Proposed Rule on Actuarial Assumptions for Determining an Employer's Withdrawal Liability

On October 13, 2022, the Pension Benefit Guaranty Corporation ("PBGC") released a *proposed* rule on actuarial assumptions that may be used in determining a withdrawing employer's liability under a multiemployer plan. A summary of the proposed rule is provided below.

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Background. An employer that withdraws from a multiemployer pension plan may be required to continue making payments to the plan to fund its share of the plan's unfunded vested benefits, if any. Actuaries use many assumptions, including the interest rate assumption, to determine the amount of unfunded vested benefits for withdrawal liability purposes. Current law requires that these assumptions, in combination, offer the actuary's best estimate of anticipated experience under the plan. Actuaries have used interest rates ranging from PBGC settlement rates (currently 3.0% to 4.0%) to funding rates (currently 6.5% to 7.5% for most plans) for years. However, the use of rates lower than the funding rate has been a topic of much recent litigation.

Broad Range of Interest Rates Allowable. The proposed rule makes clear that the use of any interest rate between PBGC rates and funding rates (including a "blended rate") is a valid approach in determining withdrawal liability, reaffirming decades of actuarial practice. The selection of such an interest rate for withdrawal liability purposes would not be subject to the "actuary's best estimate" standard.

Other Assumptions. The assumptions and methods (other than the interest assumption) must (1) each be reasonable (taking into account the experience of the plan and reasonable expectations) and (2) in combination, offer the plan actuary's best estimate of anticipated experience under the plan.

No Impact on Funding Assumptions. The proposed rule does not change the requirements that apply to the actuarial assumptions used for statutory funding requirements – including the valuation interest rate assumption.

Timing and Applicability. The proposed rule applies to the determination of withdrawal liability for employer withdrawals that occur on or after the effective date of the *final* rule. However, the proposed rule does not preclude the use of an interest rate assumption described in the proposed rule to determine an employer's withdrawal liability before the effective date of the final rule.

PBGC Requests Comments. The PBGC invited comments on any issue relating to withdrawal liability assumptions and requested specific comments on the following topics:

- Whether the final rule should restrict the allowable options to a narrower range of interest rates or to only specific methodologies for determining interest rates. In particular, should the top of the range of permitted interest rates be lower than the typical funding interest rate assumption?
- What should be the relationship, if any, between (a) the estimated date of plan insolvency, expected investment mix, and/or funded ratio, and (b) permitted withdrawal liability assumptions.
- Whether the final rule should specify assumptions or methods other than interest assumptions.

The deadline for comments is November 14, 2022.

Subject to Change. The proposed rule is subject to change when the final rule is released in the future.

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