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Regulatory Affairs Group, Office of the General Counsel
Pension Benefit Guaranty Corporation
(RIN 1212-AB28)
1200 K Street N.W.
Washington, DC 20005-4026.

Re: Multiemployer Pension Reform Act of 2014; Partitions of Eligible Multiemployer Plans and Facilitated Mergers -- Request for Information

Dear Sir or Madam:

Thank you for the opportunity to provide information on this matter of great importance to Segal Consulting (Segal) and its multiemployer clients. 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 the largest number of multiemployer plans.

Before addressing the specific questions set forth in the Request for Information (RFI), we wish to note a preliminary matter, that, under the Employee Retirement Income Security Act (ERISA), the Pension Benefit Guaranty Corporation (PBGC) exists for very important purposes including encouraging “the continuation and maintenance of voluntary private pension plans for the benefit of their participants” and providing for “the timely and uninterrupted payment of pension benefits to participants and beneficiaries.” In light of the deteriorating financial circumstances facing a segment of the multiemployer plan population, and the new tools provided under the Multiemployer Pension Reform Act of 2014 (MPRA), PBGC has an unprecedented opportunity to further fulfill its statutory purposes in a very real way.

Principles for Forthcoming Guidance

In addition to the specific comments we make in response to the questions below, we urge that the forthcoming guidance reflect the following principles:

Use Suspension Plus Partition to Save More Plans. MPRA was enacted to provide additional tools to help keep deeply troubled plans from insolvency. The new partition rules recognize that, for some plans, even taking all reasonable measures to avoid insolvency -- including suspension of benefits to the maximum extent possible -- will not

allow the plan to avoid insolvency (these plans are referred to hereafter in these comments as “maximum suspension plans”). For those plans, the additional step of partition can make the difference. Guidance should reflect the fact that the combination of suspension and partition is a highly flexible tool that can:

- Prevent projected insolvencies for maximum suspension plans and maintain those plans for the benefit of participants;
- Reduce PBGC’s expected long term loss and premium needs; and
- Result in an outcome that will be in the best possible interests of the affected plan participants and beneficiaries, compared to the alternatives.

Continue PBGC’s Early Involvement. Because suspension alone will not permit a maximum suspension plan to avoid insolvency, suspension is not permissible in such a plan unless PBGC is willing to partition it. Suspension is a long and costly process. It is not in the interests of either a maximum suspension plan or PBGC for trustees to apply for a suspension without preliminary feedback from PBGC on the feasibility of partition. PBGC has always been open to early discussions of possible transactions and to providing informal preliminary views. Nothing in the guidance should inhibit or close off that process in the context of partition.

Accelerate Partition Determinations. As noted above, for a maximum suspension plan, there is no reason to undertake the cost and disruption of a suspension application unless the trustees have reason to believe that PBGC will likely approve a partition. Because an approved suspension cannot be implemented before the effective date of the related partition, and because the magnitude of any needed partition typically increases with time, the guidance (and any related internal procedures) should permit PBGC to issue a partition order prior to, but conditioned upon approval and implementation of, the suspension.

- We strongly encourage both PBGC and Treasury to issue their approvals considerably earlier than the 225 days permitted under the statute for suspensions.

Permit Flexibility in Identification of “Partitioned Participants.” The statute does not allocate responsibility for identifying which participants and related liabilities go to newly created partition plans. These “partitioned participants” could be active participants, terminated participants, pay-status participants, participants of withdrawn employers, some combination of any of those participants, or some other grouping designed to secure PBGC approval. Guidance should reflect the fact that trustees will have reasons for making their selection of partitioned participants. However, guidance also should permit PBGC and the trustees to adjust the magnitude of the proposed partition and the identity of the partitioned participants in order to expedite approval. This flexibility also would enable resolution of any issues related to the trustees’ determination that they had taken all reasonable measures to avoid insolvency or the determination of projected solvency under the “achieve, but not materially exceed” criteria.

Minimize Plan Expenses. With regard to the application process, the suspension and partition application process will be expensive given the likely actuarial, administrative, communications, consulting, and legal costs. In order to minimize these expenses, any additional information required in the partition (or facilitated merger) process should be tailored to the circumstances and resources of the plan seeking approval. With regard to administrative expenses, the statute provides that the trustees and administrator of the plan applying for partition must also be the trustees and administrator of the newly created partition plan. It is in the interest of both the plans and PBGC to minimize administrative costs. Guidance should not disturb administrative processes developed or already in place, provided they are auditable and participants and beneficiaries are protected.

Approval of Financial Assistance for Facilitated Merger. As revised by MPRA, the merger rules of ERISA §4231 specify the conditions under which PBGC provides financial assistance to facilitate a merger. Those rules do not specify any suspension as a condition for such a merger, and certainly do not contemplate maximum suspension as required for partition. Guidance should provide that each request for financial assistance for a merger will be analyzed individually on a risk-adjusted basis and indicate that all parties should take into consideration the expenses associated with the suspension process and the risk that there will be a negative ratification vote as part of the analysis. An example of why this is important follows: assume that PBGC's financial exposure for a plan projected to be insolvent is \$10 million. Also, assume that PBGC concludes that, with a maximum suspension, it could provide financial assistance worth \$8 million, but without any suspension, it would have to provide assistance worth \$9 million to accomplish the merger. Requiring the maximum suspension would not be the optimum choice if there is a greater than 50% risk that the participants will vote down the suspension (particularly if the \$8 million estimate does not factor in the suspension process costs). Expressed more generally, guidance should not result in the automatic imposition of the same requirements, such as suspension or a certain type of projection, on every proposed merger because although each requirement might be appropriate in some cases, it might not be appropriate in many others.

RFI Questions

Issues Affecting Both Partitions and Facilitated Mergers

1. ***Application Process:*** With respect to MPRA's changes to the rules governing mergers and partitions under sections 4231 and 4233 of ERISA, respectively:

a. **On which aspects of the application process would guidance be needed or helpful?**

Generally, guidance should be provided with respect to the form and content of each type of application (facilitated merger or partition) and also provide submission information (e.g., appropriate electronic or street address).

With regard to facilitated mergers, guidance should indicate the extent to which current regulations at 29 CFR §4231 apply, and what additional information is required, particularly for an application including a request for financial assistance.

With regard to partition, it is particularly important that guidance with respect to the application indicate the information, documents, data and actuarial projections needed for the application to be complete, including a detailed description of the required contents of written material with respect to trustee determinations and actuarial projections. Such guidance should factor in criteria such as plan size and projected insolvency timeframe so that the magnitude and extent of information and analyses required can be tailored to the needs of each situation. It also would be helpful if guidance called for the trustees to be notified at the time an application is deemed complete.

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:

a. **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?**

The following types of information should already be available to all plans at the time of a facilitated merger or partition application (and in the case of a suspension, any information provided to Treasury for the suspension application would also be available):

- Certification of critical and declining status
- Plan document, amendments and SPD
- Rehabilitation plan document and updates
- Written documentation that the trustees have taken, and are taking, all reasonable measures to avoid insolvency

- Most recent actuarial valuation reports
- Most recent Form 5500 filings
- Census data used for most recent actuarial valuation and projections that are provided
- Projections of pre-suspension/pre-partition/pre-merger plan cash/flows and asset values illustrating the expected insolvency year
- Projections of post-suspension/pre-partition/pre-merger plan cash flows and asset values illustrating the expected insolvency year
- Projections of post-suspension/post-partition/post-merger plan cash flows and asset values illustrating the expected solvency

Additional information, such as sensitivity analyses or stochastic projections, might be available for some plans. To the extent possible, in order to conserve plan resources, PBGC should limit its request for information to that which the plan already has or that it could easily develop. Plans seeking partitions or PBGC financial assistance for mergers are already in precarious financial situations.

In the partition situation, PBGC should be able to obtain any additional information the plan has already provided, or will need to include, with the suspension application to Treasury.

b. What issues arise in demonstrating solvency over an extended duration?

The ERISA §305(e)(9) avoidance of insolvency certification does not have a limited duration, unlike the required 15 or 20 year solvency projections for the critical and declining status certification, or the required 31 year projection for the critical status emergence certification. Therefore, any guidance should confirm that the actuary must be able to certify that the plan is projected to avoid insolvency *indefinitely*. In general, any guidance should state that the plan actuary's determination of whether a plan is "projected to avoid insolvency" indefinitely for this purpose shall be based on solvency projections using reasonable actuarial methods and assumptions. Guidance also could indicate that the plan actuary's solvency projections should extend up to and beyond the year in which it can be demonstrated that the plan's assets are projected to start increasing (or will be sufficient to pay all remaining plan benefits for a closed plan with no future entrants and accruals).

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

For small multiemployer plans, the biggest concerns are the expense, effort and resources needed for either (a) suspension and partition approvals or (b) PBGC financial assistance for a facilitated merger if suspensions will be required.

Small plans often lack automated systems with complete historical electronic information, and rely instead on paper files (which might have been relegated to a storage facility or for

whatever reason might no longer be available), and also often have limited resources in terms of both finances and staff. The result is incomplete or unavailable documentation and hard-to-retrieve (or missing) participant information. In addition, small plans frequently have small budgets for analysis and communication of changes.

Some additional special concerns of small plans include:

- Limited ability or financial means to utilize actuarial, financial, consulting or legal experts to assist with demonstrating and documenting that they have taken, and are continuing to take, all reasonable measures to avoid insolvency, or to prepare the suspension and partition applications and notices with individualized estimates;
- Difficulty in obtaining service data for participants and beneficiaries in pay status;
- Difficulty in calculating guaranteed benefits; and
- Difficulty identifying affordable technical expertise.

4. ***Participants and Beneficiaries: What special concerns do participants and beneficiaries in multiemployer plans have regarding the process for considering applications for partition and facilitated mergers?***

Participants and beneficiaries will likely find the partition process upsetting and confusing, both because of the benefit suspension and because of the unique structure that partition creates.

ERISA §305(e)(9)(H)(iv) (as added by MPRA) states that it is the sense of Congress that the specific steps that plan sponsors should take, and the methods they use, to inform participants about suspensions should depend “on the size and resources of the plan and geographic distribution of the plan’s participants.” Any PBGC guidance with respect to required participant communications concerning facilitated mergers or partitions should be similarly scalable and flexible.

In addition, to address some of the concerns participants and beneficiaries are likely to have, PBGC could:

- Offer resources (i.e., staff time) to help answer participant questions.
- Create a page on PBGC’s website explaining what a partition is and how it works, including frequently asked questions.
- Conduct webinars and otherwise appear publicly to address practitioner and plan sponsor questions.
- Provide plan sponsors with sample communication materials to address these concerns and questions.

Issues Affecting Partitions Only

5. Notice: With respect to the requirement under section 4233(a)(2) to provide notice to participants and beneficiaries not later than 30 days after submitting the application for partition:

a. How can PBGC reduce the burden of providing the notice under current law, while still providing important information to participants and beneficiaries? Should PBGC consider issuing a model notice in future guidance?

It would be most helpful for PBGC to issue a model partition notice for participants and beneficiaries. Partition involves the division of post-suspension benefits between the original plan and a new partition plan. Because a partition will not change the total post-partition benefits for any participant or beneficiary, the model notice needs only to emphasize that fact and contain examples of how benefits are divided between the two plans. The model notice should permit reference to the benefit suspension notice, which will have individualized estimates of the total post-suspension benefit amounts.

As noted in our discussion of principles, guidance should reflect the goal of minimizing expenses associated with partition. For example, to reduce mailing expenses, guidance should permit the suspension and partition applications to be timed so that it is necessary to send only one combined notice that contains the information needed for both the benefit suspension notice and the partition notice.

b. What type(s) of information would participants and beneficiaries find most helpful?

It would be most helpful for participants and beneficiaries if the model notice included the following information:

- An explanation of the concept of partition, including that partition could result in a portion of their total benefits (after suspension) being divided between two plans – the new partition plan funded by financial assistance from PBGC and the original plan funded by existing assets and contributions from employers. Examples of how benefits could be split between the two plans could be included in an attachment.
- The trustees of the current plan also will be the trustees of the new partition plan and administration of the two plans will be coordinated.
- Contact information for both plans (which will be the same) and PBGC.

Although partition will not change the total amount of post-suspension benefits for any participant or beneficiary, the payment security risk is different for the two plans: PBGC guaranteed benefit payable from the new partition plan is backed only by PBGC. The benefit payable from the original plan, however, has an extra layer of protection in that it is paid from plan assets and also guaranteed by PBGC up to the guaranteed benefit limit in the event that the ongoing plan becomes insolvent in the future. The model notice also

should explain this to the participants and beneficiaries and note the risk of PBGC multiemployer program becoming insolvent.

- c. **Given that the amount of liabilities required to be transferred in a partition may not be known at the time notice is issued, how should the notice reflect the requirements of section 4233(e)(1), which ensure that affected participants and beneficiaries will receive no less than they would have received prior to the partition (taking into account benefit suspensions under section 305(e)(9) and any plan amendments following the partition effective date)?**

As suggested in subsection b., above, the notice should advise participant and beneficiaries that their payments may come from one plan or that payments may come from two plans. However, the important item to make clear is that the total post-suspension benefit payments will not change.

It is likely that, at the time of the partition notice, the trustees will not know which participant benefit liabilities, if any, will be approved by PBGC for transfer to a new partition plan. Guidance should not require specific notice to partition-affected participants and beneficiaries until the suspension and partition have been approved. Once suspension and partition have been approved, the partition-affected participants and beneficiaries should be notified and the appropriate information provided (e.g., the split and timing of the first affected benefit payment in the case of a pay-status participant).

6. ***PBGC Determination: For purposes of the requirement under section 4233(b) that PBGC determine, in consultation with the Participant and Plan Sponsor Advocate, that the plan sponsor has taken (or is taking concurrently with an application for partition), all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 432(e)(9) of the Code:***

- a. **What actuarial, economic, industry, or other information could a plan sponsor provide to make such a showing? What information or analysis might be difficult to provide?**

The suspension application likely will require that the trustees describe the factors they considered in determining that they are taking all reasonable measures to avoid insolvency. This raises the challenging question of whether the trustees should have required higher or lower contributions and reduced benefits further in their rehabilitation plan and schedule(s). As recognized in the factors listed in Code §432(e)(9)(C)(ii) for possible consideration by the trustees with respect to their all reasonable measure determinations, plans can remain solvent if employers continue to participate and bargaining groups remain in the plan. Neither group will participate if contributions are too high relative to the benefits that active workers will accrue.

In preparing the rehabilitation plan and updates, and applying for suspension and partition, the trustees will have concluded they have taken all reasonable measures. The rationale for that conclusion should have been memorialized in various documents. The

extent of documentation, actuarial analysis and financial evaluation will vary widely among plans, depending on plan resources and case specific facts. For some plans, the trustees' conclusions will have been obvious and modest supporting documentation (with the associated expenses for expert assistance, reports and projections) will exist. For other plans, the issues will have been more complex.

PBGC should apply the clearly erroneous standard that applies in suspension when considering the record the trustees have created. In drafting guidance and in requests for further information, PBGC should take into consideration the cost and delay caused by a request to produce documents beyond those already maintained by the plan.

b. With respect to the consultation process under section 4233(b)(2), how can the Participant and Plan Sponsor Advocate best assist PBGC in making its determination under this section?

The Participant and Plan Sponsor Advocate (Advocate) should review the information submitted, consult with the trustees and plan advisors if necessary to clarify why additional measures would not be reasonable, provide PBGC with the results of the review and serve as advocate for the participants and trustees once the Advocate has ascertained that partition would be in the best interest of the plan participants and beneficiaries.

7. *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:

a. *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 suspension 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.

As noted in our discussion of principles, a primary objective should be to expedite both suspension and partition approval so that both approvals are given in less than 225 days. Delays in approval result in the need for larger partitions and increase PBGC's long term risk. PBGC has the statutory authority to vary the magnitude of the partition that it will approve, so approval should not be delayed because of different but reasonable judgment calls with regard to actuarial assumptions, "achieve, but not materially exceed" solvency determinations and "all reasonable measures" determinations.

- b. 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.**

This problem can be mitigated if PBGC commits itself to addressing partitions well within 225 days as we recommend above. Also, as noted in our discussion of principles, a partition approval order could be conditioned upon approval and implementation of the suspension, and if it were, it would be optimal to have the suspension and partition effective dates be the same day, regardless of whether the applications were concurrent or sequential (or which application was submitted first). Coordination of effort among the agencies to set that joint effective date and communicate it at the first opportunity to the trustees is important to the process.

- c. 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.**

The "achieve, but not materially exceed" criteria can be determined in various ways by trustees. Depending on the circumstances and plan resources, trustees can base their determination upon a single deterministic actuarial projection, a set of deterministic actuarial projections to reflect sensitivity analysis, or a stochastic projection. Regardless of the approach used, the amount of liabilities to be transferred could be varied by the trustees and PBGC to expedite approvals of the suspension and partition and the necessary demonstration that this "achieve, but not materially exceed" criteria has been satisfied.

- 8. 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).**

- a. 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?**

As previously mentioned, the trustees will have had the plan actuary develop solvency projections as part of the suspension and partition submission process. These will include cash flow projections. The submissions will identify the benefits that would be suspended to the maximum extent permissible, the guaranteed benefit liabilities proposed for transfer to the new partition plan, the benefit liabilities proposed to remain in the original

plan, the projected continued solvency of the original plan and the estimated amount of financial assistance the new partition plan will need in each future year. It would not appear that PBGC would need any additional information (beyond the actuarial reports containing these projections and the supporting participant data provided to the plan actuary to prepare these reports) in order to make its determination.

b. What administrative or operational issues (e.g., recordkeeping, benefit processing, allocation of expenses) arise in connection with this change?

The administrative and operational issues of post-MPRA partitions are similar to, though more complex than, those of PBGC approved pre-MPRA partition that involved splitting participants' benefits between the new partition plan and the original ongoing plan to reflect the portion of participants' benefits that were attributable to service with a bankrupt employer. Experience has shown that trustees will need time, flexibility and case specific advice from PBGC to deal with certain administrative and operational issues, but how they deal with those issues will depend on the administrative structure and systems of the plan being partitioned.

The initial administrative hurdle will be the task of obtaining the service data for all participants and beneficiaries (especially those in pay status) to determine actual PBGC guaranteed benefits. This task will be more daunting for plans that will have to research old paper files (some of which may be incomplete or no longer available). Thereafter, the recordkeeping burden will be greater because of the need to allocate the post-suspension benefits between two plans beginning on the (presumably) concurrent suspension/partition date. Recordkeeping for the two plans will need to be coordinated because participants will receive benefits from each plan's separate trust account. Systems may need to be enhanced and linked for the operation of the two related plans, and the processing of benefits upon retirement, death and disability. Expenses also will have to be allocated appropriately between the two plans. Because PBGC financial assistance provides the funds to pay expenses of the new partition plan, guidance on appropriate expense allocation methodologies would be helpful.

c. Are there additional issues that arise with respect to the transfer of the plan's liabilities for particular groups of individuals?

A participant's total benefit is not affected by whether his or her liabilities remain in the original plan or go to the new partition plan (assuming PBGC's continued solvency). However, the administrative and operational transfer issues are more challenging for active participants than non-active participants and beneficiaries, especially if the original plan provides future benefit accruals. Administratively, it would be simpler if liabilities of only non-active participants are transferred to the new partition plan.

QDROs present special issues in the implementation of benefit suspensions. Dividing a benefit subject to a QDRO between the original plan and the new partition plan as a result of partition will present additional challenges for administrators. Guidance on the principles for making such divisions would be very helpful.

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

- a. **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?**

Critical and declining plans, and their advisors, are, and will be, gathering the data to calculate PBGC guaranteed benefits, analyzing whether seeking suspensions and partition will be in the best interests of the plan participants, designing suspensions and partitions, and preparing to develop suspension and partition applications and notices. Their focus has been on these more urgent matters. PBGC will receive more informed comments with regard to potential post-partition issues if it reissues these post-partition questions in a future RFI, after trustees and their advisors have had the opportunity to consider the issues further and gain experience.

- b. **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?**

For the first 10 years following partition, the two plans appear to be treated as one plan for purposes of withdrawal liability. In the event of an employer's withdrawal during that period, it appears withdrawal liability payments go solely to the original plan and not the new partition plan. This result appears to be consistent with the statutory scheme for partition in which the new partition plan does not have any assets. Guidance should, however, clarify this point.

It also appears that, for employers that withdrew prior to the partition and are paying their withdrawal liability through the date of the partition order, payments remain with the original plan after the partition even if liabilities attributable to that employer's employees are transferred to the new partition plan. This point also should be clarified. After the 10-year period, it appears that if an employer withdraws from the original plan, liabilities of, and any assets from PBGC financial assistance to, the new partition plan are excluded for purposes of determining unfunded vested benefits and the employer's withdrawal liability. Guidance should clarify this point and also how the financial assistance loan to the new partition plan might be treated for purposes of determining unfunded vested benefits for the initial 10-year period.

- c. **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?**

We suggest that PBGC reissue these post-partition questions in a future RFI after trustees and their professional advisors have had the opportunity to consider the issues further and gain experience.

- d. **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?**

No additional oversight by PBGC appears to be needed at this time.

Issues Affecting Facilitated Mergers Only

10. **Technical Assistance:** MPRA provides a non-exclusive list of the types of non-financial assistance that PBGC may provide in the context of a facilitated merger (e.g., training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies).

- a. **For purposes of a facilitated merger, which of these types of assistance would plan sponsors and professional advisors find most helpful?**

The type and degree of assistance that would be helpful will vary by plan and will depend on the plan's resources and professional advisors' expertise. If suspension is part of the merger, PBGC's consultative role with Treasury should prove helpful.

Additionally, PBGC could identify and bring together plans that are potential merger partners, including situations that might be eligible for assistance in the form of a facilitated merger.

- b. **Are there other examples of non-financial technical advice that would help facilitate multiemployer mergers?**

Over time, other assistance needs may arise. At this time, the new statutory provisions added by MPRA appear to provide enough flexibility for PBGC's involvement with mergers. No guidance appears to be necessary in this area at this time.

11. **PBGC Determination:** For purposes of the facilitated merger requirement under section 4231(e)(1) that PBGC determine, in consultation with the Participant and Plan Sponsor Advocate, that the transaction is in the interests of the participants and beneficiaries of at least one of the plans and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of the plans:

- a. **What actuarial, economic, industry, or other information could the plan sponsors of the plans involved in the proposed merger provide to make such a showing?**

If a suspension is a component of the merger, the information provided to Treasury in the suspension application should be sufficient for purposes of evaluating the plan applying for suspension. The relevant available information for the other merger partner(s) can also be provided to PBGC. In addition, the application for the facilitated merger could contain an explanation of why the trustees believe that the merger is not reasonably expected to be adverse to the overall interests of the

participants and beneficiaries of the plans. If there is no suspension application, PBGC should only need information similar to the non-suspension related material that would be submitted to Treasury for suspension,

As for the determination of whether the merger is in the best interest of participants and beneficiaries of at least one of the plans and not adverse to the overall interests of participants and beneficiaries of any of the plans, PBGC should provide flexibility to the trustees. The Advocate should take as true the trustees' determination that the standards have been met, unless the Advocate finds it clearly erroneous.

b. With respect to the consultation process under section 4231(e)(1), how can the Participant and Plan Sponsor Advocate best assist PBGC in making its determination under this section?

The Advocate should serve as the trustees' and participants' advocate to PBGC once the Advocate has ascertained that PBGC assistance in facilitating the merger would be in the best interest of the participants of the plan and is not reasonably expected to be adverse to the overall interests of the participants and beneficiaries of any of the plans.

12. *Concurrent Applications:* What procedural issues do plan sponsors and their professional advisors anticipate in connection with a decision to request assistance from PBGC for a facilitated merger under section 4231(e) of ERISA, concurrently with an application for suspension of benefits from the Department of Treasury under section 432(e)(9) of the Code?

We believe that PBGC is authorized to, and should, provide financial assistance to facilitate a merger without requiring a plan to suspend benefits to the maximum extent permitted, provided that the requirements under ERISA §4231 have been satisfied. If financial assistance is conditioned on suspension, the coordination of the two processes is essential.

Signature: _____



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