and retired American workers and their families who rely on multiemployer retirement and welfare plans. The NCCMP's purpose is to assure an environment in which multiemployer plans can continue their vital role in providing retirement, health, training, and other benefits to America's working men and women.

The NCCMP is a non-partisan, nonprofit, tax-exempt social welfare organization established under Internal Revenue Code ("IRC") Section 501(c)(4), with members, plans and contributing employers in every major segment of the multiemployer universe. Those segments include the

airline, agriculture, building and construction, bakery and confectionery, entertainment, health care, hospitality, longshore, manufacturing, mining, office employee, retail food, service, steel, and trucking industries. Multiemployer plans are jointly trusted by employer and employee trustees.

COMMENTS

The Proposed Rule invites interested parties to submit comments, suggestions and views concerning the provisions in the Proposed Rule, specifically identifying five areas for comment. NCCMP has focused its comments on the significant issues that will affect plans regarding the requirement to disregard certain contribution increases (Question 2) and the cost to plans associated with the Proposed Rule and simplified methods (Question 5).

Question 2: III.A. Requirement to Disregard Certain Contribution Increases in Determining the Allocation of Unfunded Vested Benefits to an Employer and the Annual Withdrawal Liability Payment Amount.

Benefit Bearing Contributions

In implementing the requirements of the Employee Retirement Income Security Act (“ERISA”) Section 305(g)(3) and IRC Section 432(g)(3), which generally require plans to exclude certain required contributions under a FIP or RP but include other contributions in allocating a plan’s unfunded vested liabilities (“UVBs”) to individual withdrawing employers, the PBGC has failed to take into account a number of factors that make implementation of these requirements far more complicated than seems to be acknowledged in the Proposed Rule. These complications are especially apparent in the proposed methodologies for allocating between benefit bearing and non-benefit bearing contributions, upon which we have focused our comments.

In many plans, particularly those either with few employers or with large employer groups, rather than the collective bargaining agreements conforming to the FIPs or RPs, the relationship is more symbiotic, where the FIP or RP may be modified to conform to the collective bargaining agreements. In these plans, the distinction between benefit bearing and non-benefit bearing contributions may not be meaningful. Still other plans use benefit formulas that make it nearly impossible to allocate between what is and is not benefit-bearing. For these plans in particular, we do not believe that the law requires that such an arbitrary and potentially meaningless apportionment be performed. These plans have typically treated all of any contributions as benefit bearing. We therefore request that the regulations be modified to permit these plans to continue to apply the statute as they have previously done.

We understand that the PBGC may take a different reading of the statute. While we do not feel that PBGC's reading is the only or most appropriate reading, the remainder of these comments assume that the PBGC does not modify its legal position.

New Effective Date or Safe Harbors

Over the period of years since the passage of PPA and later the Multiemployer Pension Reform Act of 2014 ("MPRA"), plans have been forced to apply the statutory mandate to value and apportion those portions of employer contributions required to be included or excluded in withdrawal liability calculations without significant guidance. Many plans have, in good faith, developed methodologies for performing these valuations that do not conform to the methodologies provided in the Proposed Rule. The Proposed Rule is short sighted in applying a retroactive date to 2015 or in not providing any sort of safe harbor for plans that applied such non-conforming, good faith methodologies.

PBGC's imposition of the proposed methodologies for allocating between benefit bearing and non-benefit bearing contributions retroactive to 2015 is perplexing given that many plans are nearing the end of their funding improvement or rehabilitation period. Such plans with long-established methodologies should not have to bear the burden of the added unnecessary complication and administrative expense engendered by PBGC's imposition of a retroactive effective date for its proposed methodologies. A better approach would be for the proposed methodologies to apply to plans that adopt an initial FIP or RP in a plan year subsequent to the date of the final regulation. Alternatively, we request that any final regulations include a safe harbor for plans that acted in good faith and applied non-conforming methodologies to comply with the statutory mandate. At the same time, in order to give plans the time to evaluate and consider the methodologies included in the regulations, we ask that plans be allowed to continue to apply their non-conforming methodologies for employer withdrawals occurring prior to the end of a transition period of at least one full plan year.

Additionally, regardless of whether a new effective date is adopted, rather than imposing on plans the costly burden of performing new valuations and allocations retroactive to prior plan years back to 2015, we ask that a separate safe harbor be established that would permit plans that used such good-faith, non-conforming valuation and apportionment methodologies to continue to rely on the results of their past valuations for years preceding the effective date of the new rules even for employers that withdraw after that effective date.

As noted above, adopting either an effective date that is mindful of emerging plans or the suggested safe harbors will save many plans significant administrative costs. It will also avoid the expense and uncertainty that would otherwise result from employer challenges to withdrawal liability assessments made by plans that used such non-conforming, good faith, methodologies.

Question 5: VI. Compliance with Rulemaking Guidelines

Plan Sponsor Determination of Employer-by-Employer or Plan-Wide Allocations

The methodologies set out in the Proposed Rule require that the allocation of benefit-bearing and non-benefit bearing contributions be performed on an employer-by-employer basis. While this approach is appropriate for some plans, it might not be for others. For example, many plans do not use actuaries to calculate and allocate each withdrawing employer's withdrawal liability. Instead, the actuary to such a plan will, each year, create a single, uniform template. Plan staff then fills in the individual information for the employer at the time the employer either requests an estimate of its potential liability or the plan makes a withdrawal liability assessment. This process is generally efficient and relatively low cost for both the plans and their contributing employers.

Because of the complexity of calculations on an employer-by-employer basis, it is unlikely that a single template could be developed efficiently that could be used by plan staff to perform the allocation. Furthermore, because of the complexity of the calculations, plans will likely have little choice but to turn the task over to the plan actuary to perform the calculations for each withdrawing employer. Effectively requiring that plan actuaries perform individual withdrawal liability calculations will result in a significant expense to these plans and their contributing employers.

Plans should not have to bear the cost of varying from practices developed in good faith compliance because PBGC prefers a different approach. We therefore ask that the Proposed Rule retain the employer-by-employer approach but be modified to permit plans to perform the allocation between benefit bearing and non-benefit bearing contributions on a plan-wide basis where the plan sponsor determines it is appropriate to do so. Plans would then be permitted to use this uniform, average allocation for all employers withdrawing within a plan year. This way, it will not be necessary to perform an individualized calculation for each withdrawing employer.

Additionally, because such plan-wide calculations may be difficult and expensive to perform for some plans, we ask that plans be permitted to sample a representative group of employers to determine the uniform, average allocation. This approach would be similar in kind to the proxy methodology permitted for use in determining the denominator of the allocation fraction under Section 4211.14(d) of the Proposed Rule.

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CONCLUSION

We appreciate the PBGC's efforts to both clarify and simplify the rules regarding the implementation of the requirements of the Pension Protection Act of 2006 and MPRA. We believe, however, that the Proposed Rule can be improved by adopting the alternative measures described above.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "m d scott", is centered within a light gray rectangular box.

Michael D. Scott
Executive Director