June 27, 2016

Regulatory Affairs Group
Office of the General Counsel
Pension Benefit Guaranty Corporation
1200 K St NW
Washington, DC 20005-4026

RE: RIN 1212-AB32: Payment of Premiums; Late Payment Penalty Relief

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we submit this letter to the Pension Benefit Guaranty Corporation (PBGC) in response to the proposed rule lowering the penalty on late payment of premiums, which was issued on April 28, 2016.[1]

The U.S. Chamber of Commerce is the world's largest business federation, representing more than three million businesses and organizations of every size, sector, and region. Besides representing a cross-section of the American business community in terms of number of employees, the Chamber represents a wide management spectrum by type of business and location. Each major classification of American business — manufacturing, retailing, services, construction, wholesaling, and finance — is represented. Also, the Chamber has substantial membership in all 50 states. Positions on national issues are developed by a cross-section of Chamber members serving on committees, subcommittees, and task forces. More than 1,000 business people participate in this process.

We applaud the PBGC for this proposal and encourage the agency to finalize the proposed changes as soon as possible. As you are aware, any additional financial burden can be a significant hurdle for plan sponsors and can create a disincentive to maintaining retirement plans — particularly in the defined benefit plan space. Therefore, it is critical that these burdens be minimized to the extent possible. We believe the proposed rule considerably reduces burdens for defined benefit plan sponsors. Moreover, we appreciate the recognition by the agency that

> Over the years — especially in recent years — Congress has significantly increased PBGC premium rates. Since late payment penalties are a percentage of unpaid premiums, the penalties have gone up in proportion to the increase in premiums. While it is not unfair to impose larger penalties for late payment of larger amounts, PBGC is sensitive to the fact that a penalty assessed today may be several times what would have been assessed years ago for the same acts or omissions involving a plan with the same number of participants and the same unfunded vested benefits.[2]

We note that the proposed rule states that the changes would apply to late premium payments for plan years beginning after 2015. We encourage the agency to apply the changes as well to any penalty assessments for pre-2016 plan years where the penalty assessment has not yet been resolved. We believe this will advance

[1] 81 FR 25363, April 28, 2016.
[2] 81 FR at 25364.

the intent on the agency and the proposal. We also urge the PBGC to consider providing similar relief, on a case-by-case basis, in appropriate situations involving late premium payments for pre-2016 plan years where the penalty assessment has already been resolved under pre-2016 rules. For example, relief may be appropriate where the post-2015 conditions for relief are met for a pre-2016 plan year, the penalty that had been assessed and resolved under pre-2016 rules was both large and clearly disproportionate in relation to the facts and circumstances surrounding the late payment, and there is clear and convincing evidence that the late payment was the result of inadvertence rather than any attempt to underpay the PBGC premiums.

Furthermore, the Chamber applauds the agency for creating rules that lessen financial burdens while encouraging self-correction. We urge the agency to continue this trend and reiterate our recommendation that the PBGC create a correction program that is similar to correction programs at other agencies of jurisdiction.[3]

Thank you for your consideration of these comments. The defined benefit system covers millions of employees and pays out billions of dollars in pensions; thus, it remains a significant benefit for many workers and retirees. Consequently, any effort by the PBGC to make plan administration and maintenance less burdensome is sincerely appreciated by plan sponsors.

Sincerely,

Randel Johnson
Senior Vice President
Labor, Immigration &
Employee Benefits
U.S. Chamber of Commerce

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[3] The Chamber included this recommendation in a white paper, *Private Retirement Benefits in the 21st Century: Achieving Retirement Security* (https://www.uschamber.com/report/private-retirement-benefits-the-21st-century-achieving-retirement-security). Both the IRS and the DOL have established successful correction programs aimed at helping plan sponsors voluntarily correct errors. The IRS Employee Plans Compliance Resolution System (EPCRS) provides retirement plan sponsors with correction programs designed to voluntarily correct plan failures in order to maintain the tax-qualified status of their retirement plans. The EPCRS has three components: the Self-Correction Program, the Voluntary Correction Program, and the Audit Closing Agreement Program. See https://www.irs.gov/Retirement-Plans/EPCRS-Overview. The DOL has two voluntary self-correction programs for plan administrators who need help satisfying ERISA requirements: the Delinquent Filer Voluntary Compliance Program and the Voluntary Fiduciary Correction Program. See http://www.dol.gov/ebsa/publications/correctionprograms.html.