



November 1, 2021

Submitted electronically to: www.regulations.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

RE: Comments on Proposed Revisions of the Form 5500 Annual Information Return/Reports (RIN: 1210-AB97)

Dear Sir or Madam:

We respectfully submit this comment letter on the proposed changes to the Form 5500 annual information return, and associated schedules (Proposed Modifications), as proposed by the Department of Labor, the Internal Revenue Service and the Pension Benefit Guaranty Corporation (collectively, the Agencies).¹

Segal is a major provider of actuarial, employee benefits, and human capital consulting services to employers and employee benefit plans throughout the United States, and provides actuarial services to more multiemployer pension plans than any other consulting firm.

The Proposed Modifications include changes needed to implement provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), including reporting options for certain groups of plans and the expansion of multiple employer plans to include pooled employer plans. The Proposed Modifications also include changes to provisions that are not related to the SECURE Act. We understand that other organizations and stakeholders in the pension community will be providing detailed comments on many aspects of the Proposed Modifications. The focus of this letter is on the proposed changes to the 2022 Form 5500 Schedule MB affecting multiemployer defined benefit (DB) pension plans.

¹ 86 Fed. Reg. 51, 488 (Sept. 15, 2021).

Schedule MB modifications

Line 3 (contributions made to the plan)

The current Schedule MB requires that if any of the employer contributions reported on Line 3 include amounts owed in withdrawal liability, an attachment must be provided listing total amounts and dates such amounts were paid to the plan. Although the actuary completes the Schedule MB and this attachment, detailed information as to withdrawal liability payments is maintained by the plan sponsor and is provided to the actuary only for purposes of the attachment. The Proposed Modifications would modify the Line 3 instructions to require an attachment that separately specifies “periodic” withdrawal liability amounts and “lump sum” amounts. Rather than expanding Line 3 on Schedule MB to include additional information that is not maintained by the actuary, thereby increasing the cost of further coordination between the actuary and the plan sponsor, the information requested regarding withdrawal liability should instead be required to be provided in an attachment to Schedule R or some other aspect of the Form 5500 that is under the control of the plan sponsor or its auditor.

Regardless of where the request for withdrawal liability information appears, to ensure accurate reporting, the applicable instructions should be clarified to describe in more detail what is considered be a “periodic” payment and what is considered to be a “lump sum” payment. It is not unusual for multiemployer DB plans to receive both types of payment in the plan year from the same employer as related to the same withdrawal. For example, an employer may begin making scheduled monthly or quarterly payments to the plan and then later settle the outstanding amount for payment in a lump sum. Other examples include employers that are paying monthly or quarterly payments, become delinquent on a series of payments, and then satisfy the delinquency with a lump sum payment and resume scheduled monthly or quarterly payments.

Line 4f (information on plan status)

The Proposed Modifications would modify the Line 4f Schedule MB language and the instructions to clarify language regarding when or if plans in critical status or critical and declining status are projected to emerge or become insolvent. As provided in the proposed instructions, the information required to respond must be based on the “most recent actuarial certification for the plan year and the most recently adopted rehabilitation plan.”

Clarification is needed as to what is considered to be the “most recent actuarial certification” and the “most recently adopted rehabilitation plan.” For example, for purposes of the 2022 Form 5500 filing, the proposed language, if adopted, could be interpreted to mean that the most recent actuarial certification for the plan year is the 2022 certification which is based on the 2021 actuarial valuation, or the 2023 certification, while the most recently adopted rehabilitation plan might have been adopted in an earlier or later plan year. Accordingly, we suggest that the instructions clarify that the information required in Line 4f is based on information from the 2022 certification, and the associated rehabilitation plan that was the basis for that certification.

The Proposed Modifications would also require in the instructions that plans projected to become insolvent within 30 years are required to attach an illustration showing year-by-year cash-flow projections for the period ending with the plan year the plan is projected to become insolvent or the 20th year after the valuation year, if earlier. Plans must also provide a summary of assumptions underlying the projections. Similarly, plans that are neither projected to emerge from critical status nor become insolvent within 30 years are required to attach an illustration showing cash-flow projections ending with the 20th year after the valuation year and are also required to attach a summary of assumptions used in the projections. Clarification is needed as to whether the basis to be used is from the status certification for the year of *the filing*, or the year *in which* the Schedule MB is filed.

Additionally, clarification is needed as to when the 30-year insolvency period and the 20-year period for cash-flow projections are to begin (e.g., the date of the filing of the Schedule MB, the beginning of that plan year, the end of the plan year or some other date).

Line 6e (salary scale)

The Proposed Modifications would modify the instructions to Line 6e regarding salary scale. We suggest the original Line 6e paragraph as provided in the Proposed Modifications be edited to read as set forth below:

If a uniform level annual rate of salary increase is used, enter that annual rate.
Otherwise, enter the level annual rate of salary increase that is equivalent to the rate(s) of salary increase used from age 25 to the average assumed retirement age for all active employees. The level annual rate should be entered as a percentage to the nearest .01 percent. If the plan's benefit formula is not related to compensation, check the "N/A" box.

Line 6f (withdrawal liability interest rate)

The current Schedule MB requires that information be provided as to the actuarial assumptions used to determine plan liabilities. The Proposed Modifications would require that the plan report, on Line 6f, the interest rate used to determine the present value of vested benefits for withdrawal liability determinations. If a plan uses multiple interest rates, the plan is to report the single equivalent interest rate that produces the same present value of vested benefits.

The Proposed Modifications would modify the instructions to Line 6f by stating that

[I]f any employer withdrew from the plan during the plan year, enter the interest rate used to determine the present value of vested benefits for withdrawal liability determinations.

To avoid confusion, the instructions should instead refer to any employers that *withdrew* from the plan *and were assessed withdrawal liability* during the plan year.

Additionally, as mentioned, a plan that uses multiple rates to determine the present value of vested benefits must report a single equivalent interest rate that produces the same present

value. This requirement would apply to many, if not most, plans given the wide-spread use of multiple rates (such as PBGC termination rates) and methods that blend several rates, such as the Segal Blend. This information is not part of the withdrawal liability calculation for those plans, and it is not appropriate for the Agencies to require this as it would significantly increase the amount of actuarial work and cost to the plan (via a “trial and error” approach) to provide this information. The information yielded as a result of this requirement is of dubious value to the Agencies as such information would not convey the aggregate value of vested benefits for withdrawal liability purposes for the relevant plan year. Rather than being required to report a single “equivalent” interest rate, plans that use multiple rates or blended methods should instead be required to provide a brief explanation as to the interest rates and methods used by the plan in determining the unfunded value of vested benefits for withdrawal liability purposes.

Line 8 (miscellaneous information)

The Proposed Modifications would require, on Line 8b(1), additional information about demographic characteristics, benefits, and contributions for any PBGC-covered plan with more than 500 participants. Of note is the requirement that a plan provide benefit projections that extend 50 years. Such long-range cash-flow projections are rarely performed by plan actuaries because they are not useful. We fail to see the value in this additional burden, especially given that it is a projection over a long period of time that, in accordance with the instructions, would not take into account additional benefit accruals nor new entrants, therefore resulting in a projection that in the latter 25 years is unlikely to provide any meaningful information about the benefits that would be payable.

The Proposed Modifications also require, on Line 8b(2), that plans reporting 1,000 or more active participants and using compensation to determine benefits must provide average compensation data. There is nothing in the Schedule MB, however, for plans to indicate that they do not use compensation to determine benefits. As such, the Schedule MB and instructions should be modified so that such plans may respond with a “N/A” as provided elsewhere on the Schedule MB.

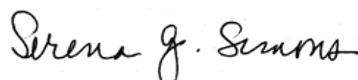
Closing

As an actuarial firm that has been providing actuarial services to multiemployer plans for many decades, Segal appreciates the opportunity to express its views regarding the Proposed Modifications. We would welcome further discussions with the Agencies on any of the points we have raised in this comment letter.

Sincerely,



Eli Greenblum
SVP, Chief Actuary



Serena G. Simons
SVP, National Retirement Compliance Practice Leader