SQUIRE PATTON BOGGS

Pension Protection Fund Levy 2018/19

Headlines and Deadlines

February 2018

On 19 December 2017, the Pension Protection Fund (PPF) published its rules governing the calculation of levies for the 2018/19 levy year. The levy estimate has reduced from £615 million in 2017/18 to £550 million. Additionally, new form contingent asset agreements, together with revised contingent asset guidance, have also been published and are available on the PPF 2018/19 levy page.

Key areas of change for 2018/19 are highlighted below, together with this year's deadlines. **This is only a summary – trustees and employers who are relying on a levy reduction method are strongly advised to check the revised draft rules and assess the actions they need to take, noting that it will take time to obtain advice, update valuations (where necessary) and finalise documentation before hard PPF deadlines. Legal advice should be obtained at an early stage.**

Use of Public Credit Ratings

The PPF has confirmed that, in preference to PPF specific modelling, it will use publicly available credit ratings collected from three rating agencies: Standard & Poor's, Moody's and Fitch. Employers within the financial services sector, which do not have public credit ratings but are registered with the Prudential Regulation Authority and are in a sector supported by Standard & Poor's Credit Model, will be scored via that model each month. The PPF portal has been updated to display credit ratings and model scores. The PPF website contains a useful FAQs section, providing information about the use of credit ratings.

Scorecards

There will be 10 scorecards. Five out of the original eight scorecards have been rebuilt. The Large and Complex Scorecard and Independent Full Scorecard have been combined and then divided according to size (the threshold for which is £30 million of turnover). The two small accounts scorecards and the Not for Profit Scorecard have also been rebuilt. The two scorecards that are new for this year reflect (1) the use of publicly rated employers and (2) financial service sector employers rated using the Standard & Poor's Credit Model.

Contingent Assets

New Forms

The PPF has produced new standard form contingent asset agreements. The PPF decided to amend the existing standard form documents because it had become aware of a line of argument that any payments made in the absence of a demand under a Type A contingent asset guarantee in respect of "'guaranteed obligations" could erode the fixed liability cap. The PPF issued a consultation on the new form agreements, putting forward five different liability cap options. It also questioned whether the five different options for measuring liability should continue to be used. The PPF has retained the five different options for measuring liability and the new form contingent asset agreements contain the PPF's preferred liability cap wording, on which it had previously consulted. This means that in the context of a contingent asset guarantee, the agreement will cover ongoing payments and insolvency demands, but the fixed cap will only attach to post-insolvency demands. Those guarantors who might have difficulty providing a guarantee if the pre-insolvency amount is uncapped will be able to take advantage of optional wording allowing a (substantial) cap to be applied in relation to pre-insolvency claims.

The PPF has also clarified the amendment and release provisions, to make clear that contingent asset agreements may be amended by mutual consent.

Where existing contingent asset arrangements were in place before 18 January 2018, they may continue to be certified by reference to the current forms for levy year 2018/19, but Type A and Type B contingent assets with a fixed monetary cap (as opposed to a fluctuating section 75 or section 179 liabilities cap) are likely to need replacing by the deadline at the end of March 2019, based on the new forms, for levy year 2019/20.

Guarantor Strength Report

Where a contingent asset guarantee results in a levy saving of £100,000 or more, the trustees will need to obtain a guarantor strength report prior to certifying the guarantee as a contingent asset. The guarantor strength report must be produced by an employer covenant adviser or equivalent, who has an appropriate level of indemnity insurance cover. Part 2 of the contingent asset guidance provides guidance in relation to the guarantor strength report. Various issues will need to be addressed in the report (on a "comply or explain" basis) and the report must contain specific duty of care wording in favour of the PPF.

A copy of the guarantor strength report will need to be provided to the PPF before 5 p.m. on 29 March 2018.

Multi-employer Plans

In its consultation on contingent asset arrangements, the PPF had asked whether changes should be made to the way in which the liability cap would work for multi-employer plans. For example, the question was asked whether the fixed liability cap should only start to erode on the insolvency of the final employer in a last man-standing pension plan. The PPF has decided that the fixed cap in a contingent asset agreement will continue to apply across the whole pension plan and erode on each employer's insolvency. The PPF urges trustees, however, to consider the continuing appropriateness of how any payments made under a contingent asset guarantee would be allocated on the insolvency of each employer, bearing in mind that the liability cap would not refresh on each insolvency.

Deficit Reduction Certificates (DRCs)

The PPF has confirmed that the certification process for deficit reduction certificates will be simplified. It will be possible to exclude all costs associated with investment expenses and any actuary (not just the scheme actuary) will be able to make the online certification on Exchange. Smaller plans (with section 179 liabilities of less than £10 million and which are closed to accrual and have a recovery plan in place) will be able to certify recovery plan and certain special contributions.

Special Category Employers

Those employers who present a low risk of insolvency (for example, because they are linked to and/or backed by government) but where the usual scoring methods do not reflect this, will be able to self-certify as a "Special Category Employer". The PPF is recommending self-certification applications should be made in plenty of time before the 31 March deadline in order to allow sufficient time to deal with any queries.

Block Transfers

Requests for treatment under the exempt transfer rules should be made to the PPF by 5 p.m. on 30 April 2018. Where the transfer arises as a result of a single employer plan self-segregating, legal advice will be required to satisfy the PPF that the plan remains a continuing entity. There will be no need to enter into new contingent asset arrangements in the case of a self-segregating transfer. However, where there is a "1 to 1" transfer, i.e. where the whole of the assets and liabilities of one plan have been transferred to a brand new plan, the trustees will need to enter into new contingent asset agreements. "1 to 1" transfers will be treated as exempt transfers under the rules.

Accounts Information

Experian will carry out its annual collection of data in January in respect of accounts filed by 31 December. Experian will no longer use dormant accounts where these relate to a period before the employer was active, for example, where the whole of the business and assets of an employer are transferred to a shelf company as part of a group reorganisation. This is on the proviso that there are other post active accounts, such as interim accounts, which could be used and where applying the normal rules would not accurately reflect the risk of the entity becoming insolvent.

Deadlines

The PPF has set its key deadlines as follows:

Document	Deadline
Guarantor Strength Certificate to be submitted to PPF	By 5 p.m., 29 March 2018
Hard copy Contingent Asset documents to be submitted as necessary to PPF	By 5 p.m., 29 March 2018
Scheme returns to be submitted on Exchange	By midnight, 31 March 2018
Contingent Asset Certificates to be submitted on Exchange	By midnight, 31 March 2018
ABC Certificates to be submitted by email to PPF	By midnight, 31 March 2018
Mortgage Exclusion (Officers) Certificates and supporting evidence to be submitted to Experian	By midnight, 31 March 2018
Accounting change certificates with supporting evidence – to be submitted by email to Experian	By midnight, 31 March 2018
Special Category Employer Certificate to be submitted by email to PPF (hard copies by 5 p.m., 29 March 2018)	By midnight, 31 March 2018
Deficit-Reduction Contributions Certificates to be submitted on Exchange	By 5 p.m., 30 April 2018
Exempt transfer applications to be submitted by email to PPF	By 5 p.m., 30 April 2018
Certification of full block transfers to be completed on Exchange or sent to PPF (in limited circumstances)	By 5 p.m., 29 June 2018

Further Information

Please note that the PPF's procedural requirements are stringent and its deadlines are firm. Trustees and employers who are relying on a levy reduction method are advised to check the revised draft rules and assess the actions they need to take and to seek advice at an early stage.

For further information, please contact any of the partners listed or your usual contact in the firm's Pensions team.

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