



August 5, 2016

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

Re: Mergers and Transfers Between Multiemployer Plans

To Whom It May Concern:

On behalf of the U.S. Chamber of Commerce, we submit this letter to the Pension Benefit Guaranty Corporation (PBGCC) in response to a request comment pertaining a proposed rule on Mergers and Transfers Between Multiemployer Plans which was issued on June 6, 2016.¹

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations, and dedicated to promoting, protecting, and defending America's free enterprise system. More than 96% of the Chamber's members are small businesses with 100 or fewer employees, 70% of which have ten or fewer employees. Yet virtually all of the nation's largest companies are also active members. 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.

Chamber members also include sponsors of multiemployer pension plans. Consequently, the Chamber has been engaged in multiemployer pension reform including the reforms in the Pension Protection Act of 2006, Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, and most recently the Multiemployer Pension Reform Act of 2014 (MPRA) contained in the Consolidated and Further Continuing Appropriations Act of 2015. In addition, we filed comments in response to a request for information on the Multiemployer Pension Reform Act of 2014; Partitions of Eligible Multiemployer Plans and Facilitated Mergers which was issued on February 18, 2015² and was a precursor to this proposal.

¹ 81 Fed. Reg. 36229 (June 6, 2016).

² 80 Fed. Reg. 8712 (Feb. 18, 2015).

Introduction

The purpose of this rulemaking is to implement statutory changes under MPRA affecting mergers of multiemployer plans and to reorganize and update the existing regulatory requirements applicable to mergers and transfers between multiemployer plans.

The enactment of the MPRA was welcomed by the Chamber and its employer members that contribute to multiemployer plans. As such, we encourage the PBGC to continue to move forward with rule-making that implements the intent and purpose of MPRA. The basic purpose of MPRA is to stave off insolvency of troubled multiemployer plans. Congress believed and we strongly concur that the best decision-makers as to how each multiemployer plan will approach its own problems are the plans' own trustees as informed by their actuaries and other consultants. For this reason, Congress established a framework of conditions, limitations, factors for consideration, protections, notices and procedures that all serve to observe and protect the interests of participants while permitting the plans wide latitude within such a framework. Consequently, our comments focus on ensuring that substance takes precedence over form and that all parties receive the information and assistance they need without being overly burdened.

Comments

Without Further Evidence of Need, the Chamber Recommends that the Plan Solvency Requirements Not be Increased. Section 4231.6(a)(1) of the proposal increases the threshold for assets after the merger or transfer from an amount equal or exceeding five times the benefit payments for the last plan year to ten times such payments. Similarly, section 4231.6(a)(2) increases the current test projecting that assets, expected contributions, and investment earnings will exceed expected expenses and benefit payments for five years to a ten year test. The agency gives very little reason for increasing these requirements. The only explanation is given in the preamble and it simply states, "... PBGC believes that the proposed changes will provide a better demonstration that benefits are not reasonably expected to be subject to suspension under section 4245 of ERISA as a result of insolvency."³ However, no further explanation or examples are given. Given that this is a substantially expanded burden for potential applicants, we believe there should be a more robust discussion of the need for this increase and any benefit it may provide to the agency and the retirement system. Without further evidence or explanation, the Chamber recommends that these requirements not be increased.

The Chamber Reiterates the Need for Flexibility in the Application Process. We appreciate the effort to align required documents with information that is already collected. Allowing applicants to use information that already exists will go a long way to ease administrative burden and costs.

As expressed on our response to the RFI, we continue to ask that plans be given as much flexibility as possible in the format of the application.⁴ As long as the information provided to

³ 81 F.R. at 36233.

⁴ See Chamber comments in response to a request for information on the Multiemployer Pension Reform Act of 2014; Partitions of Eligible Multiemployer Plans and Facilitated Mergers which were submitted on April 6, 2015. https://www.uschamber.com/sites/default/files/multiemployer_pbgc_rfi_on_partitions_and_mergers.pdf

the PBGC is clear and transparent, the format of the information should not matter. Our primary concern is that the agency receives the information it needs to make a determination without unduly burdening the plan. As such, the form of the information should not outweigh its function.

Furthermore, we ask for flexibility as the agency transitions to final rules. The preamble states that if a plan sponsor chooses to submit an application for a facilitated merger before the issuance of a final rule, then the plan sponsor may need to revise or supplement its request to take into account the requirements under the final rule.⁵ Again, we reiterate that flexibility is paramount and urge the PBGC to request such revisions or supplements only as absolutely necessary.

The Chamber Appreciates the Opportunity for Informal Discussions that Provide Clarification and Assistance. The proposal allows a plan sponsor to engage in informal discussions with the agency before filing a formal request for a facilitated merger.⁶ Having access to the agency for clarifying information will be extremely helpful to potential applicants and could result in a much more efficient process. In addition, we encourage these meetings to remain voluntary and with the primary purpose of providing assistance and not become an additional required step in the application process.

Conclusion

Mergers are a critical component of the reform provisions implemented in MPRA. To ensure the maximum benefit of these provisions, we ask that deference and flexibility be given to plan trustees as they are in the best position to understand the needs of the plan. The Chamber thanks you for your consideration of these comments and looks forward to working with you and other interested parties on this very important issue.

Sincerely,



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⁵ 81 F.R. at 36232.

⁶ Proposed Rule section 4231.3(d).