



February 21, 2017

Submitted via the Federal eRulemaking Portal: www.regulations.gov

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

RE: Requests for Approving Certain Alternative Methods for Computing Withdrawal Liability; Settlement of Withdrawal and Mass Withdrawal Liability

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we submit this letter to the Pension Benefit Guaranty Corporation (“PBGC”) in response to the Requests for Approving Certain Alternative Methods for Computing Withdrawal Liability; Settlement of Withdrawal and Mass Withdrawal Liability (“RFI”) issued on January 5, 2017.¹

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business—manufacturing, retailing, services, construction, wholesaling, and finance—is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

Introduction

The PBGC issued the RFI to gain information on issues arising from arrangements between employers and multiemployer plans involving an alternative “two-pool” withdrawal liability method. This method is an effort to encourage new employers who may be reluctant to participate in multiemployer plans due to withdrawal liability, as well as current contributing employers who may be reluctant to continue in the plan. In general, such arrangements essentially resulting the creation of two separate withdrawal liability pools: A “new pool” of unfunded vested benefits relating to future liabilities and an “old pool” of unfunded vested

¹ 82 FR 1376, January 5, 2017.

benefits relating to past and future liabilities. This method benefits existing employers by providing relief from future increases in withdrawal liability under the old pool and benefits the plan by providing needed income to the plan which could potentially extend plan solvency.

Comments

The Chamber appreciates the efforts of the PBGC to further understand the “two pool” withdrawal liability method. As you are aware, the multiemployer pension system is in dire circumstances. While many multiemployer plans are well-funded, the serious underfunding of certain plans presents a significant financial risk to the PBGC and, therefore, the entire multiemployer system. As such, the Chamber encourages all efforts to accommodate methods and options that provide flexibility for employers currently in the plans and could possibly encourage additional participation in these plans.

Answers to Specific Questions

What are the potential benefits, if any, of two-pool arrangements for plans, active participants, retirees, terminated participants and beneficiaries of existing contributing employers, potential new contributing employers, unions, and PBGC?

The Chamber believes that widespread implementation of the two-pool alternative withdrawal liability arrangements could be helpful in stabilizing the multiemployer pension system. As noted above, we believe that more options are needed for employers currently participating in withdrawal liability plans. Withdrawal liability is a major concern for Chamber members. There are many of our members who have gotten estimates of withdrawal liability that exceed the net worth of the company. Clearly, this is an outcome that was never contemplated when withdrawal liability was implemented and should be rectified. If this situation is not addressed, many employers—including many small, family-owned businesses—are in danger of bankruptcy. Therefore, we encourage any and all additional tools that allow employers to manage withdrawal liability.

Also, we encourage the PBGC to work with plans to encourage this alternative as an option for all employers. While employers that participate in the two-pool withdrawal liability arrangement expect it to be to their advantage, there are certain remaining employers that may feel disadvantaged. Greater transparency can help employers gain information that may have been unavailable previously. In addition, the PBGC may determine other methods that will help encourage this option.

Would the public and stakeholders find it useful to learn more from PBGC about innovative means proposed by some plans to balance the interests of all stakeholders and reduce the risk of loss? For instance, some trustees require a commitment to remain in the plan in exchange for withdrawal liability relief. Also, in balancing stakeholder interests, trustees of some plans offer relief from reallocation liability but not redetermination liability, or condition mass withdrawal liability relief on remaining in the plan through plan insolvency.

The Chamber believes that transparency is always helpful. If there are new ideas or methods that can be shared across the industry, it would be helpful for the PBGC to share these so that others can use and build upon these ideas. We do caution, however, that such information be shared without identifying or confidential information.

Is there a need for PBGC to more widely communicate its process for considering two-pool alternative withdrawal liability arrangement approval requests?

As noted above, the Chamber believes that transparency is important and helpful. As such, we recommend that the PBGC share as much information as possible about its process for it considering two-pool alternative withdrawal liability requests. In particular, it would be helpful to highlight areas where requests have been deficient or highlighting information that is necessary for approval.

What information should PBGC require to be submitted in a request for PBGC approval of two-pool alternative withdrawal liability allocation methods? Are there ways to minimize burden on plans and participating employers in providing such information in an initial application?

Rather than a strict list of requirements, we suggest that the PBGC requests information that is best demonstrates the information needed for the PBGC to make a determination on the requests. Moving away from a prescriptive list would minimize the burden of employers and plans having to provide information that is not necessary for the PBGC's determination.

Conclusion

We thank you for your consideration of these comments. The future of the multiemployer pension system is a critical issue to our membership and we look forward to continue to work with you on these important issues.

Sincerely,



Randel Johnson
Senior Vice President
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce



Aliya Wong
Executive Director, Retirement Policy
Labor, Immigration & Employee Benefits
U.S. Chamber of Commerce