



[Billing Code 7709-02]

PENSION BENEFIT GUARANTY CORPORATION

Pendency for Request for Approval of Special Withdrawal Liability Rules: the Service Employees International Union Local 1 Cleveland Pension Plan

AGENCY: Pension Benefit Guaranty Corporation

ACTION: Notice of Pendency of Request

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation (“PBGC”) has received a request from the Service Employees International Union Local 1 Cleveland Pension Plan for approval of a plan amendment providing for special withdrawal liability rules. Under section 4203(f) of the Employee Retirement Income Security Act of 1974 and PBGC’s regulation on Extension of Special Withdrawal Liability Rules, a multiemployer pension plan may, with PBGC approval, be amended to provide for special withdrawal liability rules similar to those that apply to the construction and entertainment industries. Such approval is granted only if PBGC determines that the rules apply to an industry with characteristics that make use of the special rules appropriate and that the rules will not pose a significant risk to the pension insurance system. Before granting an approval, PBGC’s regulations require PBGC to give interested persons an opportunity to comment on the request. The purpose of this notice is to advise interested persons of the request and to solicit their views for it.

DATES: Comments must be received on or before [INSERT 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.
- E-mail: reg.comments@pbgc.gov.
- Fax: 202-326-4224.
- Mail or Hand Delivery: Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

Comments received, including personal information provided, will be posted to www.pbgc.gov.

Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW, Washington, DC 20005-4026 or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.)

FOR FURTHER INFORMATION CONTACT: Bruce Perlin (Perlin.Bruce@PBGC.gov), 202-326-4020, ext. 6818 or Jon Chatalian (Chatalian.Jon@PBGC.gov), ext. 6757, Office of the Chief Counsel, Suite 340, 1200 K Street N.W., Washington, DC 20005-4026; (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4020.)

SUPPLEMENTARY INFORMATION:

Background

Section 4203(a) of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (“ERISA”), provides that a complete withdrawal from a multiemployer plan generally occurs when an employer

permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under § 4205 of ERISA, a partial withdrawal generally occurs when an employer: (1) Reduces its contribution base units by seventy percent in each of three consecutive years; or (2) permanently ceases to have an obligation under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location or to an entity or entities owned or controlled by the employer; or (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased.

Although the general rules on complete and partial withdrawal identify events that normally result in a diminution of the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute normally does not weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, § 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan and the employer either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement, or resumes such work within five years without renewing the obligation to contribute at the time of resumption. In the case of a plan terminated by mass withdrawal (within the meaning of ERISA § 4041(A)(2)), § 4203(b)(3) provides that the five year restriction on an employer resuming covered work is reduced to three years. Section

4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in § 4203(a) of ERISA includes the permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under § 4208(d)(1) of ERISA, “[a]n employer to whom § 4203(b)(relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer’s obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.” Under § 4208(d)(2) of ERISA, “[a]n employer to whom § 4203(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation.”

Section 4203(f)(1) of ERISA provides that PBGC may prescribe regulations under which plans in other industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in § 4203(b) and (c) of ERISA. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and that the use of such rules will not pose a significant risk to the insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that PBGC shall prescribe by regulation a procedure by which plans may be amended to adopt

special partial withdrawal liability rules upon a finding by PBGC that the adoption of such rules is consistent with the purposes of Title IV of ERISA.

PBGC's regulations on Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) prescribe procedures for a multiemployer plan to ask PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. The regulation may be accessed on PBGC's Web site (<http://www.pbgc.gov>). Section 4203.5(b) of the regulation requires PBGC to publish a notice of the pendency of a request for approval of special withdrawal liability rules in the *Federal Register*, and to provide interested parties with an opportunity to comment on the request.

The Request

PBGC received a request, dated September 16, 2011, from the Service Employees International Union Local 1 Cleveland Pension Plan (the "Plan"), for approval of a plan amendment providing for special withdrawal liability rules. Subsequently, the Plan requested that PBGC suspend review of the amendment. On January 24, 2014, the Plan requested that PBGC again consider the amendment and provided updated actuarial information. PBGC's summary of the actuarial reports provided by the Plan may be accessed on PBGC's Web site (<http://www.pbgc.gov>). A copy of the complete filing may be requested from the PBGC Disclosure Officer. The fax number is 202-326-4042. It may also be obtained by writing the Disclosure Officer, PBGC, 1200 K Street NW, Suite 11101, Washington, DC 20005.

In summary, the Plan is a multiemployer pension plan currently covering employees who work in the commercial building cleaning and security industries in the greater Cleveland, Ohio area. The Plan represents in its submission that the industry for which the rule is requested--the commercial building cleaning industry--has characteristics similar to those of the construction

industry. According to the Plan's submission, the principal similarity is that when a contributing employer's contract to clean a building expires, the cleaning work will generally continue to be performed by employees covered by the Plan, irrespective of the employer retained to perform the cleaning services. Under the proposed amendment, a complete withdrawal of an employer whose employees substantially all work in the commercial building cleaning industry shall occur only when: (a) the employer ceases to have an obligation to contribute under the Plan and (b) the employer continues to perform work in the jurisdiction of the Plan of the type for which contributions were previously required or resumes such work within five (5) years after the date on which the obligation to contribute under the plan ceases and does not renew the obligation at the time of the resumption. In the case of termination by mass withdrawal (within the meaning of ERISA § 4041A(a)(2)), the proposed amendment provides that § 4203(b)(3), the provision that allows a construction employer to resume covered work after three years of withdrawal opposed to the standard five year restriction, is not applicable to withdrawing commercial building cleaning industry employers. Therefore, in the event of a mass withdrawal, there is still a five year restriction on resuming covered work in the jurisdiction of the Plan. The request includes the actuarial data on which the Plan relies to support its contention that the amendment will not pose a significant risk to the insurance system under Title IV of ERISA.

Comments

All interested persons are invited to submit written comments on the pending exemption request. All comments will be made part of the administrative record.

Issued in Washington, DC, on this 12__ day of August, 2015.

Alice C. Maroni,
Acting Director,
Pension Benefit Guaranty Corporation.

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