



April 8, 2019

RIN 1212-AB36
Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005-4026
Submitted electronically through the Federal eRulemaking Portal at
<http://www.regulations.gov>
(RIN) 1212-AB36

Methods for Computing Withdrawal Liability Under the Multiemployer Pension Reform Act of 2014 (“MPRA”)

To Whom It May Concern:

I am an Enrolled Actuary who practices in the area of defined benefit multiemployer pension plans. For the most part, I serve as actuary for those plans, but I also do some consulting with employers who contribute to multiemployer plans. A brief biography is attached to this letter.

I am writing to comment on the PBGC’s proposed regulations published in the Federal Register on February 6, 2019 captioned Methods for Computing Withdrawal Liability, Multiemployer Pension Reform Act of 2014. My focus here will be the part of the proposed changes that “would provide guidance and simplified methods for a plan sponsor to disregard certain contribution increases for purposes of determining an employer’s annual withdrawal liability payment.”

For ease of reference, I am including the relevant parts of the proposed language in Section 4219.3:

- “(a) *General rule.* For purposes of determining the highest contribution rate under Section 4219(c) of ERISA, a plan must disregard:
 - (1) *Surcharge.* Any surcharge under Section 305(3)(7) of ERISA or Section 432(3)(7) of the Code the obligation for which accrues on or after December 31, 2014.



- (2) *Contribution increase.* Any contribution increase that goes into effect during a plan year beginning after December 31, 2014 so that a plan may meet the requirements of a funding improvement plan under Section 305(c) of ERISA or Section 432(c) of the Code or a rehabilitation plan under Section 305(e) of ERISA or Section 432(e) of the Code, except to the extent that one of the following exceptions applies:
- (i) The contribution increase is due to increased levels of work, employment, or periods for which compensation is provided,
 - (ii) The contribution increase provides an increase in benefits, including an increase in future benefit accruals, permitted by Sections 305(d)(1)(B) or 305(f)(1)(B) of ERISA or Section 432(d)(1)(B) or Section 432(f)(1)(B) of the Code, **and an increase in benefit accruals as an integral part of the benefit formula.** The portion of such contribution increase that is attributable to an increase in benefit accruals must be determined actuarially.” **(Emphasis added)**

I have two issues, both of which concern the phrase in boldface in paragraph (a)(ii) above.

Issue 1: The proposed regulation introduces a new concept without any definition. When is an increase in benefits an “integral” part of a benefit formula? Something is generally integral if it is essential or necessary. Wheels are integral parts of a bicycle, for instance. Without wheels there is no bicycle. The example given of a benefit formula that expresses accruals as 1% of contributions is less than satisfying as guidance. Are there other examples of an integral part of a plan? Virtually all of the plans I work on personally and the vast majority of plans I am familiar with that have a percentage-of-contribution benefit formula do not find it difficult to exclude contribution rate increases after a given date as non-benefit bearing. In fact, for plans designing funding improvement plans or rehabilitation plans, increases in future accruals due to contribution rate increases are usually the first in line when benefits have to be cut or reduced.

Issue 2: There has been some discussion in our office as to whether an actuarial certification is required under ERISA Section 305 or Code Section 432 if there is an increase in benefits solely due to a contribution increase in a plan with a percentage of contribution formula as described in the proposed regulation. To date, that has not been a practical issue because either (i) the requirements of those sections have been readily met and the certification is straightforward or (ii) there are no increases in benefits since the contribution increases are not benefit bearing.



Are these proposed regulations implying that it is permissible to have an increase in benefits because of the contribution increase even though the conditions of ERISA Section 305 or Code Section 432 are not met?

Thank you for the opportunity to comment on the proposed regulations. If there are any questions or if you would like to discuss any of the above, please let me know.

Respectfully submitted,

James J. McKeogh, FSA, FCA, MAAA, EA

JJM:cc

Enclosure

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James J. McKeogh, FSA, FCA, MAAA, EA

Jim is the president and founder of The McKeogh Company. He has extensive experience in the design of retirement programs for major corporations and multiemployer plans alike. Jim is a frequent speaker on multiemployer plan topics and has spoken at the Enrolled Actuaries Meetings, the Society of Actuaries Meetings, the Conference of Consulting Actuaries Annual Meetings and the IFEBP Meetings. He was the founding chairperson of the American Academy of Actuaries Task Force for Multiemployer Plans.

Jim has a Bachelor of Arts degree in mathematics from LaSalle University and a Master of Arts degree in mathematics from Villanova University. He is a Fellow of the Society of Actuaries, a Member of the American Academy of Actuaries, a Fellow of the Conference of Consulting Actuaries and an Enrolled Actuary under ERISA.