

PBGC (Slightly) Opens Door to Exceptions From Special Withdrawal Liability Rules for SFA Multiemployer Pension Plans

Employee Benefits & Executive Compensation on February 13, 2023

As previously [discussed](#), the Pension Benefit Guaranty Corporation (the “PBGC”) issued final regulations in July 2022 for plans that receive special financial assistance (“SFA”) under the American Rescue Plan Act of 2021 (“ARPA”). Among other things, the regulations imposed special withdrawal liability rules on plans that receive SFA – including a phase-in period for the treatment of SFA as a plan asset and an obligation to use mass withdrawal assumptions during a certain period after receiving SFA. Although the regulations were “final,” the PBGC invited comments on the phase-in rule in particular.

On January 26, 2023, the PBGC released an [update](#) to the final regulations in response to the comments that it received, with one change. In response to a comment from a multiemployer pension fund with an alternative withdrawal liability allocation method – the New England Teamsters and Trucking Industry Pension Fund – that the requirement to use mass withdrawal assumptions and to phase-in SFA as a plan asset could incentivize employers to withdraw in some cases, the PBGC added a process for plans to request exceptions from those requirements under narrow circumstances. The details of the process are outlined in the update to the final regulations.

The exception process is separate from the SFA application process, and plan sponsors may submit their exception requests to PBGC before filing an initial application or a revised application for SFA. It is not expected that the PBGC will grant many exceptions.

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