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April 5, 2019

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

[Submitted via www.regulations.gov]

RE: Comments on Proposed Regulation: "Methods for Computing Withdrawal Liability, Multiemployer Pension Reform Act of 2014" (RIN 1212-AB36)

To Whom It May Concern:

On behalf of the Multiemployer Plans Committee of the American Academy of Actuaries,[1] I respectfully submit the following comments in response to the regulation proposed by the Pension Benefit Guaranty Corporation (PBGC) regarding simplified methods and other aspects of computing withdrawal liability under the Multiemployer Pension Reform Act of 2014. Our comments are grouped into two sections: general comments, and comments in response to the specific questions raised by PBGC.

General Comments

The following are general comments on the proposed regulation.

1. *Prospective Effective Date*

   In its description of the proposed regulations (section "V. Applicability"), PBGC provides that the changes related to simplified methods for determining an employer's share of unfunded vested benefits and an employer's annual withdrawal liability payment would be applicable to employer withdrawals that occur on or after the effective date of the final rule. The effective date is less clear in the proposed regulations, however. PBGC might want to consider making a clearer statement in the regulations that the new rules apply prospectively only, to prevent unintended consequences with respect to prior withdrawal liability determinations.

   PBGC might also consider defining the effective date for the changes described in the regulations to be based on the *plan year* in which an employer withdraws, rather than the date of the

[1] The American Academy of Actuaries is a 19,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 50 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

withdrawal itself. For example, if the regulations require plan sponsors to choose from one of the available simplified methods, the requirement could be effective for determinations for withdrawals *in plan years* beginning on or after the effective date of the final rule, rather than for withdrawals on or after the effective date.

2. *Safe Harbors and Compliance Determinations*

   PBGC should consider that many plan sponsors might have developed reasonable simplified methods based on their interpretations of the applicable law, and their interpretations could differ from guidance provided in the proposed regulations. A simplified method developed by an individual plan sponsor could be reasonable and appropriate given the plan's circumstances, available data, and other factors.

   In the final regulations, PBGC would do well to consider clarifying that the simplified methods described in the proposed regulation are "safe harbor" methods, but that alternate simplified methods could be appropriate as well. PBGC might also consider providing plan sponsors with the option of seeking approval for an alternate simplified method that differs from those described in the regulations.

3. *Application of De Minimis Credit*

   With respect to how the regulations interact with the guidance previously provided under Technical Update 10-3, PBGC might consider clarifying the point at which the de minimis credit under section 4201(b)(1) of ERISA is applied in determining an employer's withdrawal liability.

   In particular, some plan sponsors might find the description of the proposed regulations confusing. At one point, the description says that any adjustments for adjustable or suspended benefits are to be calculated before the application of the de minimis credit. At another point, it says that the simplified method is "essentially the same" as the simplified method described in Technical Update 10-3, which was interpreted by many to apply the adjustment after the de minimis credit.

   If the regulations ultimately cause a change in how a plan accounts for adjustable benefits in determining withdrawal liability, it would be helpful for the regulations to clarify that it is acceptable for the change to be made prospectively only (as described in 1. above).

Responses to PBGC Questions

The following are responses to each of the questions included in PBGC's request for comments on the proposed regulation.

> *<u>Question 1</u>: Examples of Simplified Methods.* PBGC invites public comment on whether the examples in this proposed rule are helpful and whether there are additional types of examples that would help plan sponsors with these calculations.

The provided examples in the proposed regulation are helpful. In addition to those provided, it would be helpful for PBGC to provide an example involving a partial withdrawal.

> *<u>Question 2</u>: 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.* As discussed in section III.A., a plan sponsor would be able to include in the determination of contribution amounts a "benefit-bearing" contribution increase—a contribution

increase that funds an increase in benefits or accruals as an integral part of the plan's benefit formula. The proposed regulation would require the portion of the contribution increase (fixed amount, specific percentage, etc.) that is funding the increased future benefit accruals to be determined actuarially. PBGC invites public comment on alternative methods that plan sponsors might use to identify additional contributions used to provide an increase in benefits.

The examples in this section of the proposed regulation are helpful. We appreciate that the examples are not overly prescriptive with respect to the actuarial determination of the portion of the contribution increase that is necessary to fund the nominal increase in benefit accrual, versus the portion that will fund past service obligations. Permitting plan actuaries to exercise professional judgment in making these determinations will provide the flexibility needed to ensure that the approach used is appropriate for a particular situation.

As an important technical matter, PBGC might consider clarifying in the final regulations that the actuarial determinations described above be done on an aggregate, plan-wide basis, rather than for each employer individually. Performing separate actuarial determinations for individual employers would create an unreasonable burden for many plan sponsors, and it could result in unintended consequences.

It is also important for PBGC to consider that many plan sponsors have adopted alternative methods to identify additional contributions used to provide an increase in benefits. In some cases, the alternative method does not include an explicit actuarial determination of the portion of the contribution increase that is necessary to fund future benefit accruals versus past service obligations. For example, one simplified method that some plan sponsors have adopted is to classify contribution increases as either benefit-bearing (i.e., included in a benefit formula that bases accruals on contributions) or supplemental (i.e., excluded from the benefit accrual formula). Increases in benefit-bearing contribution rates are included in withdrawal liability determinations, while increases in supplemental contribution rates are not.

> *Question 3: III.B.3. Simplified Method for Determining the Denominator Using the Proxy Group Method.* The proposed regulation would provide a simplified method to permit plan sponsors to determine total contributions in the denominator based on a representative proxy group of employers rather than performing calculations for all employers. PBGC invites public comment on alternative bases that plan sponsors might use to define a proxy group of employers and on the determination of contributions in the denominator.

We appreciate the proposed rule providing the simplified "proxy group" method as a way to determine the denominator of allocation fractions, rather than performing calculations for all employers. PBGC should consider that some plan sponsors might have already adopted other simplified methods for determining the denominators that are as reasonable as the proxy group method. Furthermore, special circumstances can arise that could cause the plan sponsor to have to adjust the proxy group method (for example, employers changing from one contribution rate schedule to another).

Therefore, PBGC might consider clarifying in the final regulations that the simplified proxy group method is a safe harbor approach. Other simplified methods could be reasonable, as determined by the plan sponsor. As noted in our general comments, PBGC might consider providing plan sponsors with the option of seeking a compliance determination for an alternate simplified method that differs from those described in the regulations.

> *Question 4: III.C. Simplified Methods After Plan is No Longer in Endangered or Critical Status in Determining the Allocation of Unfunded Vested Benefits.* The proposed regulation would provide a simplified method for plan sponsors to comply with the requirement in section 305(g)(4) of ERISA that, as of the expiration date of the first collective bargaining agreement requiring plan contributions that expires after a plan is no longer in endangered or critical status, the allocation

> fraction must include contribution increases that were previously disregarded. PBGC invites public comment on other simplified methods that a plan operating under numerous collective bargaining agreements with varying expiration dates might use to satisfy the requirement in section 305(g)(4) of ERISA.

We appreciate that the proposed regulations recognize the complexity and administrative burden that could arise in situations in which a plan (or even an individual employer) is subject to multiple collective bargaining agreements with varying expiration dates. The simplified methods in the proposed regulations would provide plan sponsors with a reasonable means to satisfy the requirement under section 305(g)(4) of the Employee Retirement Income Security Act (ERISA).

> *Question 5: VI. Compliance with Rulemaking Guidelines.* PBGC has estimated that plans using the simplified methods under the proposed rule would have administrative savings as shown on the chart in section VI. PBGC invites public comment on the expected savings on actuarial calculations and other costs using the simplified methods.

The expected savings on actuarial calculations (and other matters related to plan administration) will vary greatly from plan to plan. Factors such as the plan's industry, benefit formula, contribution schedules, timing, and number of collective bargaining agreements will all play a role in how complicated the calculations would be, both with and without the simplified methods.

PBGC might consider that, in the absence of guidance up to this point, a plan sponsor could have implemented a simplified method that differs from those described in the proposed regulations. It is possible that if the regulations prohibit such methods and instead require the use of one of the prescribed simplified methods, such a plan could see an *increase* in its administrative costs related to changing its methods to conform to the regulations.

For example, consider a plan sponsor that has implemented an alternative simplified method that does not require an actuarial determination of the portion of contribution increases that is funding the increase in future benefit accruals. Such a plan sponsor would likely see an increase in its administrative costs if the final regulations require actuarial determinations going forward.

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The Multiemployer Plans Committee appreciates the opportunity to provide input to PBGC on this important topic. We would be happy to discuss any of the issues raised in this letter at your convenience. Please contact Monica Konaté, the Academy's pension policy analyst (202-785-7868 or konate@actuary.org) if you have any questions or would like to discuss these issues further.

Sincerely,

Jason Russell, MAAA, FSA, EA
Chairperson, Multiemployer Plans Committee
American Academy of Actuaries