

## Multiemployer Pension Reform Act of 2014 Contributions for Withdrawal Liability

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On December 16, 2014, President Obama signed the Consolidated and Further Continuing Appropriations Act of 2015 that included the Multiemployer Pension Reform Act of 2014 (MPRA), which impacts multiemployer defined benefit pension plans.

MPRA changed how certain employer contributions are handled when calculating withdrawal liability and withdrawal liability payment amounts. The following discussion is based on our current understanding of the MPRA provisions, which could change after regulations or other guidance have been issued.

We recommend that plan administrators review their procedures and systems with regard to invoicing employers and/or retaining employer contributions in order to isolate the following contribution amounts that are excluded when calculating withdrawal liability:

- 5% and 10% employer contribution surcharges
- Contribution increases *outside* the benefit formula *and* required by a funding improvement plan or rehabilitation plan that go into effect during plan years beginning after December 31, 2014

Tracking these contributions continue while the plan is in endangered or critical status. Tracking ends on the expiration date of the collective bargaining agreement in effect when the plan emerges from endangered or critical status.

### WITHDRAWAL LIABILITY

There are four withdrawal liability allocation methods defined in ERISA:

- Presumptive Method – ERISA Section 4211(b)
- Modified Presumptive Method – ERISA Section 4211(c)(2)
- Rolling-5 Method – ERISA Section 4211(c)(3)
- Direct Attribution Method – ERISA Section 4211(c)(4)

Plans could also apply to the PBGC for approval of an alternative allocation method under ERISA Section 4211(c)(5).

For plans that use the presumptive, modified presumptive, or rolling-5 method for calculating withdrawal liability, there may be one or more pools of unfunded vested benefit liability (UVB) as of the end of the plan year prior to an employer's withdrawal from the plan. When calculating the withdrawal liability assessment, each pool of UVB is allocated to the employer using an allocation fraction. The numerator of the allocation fraction is the employer's obligated contributions to the plan during the five plan years ending with the plan year in which each of the pools was determined. The

denominator of the allocation fraction is total contributions made to the plan by all employers during the same five-year period. The employer's withdrawal liability (prior to the application of the de minimis rule) is the sum of the allocated pools.

An employer's annual withdrawal liability payment is equal to the product of:

- The highest contribution rate in the last 10 plan years ending with the plan year of withdrawal
- The average base units in the three consecutive plan years that produce the highest average within the 10 year period ending before the plan year of withdrawal

MPRA changed how certain employer contributions are handled for determining the numerator and denominator of the allocation fraction(s). It also changed how the highest contribution rate is determined when calculating the annual withdrawal liability payment. These changes are described below.

### EMPLOYER CONTRIBUTION SURCHARGES

**Allocation fraction:** The Pension Protection Act of 2006 (PPA) provides that the numerator and denominator of the allocation fraction(s) used for calculating withdrawal liability should exclude the 5% and 10% contribution surcharges imposed on employers participating in critical status plans prior to the adoption of a rehabilitation plan schedule. The surcharge exclusion applies to the presumptive, modified presumptive, and rolling-5 methods of calculating withdrawal liability. MPRA did not change this provision.

**Highest contribution rate:** Prior to MPRA, PPA did not provide rules regarding how the surcharges apply in determining the withdrawal liability payment amount. MPRA added the provision that the 5% and 10% employer contribution surcharges are excluded in determining the highest contribution rate for the withdrawal liability payment amount. *Plan administrators should continue to separately track these surcharge amounts.*

**Effective date:** This change is effective for surcharges that accrue on or after December 31, 2014. The new law is silent with regard to how employer surcharges are handled in determining the highest contribution rate prior to January 1, 2015, for withdrawal liability assessments on and after that date.

**CONTRIBUTION INCREASES REQUIRED BY FUNDING IMPROVEMENT OR REHABILITATION PLAN**

Prior to MPRA, contribution increases required by a funding improvement plan or a rehabilitation plan were included in the allocation fraction(s) for calculating an employer’s withdrawal liability and for determining the highest contribution rate for the withdrawal liability payment amount.

**Allocation fraction:** MPRA changes how some of these contribution increases are handled for withdrawal liability purposes. Under MPRA, contribution increases that apply *outside* the benefit formula and are required by a funding improvement plan or rehabilitation plan that go *into effect* during plan years beginning after December 31, 2014, are excluded from the numerator and denominator of the allocation fraction(s) for determining withdrawal liability while the plan is in endangered, critical, or critical and declining status.

Contribution increases that *apply inside* the benefit formula (i.e., contributions that increase participants’ benefits), or increases that are due to increased levels of work, employment, or periods for which compensation is provided, continue to be included in the numerator and denominator of the allocation fraction(s). Contribution increases that apply *outside* the benefit formula and are required by a funding improvement plan or rehabilitation plan that *went into effect* during plan years beginning on or before December 31, 2014, and contribution increases that are not part of a funding improvement or rehabilitation plan are also included in the allocation fraction(s).

The rules change upon the expiration date of the collective bargaining agreement in effect when the plan emerges from endangered or critical status. *Plan administrators will now need to separate employer contributions into the two categories below, taking into account the plan’s PPA zone status and the expiration dates of the collective bargaining agreements.*

The new rules are summarized in Table 1 below.

**Highest contribution rate:** MPRA also provides that regardless of the plan’s PPA zone status, contribution increases outside the benefit formula and required by a funding improvement plan or rehabilitation plan that *go into effect* during plan years beginning after December 31, 2014, are excluded when determining the highest contribution rate for the withdrawal liability payment amount. All other contribution increases are included.

**Effective date:** These changes are effective for contribution increases that go into effect during plan years beginning after December 31, 2014.

**SIMPLIFIED RULES**

MPRA requires the PBGC to prescribe simplified methods for applying these new withdrawal liability rules. It is not known when such simplified methods will be available.

**QUALIFICATION**

The objective of this memo is to assist in gathering the information needed to calculate withdrawal liability for an employer who partially or completely withdraws from a trust. It reflects our understanding of ERISA withdrawal liability requirements as amended by subsequent legislation, including PPA and MPRA, and reflecting all regulations and guidance issued to date.

Milliman’s advice is not intended to be a substitute for qualified legal counsel. There are many legal issues that are associated with the determination of withdrawal liability. Therefore, we recommend that you consult with plan’s legal counsel on these issues.

Please contact a Milliman consultant to better understand how these new MPRA provisions may impact your multiemployer pension clients.

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**TABLE 1: CONTRIBUTIONS FOR WITHDRAWAL LIABILITY PURPOSES UNDER MPRA**

| PPA ZONE STATUS  | CONTRIBUTIONS INCLUDED IN THE ALLOCATION FRACTION  | CONTRIBUTIONS EXCLUDED FROM THE ALLOCATION FRACTION  |
|--|--|--|
| Endangered Status (Yellow Zone)<br>or<br>Critical Status (Red Zone)<br>or<br>Critical and Declining Status (Deep Red Zone) | Contribution increases <i>outside</i> the benefit formula and <i>not</i> required by the funding improvement plan or rehabilitation plan<br><br>Contributions <i>inside</i> the benefit formula<br><br>Contribution increases due to increased levels of work, employment, or periods in which compensation is provided<br><br>Contribution increases <i>outside</i> the benefit formula and required by the funding improvement plan or rehabilitation plan that <i>go into effect</i> during plan years beginning on or before December 31, 2014 | Contribution increases <i>outside</i> the benefit formula and required by the funding improvement plan or rehabilitation plan that <i>go into effect</i> during plan years beginning after December 31, 2014 |
| Green Zone   | All contributions*   | None*  |

\* The endangered and critical status rules apply until the expiration date of the collective bargaining agreement in effect when the plan emerges from endangered or critical status.

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