

PBGC ISSUES GUIDANCE ON FINANCIAL ASSISTANCE TO MULTIEMPLOYER PLANS AND IMPACT ON WITHDRAWAL LIABILITY

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The American Rescue Plan Act of 2021 (ARP) provided for financial assistance to financially troubled multiemployer pension plans. The financial assistance provides eligible multiemployer pension plans with the amount needed to pay all benefits due through the plan year ending in 2051 above the plan's available financial resources. The PBGC expects the program may provide \$94.0 billion in benefit payments to more than 200 multiemployer plans. The PBGC also estimated that more than 100 plans that would have become insolvent during the next 15 years will avoid insolvency because of this financial assistance.

The PBGC issued this interim final rule without a notice or comment period. Therefore, the rule takes immediate effect. However, the PBGC invited comments and may revise the rule in light of the comments received. Much of the regulation deals with operational rules for multiemployer pension plans that receive financial assistance. However, the regulation also specifies rules regarding the calculation of withdrawal liability for plans receiving this assistance.

ARP itself, as enacted, did not contain rules governing how this assistance was to be factored in for withdrawal liability purposes. ARP did indicate that the PBGC should issue regulations.

The PBGC regulation indicates that the financial assistance is to be included as an asset of the plan when withdrawal liability is computed. While initially this might seem that it would lower withdrawal liabilities for employers, another provision may eliminate that prospect. The PBGC regulation also provides that in calculating withdrawal liability, a plan receiving this assistance must use the actuarial factors that would be applicable in a mass withdrawal. Under these rules, the interest rates and other actuarial assumptions attempt to be similar to what market annuity purchase rates are. This interest rate would be much lower than many plans currently utilize. In fact, the current interest rate of just above 2% would be lower than the rate used by plans that use the plan's funding interest rate assumption or even a blending method (such as the Segal Blend) for determining interest rates. Additionally, any settlement of a withdrawal liability of an amount greater than \$50 million requires PBGC approval.

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The reason for not providing withdrawal liability relief to employers is to not encourage employers to leave the plan which could result in mass withdrawals or otherwise weaken the financial stability of these troubled plans.

Finally, in a rather surprising development, the PBGC indicates that it may be providing guidance on actuarial factors and interest rates to be used in general when calculating withdrawal liability for plans not receiving assistance. This guidance may resolve many of the disputes currently ongoing between employers who have withdrawn from a plan and multiemployer pension funds. Whether this guidance will be helpful to employers is unknown. PBGC Interim Final Rule, Special Financial Assistance by PBGC, <https://www.govinfo.gov/content/pkg/FR-2021-07-12/pdf/2021-14696.pdf>.