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April 6, 2015

Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K Street, NW
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RE: Multiemployer Pension Reform Act of 2014; Request for Information on Partitions of Eligible Multiemployer Plans and Facilitated Mergers

To Whom It May Concern:

The American Academy of Actuaries[1] Pension Practice Council respectfully requests your consideration of comments from our Multiemployer Pension Plans Subcommittee regarding the Request for Information on Partitions and Facilitated Mergers under the Multiemployer Pension Reform Act of 2014 (MPRA). The council and subcommittee realize that the implementation of partitions and mergers, as well as benefit suspensions under MPRA, present many complex challenges, and appreciate this opportunity to respond to the questions contained in the request. These comments address several, but not all, of the questions contained in the request for information. The subcommittee's comments focus on areas where guidance might have the greatest impact, and where there is an actuarial component to the issue raised.

1. Application Process: With respect to MPRA's changes to the rules governing mergers and partitions under sections 4231 and 4233 of ERISA, respectively, on which aspects of the application process would guidance be needed or helpful?

The most helpful guidance would describe all of the information that plan sponsors need to submit to the PBGC with the application for mergers and partitions in order for the application to be complete. In particular, we recommend that the guidance include the details that will be required with respect to needed actuarial projections and reports. When deciding whether or not to pursue these transactions, plan sponsors will be very concerned about the potential costs, especially if they believe it is reasonably possible that the application will not be approved. The more guidance that is available regarding the information and data that is required in order for an application to be considered complete for approval, the more plan sponsors will be able to make informed decisions about whether or not to apply.

[1] The American Academy of Actuaries is an 18,500+ member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

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It would also be helpful if the PBGC is able to provide, as best it can, its evaluation criteria for determining whether to consider and approve an application for partition or facilitated merger. Trustees are reluctant to commit resources that could otherwise be used to pay benefits in preparing lengthy and complex applications that are unlikely to get serious consideration.

2. PBGC Determinations: With respect to a PBGC determination under section 4233(b)(3) that a partition is necessary for a plan to remain solvent, or in the case of a facilitated merger involving financial assistance under section 4231(e)(2)(B) that financial assistance is necessary for a merged plan to become or remain solvent:

- ***What types of actuarial and plan administrative information and analysis are available to demonstrate that a partition or facilitated merger of the plan is necessary to remain solvent?***

In order to prepare the certifications and determinations that are necessary for the implementation of benefit suspensions, the actuary will need to have prepared projections of the plan assets both with and without the impact of the suspensions. In the case of a plan that is applying for partition, these projections will show that even with the application of maximum suspensions, the plan is not projected to avoid insolvency. This information and the supporting data, together with the documentation maintained by the plan sponsor that all reasonable measures have been taken to avoid insolvency, should provide much of what PBGC will need to evaluate whether the partition or facilitated merger is necessary for the plan to remain solvent.

- ***What issues arise in demonstrating solvency over an extended duration?***

Any single projection based on one set of assumptions is a weak forecast of the long-term future. A better picture of what the future may hold can be gained by stochastic modeling or doing sensitivity testing of one or more parameters. In long range projections of pension plans, the assumptions that might be tested include (depending on relevance and materiality): return on assets, projection of base units for anticipated contributions, retirement behavior (especially given the guarantee formula), and the new entrant profile for plans that have not been frozen or closed to future members (because the majority of active participants at the end of the projection will likely not be participants today).

The cost of the analysis and the resources available to plans are important considerations when determining the appropriate extent of sensitivity analysis. Although a particular approach may make sense for a large plan, a smaller plan might find the cost to be prohibitive. Requiring too extensive an analysis in all cases would be counterproductive if it discouraged plans that could benefit from these provisions from applying.

Regardless of the extent of sensitivity testing under deterministic projections or the use of stochastic projections, the duration of the projections needs to be sufficiently long to demonstrate *indefinite* solvency. Actuaries will prepare detailed projections up to the limits of their available tools, and then draw reasonable conclusions about the direction of projected funding levels beyond that point. Guidance could indicate that the detailed cash flow projections must extend sufficiently far to enable the actuary to reasonably conclude that the asset levels are expected to remain sufficient to pay benefits indefinitely beyond the projection period.

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3. Small Plans: What special concerns do small multiemployer plans and their sponsors have regarding partition and facilitated mergers?

Small plans are very concerned about the actuarial, administrative and legal costs of providing information, obtaining agency approval and completing the statutory process for suspensions, partition and facilitated mergers. Some costs, such as mailing of notices and ballots, vary by number of participants. However, many other costs are similar, in dollar amounts, as for a large plan – but far more costly as a percentage of the remaining assets, cash flow and liabilities.

Small plans may be dominated by two or three competitor privately held employers whose continued participation in the plan are important drivers of when insolvency may occur. It is difficult to obtain information about the financial health of these employers because privately held employers typically do not disclose financial information, especially not to competitors.

4. Concurrent Applications: What practical issues do plan sponsors and their professional advisors anticipate may arise in connection with a decision to submit combined applications for partition to PBGC under section 4233 of ERISA, and suspension of benefits to the Department of Treasury under section 432 of the Code? In responding to this question, consider the following:

- ***Timing: With respect to an application for partition, PBGC is required to make a determination not later than 270 days after the application date (or, if later, the date such application was completed). With respect to an application for of benefits, the Treasury Secretary (in consultation with PBGC and the Secretary of Labor) is required to approve or deny an application within 225 days after submission.***
- ***Effective Date: With respect to a concurrent application for partition and suspensions of benefits, the suspension of benefits may not take effect prior to the effective date of such partition.***
- ***Solvency: Under section 4233(c), the amount to be transferred in a partition is the minimum amount of the plan's liabilities necessary for the plan to remain solvent. Section 432(e)(9)(D)(iv) of the Code provides that any suspensions of benefits, in the aggregate (and, if applicable, considered in combination with a partition of the plan under section 4233 of ERISA), shall be reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency.***

When designing a plan for benefit suspensions and partitions, the plan sponsor will rely on actuarial projections based on a planned or estimated effective dates for benefit suspensions and the partition. If the ultimate suspensions take effect later than the planned (or estimated) effective dates, the amount of the liabilities necessary to be transferred in a partition in order for the plan to remain solvent will increase. Therefore the PBGC's interests, as well as the participants' and the plan's interests, are best served for the suspension and approval process to proceed as expeditiously as possible. Approval and implementation prior to 270 days for partition and 225 days for both suspension and partition will reduce the expected long-term cost to the PBGC.

Regardless of the length of time approval takes for suspensions and partition, economic conditions and PBGC assumptions will change from application date to the approval dates, and actual implementation could differ from the proposed or estimated dates. Permitting or requiring updates to the plan's proposed suspension and partition actuarial projections will not eliminate this timing issue, as updates will always require time to prepare, and circumstances can change during this time.

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Because of the importance of timely action, it is crucial that PBGC communicate openly and actively with Treasury when reviewing any application that requires a partition. A decision or issue that affects one application will necessarily have an effect on the other, so the process will be ineffective unless the oversight agencies communicate their findings to each other during the approval process. The ability of the PBGC to change the magnitude of the partition proposed in the partition application should help facilitate suspension approval. As the PBGC can condition partition upon suspension implementation, and suspensions may not take effect prior to the partition effective date, concurrent implementation of suspension and partition is practical, whether or not concurrent or combined applications are submitted. Consequently, coordination of the approvals is important, but requiring concurrent applications is unnecessary.

5. Transferred Liabilities: Prior to MPRA, PBGC's partition order would provide for a transfer of no more than the non-forfeitable benefits directly attributable to service with the bankrupt employer and an equitable share of assets. In contrast, under section 4233(c), the partition order will provide for a transfer of the minimum amount of the plan's liabilities necessary for the plan to remain solvent. In addition, section 4233(e)(1) prescribes a continuing payment obligation that applies to the plan that was partitioned (the original plan).

- ***What types of actuarial and administrative information and data do multiemployer plans generally maintain that would allow PBGC to determine the minimum amount of the plan's liabilities necessary for the plan to remain solvent?***
- ***What administrative or operational issues (e.g., recordkeeping, benefit processing, allocation of expenses) arise in connection with this change?***
- ***Are there additional issues that arise with respect to the transfer of the plan's liabilities for particular groups of individuals?***

When a partition is needed, the application should first include projections of the plan assets that demonstrate that the plan is not projected to remain solvent even if maximum benefit suspensions are implemented. The application should also include projections that illustrate a proposed partition approach in which the plan remains solvent, including a statement of actuarial opinion to that effect, with disclosures as required by the applicable Actuarial Standards of Practice. PBGC's evaluation of the minimum partition amount necessary for the plan to remain solvent would begin with a review of these projections. The projections will include a description of all assumptions, methodologies, plan provisions and participant census data on which they are based. This information together, with the actual participant data used for the projections, would allow PBGC to test and validate the results of the projections, and if deemed necessary, evaluate partition approaches that differ from what was included in the application.

In the case of benefit suspensions that are not accompanied by a partition, the statute specifies that the suspensions should be reasonably expected to achieve, but not materially exceed, the level that is necessary to avoid insolvency. While the partition provisions do not include this language, it would be appropriate for the PBGC to use a similar standard when determining the minimum amount of transferred liabilities for the plan to remain solvent.

In the case of a partition, the PBGC has sole authority to decide whether or not the solvency criteria have been satisfied. As discussed above, the partition application process should include projections prepared by the plan actuary, but the purpose of these projections is to assist PBGC in reaching its own conclusion. To the extent that PBGC will evaluate the minimum transfer amount necessary for a plan to avoid insolvency using specific PBGC-set assumptions or actuarial principles, it important that guidance specify those PBGC assumptions or principles. This information will allow plan sponsors to prepare partition applications that provide maximum value to PBGC and will expedite the process to the greatest extent possible.

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Lastly, it will also be helpful for the PBGC to engage plans in dialogue prior to the submission of a partition application. The approval process has many components, and PBGC has wide latitude to determine how to apply those components to individual situations. Guidance should encourage plans to contact PBGC before making any substantive decisions on how to approach a potential partition application. A distressed plan will be far more likely to spend the resources necessary to pursue partition if the sponsor is confident that it understands PBGC's perspective on partitions, the plan's specific situation, and how the application will be evaluated.

6. Post-Partition: With respect to issues that might arise post-partition:

- ***What kinds of administrative or operational issues (e.g., recordkeeping, benefit processing, allocation of expenses, the original plan's ongoing payment obligations under section 4231(e)(1)) might arise post-partition for plan sponsors?***
- ***What issues or challenges do plan sponsors and their professional advisors anticipate in connection with the special withdrawal liability rule under section 4233(d)(3), which applies for a 10-year period following the partition effective date?***
- ***What issues or challenges do plan sponsors and their professional advisors anticipate in connection with the special benefit improvement and premium rules under sections 4233(e)(2) and (3) of ERISA, which apply for a 10- year period following the partition effective date?***
- ***Is there a need for additional post-partition oversight by PBGC to ensure compliance with MPRA's post-partition requirements, and if so, in what areas?***

Knowing how the assets in the new plan will be measured would help in determining the unfunded vested benefits of the two post-partition plans. The simplest approach is that the value of the assets in the plan created by the partition should be deemed to be zero, and if that approach is valid, guidance should so state. Alternatively, guidance should indicate whether or not the outstanding balance of loans provided by the PBGC as financial assistance (net of funds in the plan account provided by the PBGC to pay the next several months of guaranteed benefits and reasonable plan expenses) should be reflected as negative plan assets. If the outstanding balance of such loans needs to be reflected in withdrawal liability for the 10-year period, the PBGC should provide that amount annually to the plan on a timely basis.

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The Pension Practice Council and Multiemployer Pension Plans Subcommittee appreciate the opportunity to provide input to PBGC on this important guidance. We would be happy to discuss any of these items with you at your convenience. Please contact Matthew Mulling, the Academy's pension policy analyst (202-223-8196, mulling@actuary.org) if you have any questions or would like to discuss these items further.

Sincerely,

Eli Greenblum, MAAA, FSA, FCA, EA
Chairperson, Pension Practice Council
American Academy of Actuaries