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Multiemployer

B U L L E T I N

Pension Benefit Guaranty Corporation

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THE EFFECT OF THE DEFICIT REDUCTION ACT ON THE WITHDRAWAL LIABILITY PROVISIONS OF THE MULTIEMPLOYER ACT

Background

Under the Multiemployer Pension Plan Amendments Act of 1980 (the "Multiemployer Act" or the "Act"), as originally enacted, an employer that withdraws from a multiemployer pension plan after April 28, 1980, is liable for a share of the plan's unfunded vested benefits. Section 4211 of the Act prescribes the methods for determining an employer's allocable share of the plan's unfunded vested benefits. There are four statutory allocation methods: the presumptive method, the modified presumptive method, the rolling-5 method, and the direct attribution method. The Pension Benefit Guaranty Corporation (the "PBGC") may prescribe modifications to these methods and may approve non-statutory alternative methods of allocation. Except for plans described in section 404(c) of the Internal Revenue Code, any multiemployer plan that is not amended to adopt a different statutory or non-statutory allocation method is required under the Act to allocate unfunded vested benefits using the presumptive method.

A withdrawing employer's liability under the presumptive method (section 4211(b)), as originally enacted, is determined on the basis of three elements:

- (1) the unfunded vested benefits under the plan for the last plan year ending before April 29, 1980 ("the plan's pre-1980 liability");
- (2) the change in unfunded vested benefits for each plan year ending after April 28, 1980, in which the employer both was obligated to contribute and had not withdrawn from the plan at the year's end ("annual change"); and
- (3) reallocated unfunded vested benefits for each plan year ending after April 28, 1980.

The withdrawing employer's share of each element of liability is based on its proportion of contributions to the plan over the five plan years ending with the plan year in which the element arose. In determining the employer's share of the plan's pre-1980 liability, the plan's pre-1980 liability is multiplied by a fraction ("the pre-1980 fraction"), the numerator of which is the employer's total required contributions to the plan for the five plan years ending before April 29, 1980, and the denominator of which is the total contributions made by all employers for the same period (excluding contributions of employers that withdrew before April 29, 1980). Each employer's share of the annual change and of the amounts that became uncollectible during a plan year ending after April 28, 1980, is determined by a similar fraction using contributions over a five-plan-year period.

The modified presumptive method, section 4211(c)(2), allocates the employer's share of the plan's pre-1980 liability using the same pre-1980 fraction as the presumptive method. For plan years ending after April 28, 1980, however, the plan sponsor determines the change in unfunded vested benefits from the date for determining the pre-1980 liability (the last day of the last plan year ending before April 29, 1980) to the end of the plan year preceding withdrawal, rather than by determining a separate change for each plan year as under the presumptive method. The employer's share of this post-1980 liability is determined using a fraction ("the post-1980 fraction"), the numerator of which is the employer's total required contributions for the five plan years preceding the employer's withdrawal, and the denominator of which is the total contributions made by all employers for the same period (excluding contributions of employers who withdrew during that period).

Under the third allocation method, the rolling-5 method (section 4211(c)(3)), a share of the plan's unfunded vested benefits as of the end of the plan year preceding withdrawal is allocated to the employer using the same post-1980 fraction as under the modified presumptive rule. This method does not distinguish between pre- and post-1980 liabilities.

Finally, under the direct attribution method, section 4211(c)(4), the employer is allocated both the unfunded vested benefits attributable to participants' service with the employer and a share of the plan's unattributable unfunded vested benefits. The plan's unattributable unfunded vested benefits are allocated to the employer in proportion to its share of the plan's attributable liabilities.

The Deficit Reduction Act of 1984 ("DEFRA"), signed into law on July 18, 1984, significantly affects these withdrawal liability rules. Section 558(a) of DEFRA voids any liability resulting from an employer's withdrawal from a multiemployer plan before September 26, 1980, the enactment date of the Multiemployer Act, and requires plan sponsors to refund any withdrawal liability collected with respect to such withdrawals. DEFRA section 558(b) changes the initial determination dates in the presumptive and modified presumptive allocation methods from the last plan year ending before April 29, 1980, to the last plan year ending before September 26, 1980. Subsection (b) also adjusts certain other dates found in the Act to conform to subsection (a). Finally, subsection (c) of section 558 provides that:

The amendments made by this section shall not be construed to increase the liability incurred by any employer pursuant to [The Multiemployer Act's withdrawal liability provisions] as in effect immediately before the amendments made by subsection (b), as a result of the complete or partial withdrawal of such employer from a multiemployer plan prior to September 26, 1980.

Deficit Reduction Act §558(c) (to be codified at 29 U.S.C. 1381 nt.).

The purposes of this bulletin are to set forth the PBGC's interpretation of section 558, to explain the adjustments required in the statutory allocation methods, and to inform the public that the PBGC intends to propose rules that would allow plans to adopt amendments simplifying the amended allocation rules. The interpretation contained in this bulletin has not been approved by the Board of Directors of PBGC and does not have the effect of a regulation adopted by the Board.

The Interpretation of Section 558

Subsections (a) and (b) of section 558 are straightforward. Pre-September 26, 1980, withdrawal liability is voided, refunds are required of amounts paid in satisfaction of that liability, and the computation dates in the allocation methods are changed from April 28 or 29, 1980, to September 25 or 26, 1980. The purpose of subsection (c) is not so clear; however, the PBGC has concluded on the basis of the language of section 558 and its accompanying legislative history, that subsection (c) restates the effect of subsections (a) and (b). Subsection (c) clearly relates only to employers who withdrew before September 26, 1980, despite the fact that these employers are relieved of all withdrawal liability by subsections (a) and (b).

Section 558 does not state to whom plan sponsors should reallocate voided liabilities. However, the legislative history states:

The bill provides that it is not to increase the liability incurred by any employer under the withdrawal liability rules. Accordingly, the amounts payable with respect to withdrawals after September 25, 1980, are not to be increased merely because of the refunds provided by the bill.

Senate Comm. on Finance, 98th Cong., 2nd Sess., Deficit Reduction Act of 1984: Explanation of Provisions Approved by the Committee on March 21, 1984, at 17 (Comm. Print 1984).

While this report could be viewed as meaning that no costs associated with DEFRA are to be reallocated, the PBGC believes that the quoted section of the report is better interpreted as explaining that the withdrawal liabilities of those employers that withdrew on or after September 26, 1980, but before DEFRA's effective date of July 18, 1984 are not affected by the changes relating to refunds and computation dates. This gives meaning to the Senate Finance Committee's statement by not allocating any increased costs incurred in complying with section 558 to those employers that withdrew before DEFRA's effective date and, at the same time, ensures the full allocation of plan liabilities, in accordance with the Congressional purpose behind the statutory allocation methods.

This interpretation also prevents the reintroduction of the retroactivity concept discarded by DEFRA and avoids imposing on plan sponsors the excessive and unreasonable burden of recomputing and reassessing the withdrawal liabilities of virtually all employers that withdrew during the nearly four year period between September 26, 1980, and July 17, 1984.

Treatment of Refunds and Voided Liabilities

The four statutory formulas require no modification to account for refunds to employers who withdrew before September 26, 1980 of withdrawal liability payments made by them. These refunds would be treated as disbursements from the plan in the year of the refund and thus will automatically be reflected in the value of unfunded vested benefits as of the end of the year of disbursement.

Further, three of the methods--the modified presumptive, rolling-5, and direct attribution methods--provide automatically for reallocation of the voided liabilities. This is because

these three methods determine an employer's liability, in whole or in part, on the basis of the value of unfunded vested benefits as of the end of the year before withdrawal, reduced by the value of outstanding claims for withdrawal liability reasonably expected to be collected from employers who withdrew in prior plan years. For the purpose of computing amounts allocable to employers withdrawing after DEFRA's enactment, any outstanding withdrawal liability claim that is voided becomes zero. (The presumptive method does not take into account outstanding withdrawal obligations and, as noted infra, requires more complex computations.)

The Date Changes Resulting from Section 558(b)

Because the date changes to section 4211 do not apply to employers who withdrew between September 26, 1980 and July 17, 1984, these employers do not share in the reallocation of costs resulting from DEFRA. However, the application of the changes made by DEFRA section 558(b) in the initial determination dates for computing withdrawal liability can create certain amounts that would otherwise be charged to these employers. This situation can arise under the presumptive and the modified presumptive methods.

The presumptive method. DEFRA altered the presumptive method in three respects. First, the date for the initial determination of unfunded vested benefits was changed from the close of the last plan year before April 29, 1980 to the close of the last plan year before September 26, 1980. Second, the first plan year ending after September 25, 1980, rather than April 28, 1980, became the first year for which annual changes in unfunded vested benefits had to be computed. Third, the denominator for allocating initial unfunded vested benefits was modified to exclude the contributions of all employers that withdrew before September 26, 1980.

Plans with plan years ending between September 26, 1979 and April 28, 1980 are not affected by the first two changes, because the plan year for determining initial unfunded vested benefits and the first plan year for determining annual changes remain the same. The plans in this category may, however, be affected by the third change if any employer withdrew between April 29, 1980 and September 25, 1980, because the contributions of these employers are no longer includible in the denominator of the allocation fraction. The result is an increase in the allocable share of the initial unfunded vested benefits of each employer that was contributing to the plan as of the close of the last plan year ending before September 26, 1980. None of this increase, however, can be assessed against employers that

withdrew between September 26, 1980 and July 17, 1984. In order to avoid incomplete allocation, the unamortized increase in liabilities otherwise attributable to these employers must be treated as unassessable or uncollectible in the plan year within which July 18, 1984 falls and must be reallocated as of the end of that plan year, as provided by section 4211(b)(4)(B)(iii) of the Multiemployer Act.

Plans using the presumptive method that had plan years ending between April 29, 1980 and September 25, 1980 are more seriously affected by DEFRA's date changes. These plans must make the allocation described in the preceding paragraph and, in addition, in order to satisfy the requirements of the presumptive method, must recompute all allocation method elements, even if no employer's withdrawal liability has been voided. For example, for a plan with a June 30th year end, DEFRA moves the initial determination date from June 30, 1979 to June 30, 1980, and subsequent computations of annual changes in unfunded vested benefits begin with the plan year ending in 1981, rather than the one ending in 1980. Because each annual change is dependent on the initial unfunded vested benefits and the prior annual change amounts, the entire schedule of annual changes must be recomputed.

Because of the potential burden and complexity of these recomputations, the PBGC intends to approve alternative allocation methods that will enable plans using the presumptive method to comply more simply with the requirements of DEFRA. These alternatives are discussed infra.

The modified presumptive method. The effect of DEFRA on the modified presumptive method parallels the effect on the presumptive method: the determination date for initial unfunded vested benefits was changed to the close of the last plan year ending before September 26, 1980; the total change calculation was moved to begin with the first plan year after September 25, 1980; and the denominator for allocating initial unfunded vested benefits was modified to exclude contributions of employers who withdrew before September 26, 1980.

Unlike the presumptive method, however, the modified presumptive method can readily accommodate changed effective dates. The method reduces unfunded vested benefits as of the close of any plan year by the amount of assessed and collectible withdrawal liability. Any amounts otherwise allocable to withdrawn employers that are unassessable or uncollectible because of the provisions of DEFRA automatically become allocable to current employers. Therefore, the date changes made by DEFRA in the modified presumptive method require no special consideration.

Other Issues

As illustrated by this bulletin, the changes in the Multiemployer Act made by DEFRA will, in many cases, affect individual employers who are assessed withdrawal liability on or after July 18, 1984, DEFRA's effective date. Plan sponsors complying with DEFRA's changes and attempting to reallocate costs to achieve the same degree of allocation that existed before DEFRA may also be affected by an increased administrative burden, particularly in plans using the presumptive method.

The PBGC staff is currently preparing a procedural rule, using the authority for alternative allocation methods found at section 4211(c)(5), that would ease some of DEFRA's effects. This rule will set forth alternative approaches that plans currently using the presumptive method or the modified presumptive method could adopt to reallocate voided assessable amounts so that these plans may, if they choose, avoid the recomputations required by section 558(b); for example, plans using the presumptive method may be amended either to allocate in the plan year in which DEFRA was effective the unamortized balance of amounts otherwise allocable to employers that withdrew before DEFRA, or to treat the last plan year ending before DEFRA's effective date as the initial year for purposes of computing annual changes. For a plan using the modified presumptive method, the PBGC staff envisions permitting the plan to adopt an amendment that maintains the allocation fraction used before DEFRA's changes.

Authority to waive approval of amendments adopting the approaches of such a new rule is found in section 4211(c)(5)(B) of the Multiemployer Act. However, until such rule is promulgated, plan sponsors are to adopt plan amendments in accordance with existing PBGC regulations. This includes submitting to the PBGC for approval any allocation method that differs from the statutory formulas and complying, where necessary, with the provisions of section 4214 of the Act.

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