The
ERISA
Industry
Committee

November 24, 2014

Legislative and Regulatory Department
Pension Benefit Guaranty Corporation
1200 K Street NW
Washington, DC 20005-4026

RE: Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums

Ladies and Gentlemen:

The ERISA Industry Committee ("ERIC") is pleased to respond to the request of the Pension Benefit Guaranty Corporation ("PBGC") for comments on the Proposed Submission of Information Collection for OMB Review for the Payment of Premiums (the "Information Collection Request").[1] We recognize the PBGC's interest in collecting information related to payouts to certain former employees. ERIC's comments, based on input from our members, are intended to provide helpful recommendations in order to ensure that the PBGC collects information that represents data related to the transactions subject to the Information Collection Request (and does not inadvertently over or under-report relevant data). In addition, we would like to take the opportunity to provide some background information regarding de-risking transactions that we believe the PBGC will find helpful as it begins to collect data related to these activities.

ERIC is a strong supporter of the defined benefit system and is in a unique position to educate policymakers on the motivations and goals of large plan sponsors related to their defined benefit plans. We believe the PBGC should support the efforts of plan sponsors who continue to offer and/or administer defined benefit plans. Plan sponsors continue to require flexibility to respond effectively to outside challenges including economic, financial, political and global events that impact the management and administration of defined benefit plans.

ERIC'S INTEREST IN THE INFORMATION COLLECTION REQUEST

ERIC is a nonprofit association committed to the advancement of the employee retirement, health, and welfare benefit plans of America's largest employers. ERIC's members provide comprehensive retirement, health care coverage, incentive, and other economic security benefits directly to some 25 million active and retired workers and their families. ERIC has a strong interest in proposals that would affect its members' ability to provide secure retirement benefits in a cost-effective manner.

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[1] PBGC, *Proposed Submission of Information Collection for OMB Review; Comment Request; Payment of Premiums*, 79 Fed. Reg. 56831 (Sep. 23, 2014).

SUMMARY

The following is a summary of ERIC's comments, which are described in greater detail below:

- Plan sponsors can increase the strength and duration of their defined benefit plans through a variety of de-risking methods. The PBGC should support the efforts of companies that continue to sponsor and/or administer defined benefit plans.

- The Information Collection Request is somewhat vague and open-ended with respect to the type of information that the PBGC plans to collect. The PBGC should provide additional clarification with respect to the data that needs to be reported.

DETAILED COMMENTS

I. Plan sponsors can increase the strength and duration of their defined benefit plans through various de-risking methods.

A. The number of defined benefit plans has been steadily declining and the plans are posing financial challenges to the companies that sponsor them.

Reports from the U.S. Department of Labor ("DOL") indicate that the number of defined benefit plans has been steadily declining over the last 20 years.[2] Historical data from the DOL reflects that the total number of defined benefit plans sponsored by private employers has declined from 103,346 plans in 1975 to 43,718 plans in 2012.[3] Similarly, the total number of active participants in defined benefit plans has declined from over 27 million in 1975 to fewer than 16 million in 2012. A review of Fortune 500 companies found that 80% of companies had a defined benefit plan open to new entrants in 1995, while only 31% had a plan open to new entrants in 2011.[4]

Plan sponsors must have flexibility to address the variety of risks associated with their defined benefit plans. For example, market volatility, changes in inflation and interest rates, and increasing life expectancy create many different risks to defined benefit plan sponsors. If these risks are not properly managed, they can impact the value of a plan sponsor's market capitalization as well as its credit rating, ability to obtain capital, and cash flow.

A number of factors have magnified the impact that defined benefit plans have on a plan sponsor's financial outlook. Recent regulatory changes, including more stringent requirements imposed by the Financial Accounting Standards Board ("FASB") and the Securities and Exchange Commission ("SEC"), have impacted how defined benefit plan liabilities are reflected on companies' balance sheets. The requirement to include a "snapshot" of defined benefit plan liabilities (that are long-term liabilities by nature) on companies' balance sheets led to significant volatility in overall liabilities from year to year. Increases in pension funding requirements (included in the Pension Protection Act of 2006) followed by the 2008 economic recession provided a "double blow" to

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[2] Since 1995, the number of private pension plans has decreased by 37%. Since 2008, the number of private pension plans has steadily decreased by more than 500 plans each year.
[3] Dep't of Labor, *Private Pension Plan Bulletin Historical Tables and Graphs* (Sep. 2014).
[4] Aon Hewitt, *Lump Sum Payments for Terminated Vested Participants* (Mar. 8, 2012).

companies with defined benefit plans. The increases in funding requirements were followed immediately by a major recession that limited companies' access to credit and reduced the value of their plans' assets.

Companies' cash flows have been severely and negatively impacted by a "perfect storm" of more stringent rules, economic developments and financial events. Companies were forced to make significant additional contributions to their pension plans while managing the sudden and negative impact of the recession on their companies' core service/products. In addition, the broad swings in the stock market and the Federal Reserve's policy of low interest rates for the past number of years have directly and negatively impacted both the assets and liabilities of defined benefit plans. Significant volatility in asset returns and increases in pension liability calculations have resulted in an environment of uncertainty for plan sponsors of defined benefit plans. The dynamics of low interest rates and uneven stock market returns have resulted in higher defined benefit plan contributions in an environment of slow economic growth.

The end result is that companies have been forced to contribute additional cash into their defined pension plans rather than invest in their underlying core businesses, including research and development, capital investment, corporate expansion, and expansion of their workforce. As sponsors of defined benefit plans, ERIC members support the need to create reasonable and transparent funding rules. However, as defined benefit plans have liabilities that are, by nature, long-term, we believe that the rules and policies related to these plans should reflect the long-term nature of the plans' investments and liabilities.

As discussed below in detail, there are rising administrative costs associated with sponsoring defined benefit plans. For example, the amount of PBGC premiums will double (for flat-rate premiums) and triple (for variable-rate premiums) between 2012 and 2016. Many Treasurers and financial experts working for companies with well-funded plans are questioning the efficiency and effectiveness of the increases in administrative costs associated with their defined benefit plans. As a result, they are exploring alternatives that provide appropriate and perhaps improved operational efficiencies with respect to these plans. Additionally, companies who operate in a global marketplace or compete with many "new economy" technology companies need to ensure that they are and remain competitive. Unfortunately, many international competitors of U.S. companies or "new economy" technology companies often do not sponsor defined benefit plans. Therefore, U.S. companies are forced to aggressively manage the risks associated with defined benefit plans in order to remain competitive and successful in their respective industries.

B. Many companies want to continue to sponsor defined benefit plans and use a variety of techniques to enable them to do so.

Many companies want to continue to sponsor their defined benefit plans and use a variety of techniques in order to do so. A 2013 survey found that more than 70% of companies whose defined benefit plans are open to new entrants expect to continue to offer a plan to all employees in five years.[5] A 2012 survey similarly found that 80% of plan sponsors with open plans were not expecting to make changes.[6]

[5] Towers Watson, *U.S. Pension Risk Management — What Comes Next?* (Nov. 2013).
[6] Aon Hewitt, *Lump Sum Payments for Terminated Vested Participants* (Mar. 8, 2012).

Companies use a variety of approaches to manage the risks associated with their defined benefit plans. The 2013 survey found that 75% of responding companies had either implemented or were planning to implement a plan to minimize the risks associated with their defined benefit plans.[7] The 2013 survey also found that 80% of responding companies expected their focus to be on risk reduction in the following two to three years rather than seeking higher investment returns related to defined benefit assets.

The 2013 survey also found that half of responding plan sponsors were looking to transfer some or all of their pension plan obligations off their balance sheets. These de-risking transactions provide plan sponsors with options to safely and legally transfer the lifetime income benefits to companies whose core business is managing long-term risk and liabilities – insurance companies. Prior to the recent resurgence of these de-risking transactions, plan sponsors had little option but to freeze their defined benefit plans to new entrants. Data indicates that the plans of 70% of responding companies were no longer open to new participants.[8]

Plan sponsors are taking aggressive steps to manage their pension plan liabilities with the goal of reducing long-term risk. A recent development within defined benefit plan management is evaluating plan risk through the lens of different "classes" or "sectors" of workers, including active, deferred vested and in pay-status. Although the labels for these worker classes are not new, managing and tailoring the defined benefit plan risk strategies tailored to each of these worker sectors is a relatively new approach. Companies use a variety of investment approaches to minimize risks associated with inflation, interest rates, and market volatility. One option related to this approach is to offer annuities to defined benefit plan participants and beneficiaries through reputable and heavily regulated insurance companies. Specifically, employers are exploring options (and some have executed transactions) that transfer deferred vested and retirees in pay status to outside insurance companies. Plan fiduciaries carefully evaluate the annuities available for participants in accordance with guidelines established by the U.S. Department of Labor.[9]

Many companies have been purchasing annuities through outside insurance companies for participants for decades. Insurance contracts used to be a popular method for funding pension benefits and transferred longevity and investment risk to insurance companies. The current de-risking practice of purchasing annuities reflects a full circle return to the manner in which defined benefit plans used to be operated.

Fiduciaries purchasing annuities for participants often select insurance companies that have many years of experience (some with over 100 years of experience), that have demonstrated financial solvency during this time, and whose core business is providing annuities. Furthermore, a strong network of state insurance commissioners and departments of insurance heavily regulate the insurance companies that provide participants with retirement annuities.

One criticism of de-risking transactions involves the loss of PBGC "back-stop" insurance for participants' benefits. However, these critics fail to appreciate the fact that participants who receive annuities as a part of these transactions are also assured to receive their full pension benefit, are not dependent on the continued success of the plan sponsor, and, therefore, will not experience any

[7] Towers Watson, *U.S. Pension Risk Management — What Comes Next?* (Nov. 2013).
[8] *Id.*
[9] Dep't of Labor, *Interpretive Bulletin 95-1*.

benefit cutbacks under a benefits payment system under a PBGC takeover of the company pension plan.

Defined benefit plans often include lump sum distribution options, which are popular among plan participants. A 2013 survey found that 58% of respondents offered or planned to offer lump sum payments to former employees without terminating their plans.[10] Unrelated to the recent de-risking transactions, lump sums payouts that are already included in defined benefit plans exhibit a significant take-up rate by defined benefit plan participants.[11] A recent study found that when no restrictions were placed on lump sum distributions, only 44% of participants in traditional defined benefit plans and 22% of participants in cash balance plans elected annuities.[12]

Purchasing annuities and offering lump sums also reduces the companies' risks with respect to PBGC premiums. Recently-enacted legislation increased the amount of premiums owed by single-employer plan sponsors in 2012 by $8.9 billion over 10 years and in 2013 by $7.9 billion over 10 years.[13] These increases essentially doubled the flat-rate premium from $35 per participant in 2012 to $64 per participant in 2016, and tripled the variable-rate premium from $9 per $1,000 of underfunding in 2012 to $29 per $1,000 of underfunding in 2016. Furthermore, the Administration's budget proposal for fiscal year (FY) 2014 would have allowed the PBGC to set its own premiums, raising $25 billion in revenue over 10 years. As a result, companies cannot reliably predict the amount of premiums they will need to pay in future years. A recent study found that this uncertainty hinders investment, endangers jobs and restricts economic growth.[14]

Companies also consider plan design changes that enable them to continue to sponsor defined benefit plans. A recent survey found that 25% of all defined benefit plans are cash balance plans, up from 2.9% in 2001.[15] The recently released final regulations on cash balance plans provide the regulatory certainty that plan sponsors need in order to design and sponsor the new generation of defined benefit plans. We expect to see increases in sponsorship of cash balance plans in the future.

C. The PBGC should support companies that strive to maintain their defined benefit plans.

By allowing companies to have flexibility and choice with respect to approaches to managing retirement plans, policymakers can support companies in their efforts to continue to provide their workers with retirement benefits through pension plans. We believe this goal falls squarely within the PBGC's mission – ensuring that plan sponsors have the appropriate tools to manage pension plans

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[10] Towers Watson, *U.S. Pension Risk Management — What Comes Next?* (Nov. 2013).
[11] A report from the Employee Benefit Research Institute (EBRI) indicated "many of these plans also offer the alternate option of a lump-sum distribution". Employee Benefit Research Institute (EBRI), *Annuity and Lump-Sum Decisions in Defined Benefit Plans: The Role of Plan Rules* (Jan. 2013). Data from the Bureau of Labor Statistics from 2000 also states "44 percent of all workers in defined benefit plans were offered some type of lump-sum benefit option." Bureau of Labor Statistics, *Distribution of retirement income benefits* (Apr. 2003).
[12] The data combined plans across the years 2005-2010 and reflects workers who made their payout decision between ages 50 and 75 and had a minimum job tenure of five years and a minimum account balance of $5,000. Employee Benefit Research Institute (EBRI), *Annuity and Lump-Sum Decisions in Defined Benefit Plans: The Role of Plan Rules* (Jan. 2013).
[13] Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141); Bipartisan Budget Act of 2013 (P.L. 113-67).
[14] The Pension Coalition, *Increasing Pension Premiums: The Impact on Jobs and Economic Growth* (May 2014).
[15] Kravitz, Inc., *2014 National Cash Balance Research Report*.

within the current economic, political, and global pressures. Furthermore, the purchase of annuities and lump sum distributions by plan sponsors will not increase the risk that defined benefit plans pose to the PBGC. Instead, they reduce the exposure that the PBGC has for these plans by reducing the number of participants who might someday need to rely on the PBGC guarantee.

The PBGC should adopt policies that are designed to support and encourage companies that want to maintain defined benefit plans, including cash balance plans. As discussed above, many companies want to continue to sponsor their defined benefit plans, but need to minimize the risks associated with them. De-risking activities allow companies to reduce their risks associated with defined benefit plans, while simultaneously maximizing the security of benefits for participants and retirees. These plan sponsors are able to continue to sponsor their pension plans through managing investment risks, purchasing annuities from reputable companies, offering lump sums, and amending their plan designs.

Any approaches taken by the PBGC should support the sponsorship of defined benefit plans, including methods used by companies which enable them to continue to sponsor these plans.

II. The PBGC should provide additional details about the information that it is seeking to collect.

The notice in the Federal Register for the Information Collection Request is somewhat vague and open-ended with respect to the type of information that the PBGC plans to collect. The PBGC only states that it "intends to revise the 2015 filing procedures and instructions to…[r]equire reporting of certain undertakings to cash out or annuitize benefits for a specific group of former employees."[16] As a result of the lack of details, it is difficult for us to provide comments that would enhance the quality, utility, and clarity of the information to be collected.

Although the Federal Register notice lacks information, the PBGC provided us with a copy of the Draft 2015 Premium Payment Instructions (the "2015 Instructions"). For purposes of this comment letter, we anticipate that the Information Collection Request refers to the information described in these 2015 Instructions. Excerpts from the 2015 Instructions are attached as Exhibit A. We strongly encourage the PBGC to clarify whether this assumption is accurate and if not, to provide additional opportunity to comment.

The following comments are based on the information contained in the 2015 Instructions.

A. The time frames for collecting data for each year's filing should be consistent.

The 2015 Instructions provide that information must be provided for lump sum windows and annuities. With respect to lump sum windows, information would be collected for those windows that are offered during the current premium payment year (excluding windows for which the time period for electing a lump sum under the window ended fewer than 30 days before the premium filing is made) as well as during the prior premium payment year. For annuities, information would be collected for annuities purchased for participants upon retirement as part of routine plan operation during the premium payment year (excluding annuities purchased fewer than 30 days before the premium filing is made) as well as annuities purchased during the prior premium payment year.

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[16] 79 Fed. Reg. at 56831.

As a result, the PBGC will collect data for nearly two years for 2015. We anticipate that the PBGC will only request data for the 12-month period ending in the premium payment year in future years. As a result, the PBGC could not reasonably compare the data collected for 2015 to any future years as the 2015 data will reflect lump sums offered and elected in lump sum windows as well as annuities purchased over a two-year period, while future years would only reflect data for a one-year period.

ERIC urges the PBGC to collect information that reflects a 12-month period for filings for each premium payment year. The instructions could require the provision of the number of lump sums offered and elected in lump sum windows and the amount of annuities purchased for the prior 12-months ending with 30 days (or preferably 60 days as discussed below) before the premium filing is made. For example, plans with a premium due date of October 15, 2015 would report data on lump sum windows that ended and annuities purchased between August 17, 2014 and August 16, 2015 (i.e., 60 days before the filing date). For the following year (i.e., October 15, 2016), plans would report data on lump sum windows that ended and annuities purchased between August 17, 2015 and August 16, 2016.

Additionally, plan administrators should not have to amend the filing as long as the information related to the events was reasonably believed to be accurate when made. The plan administrator may later determine that an individual was eligible for a lump sum window even though it may initially have appeared as though they were not eligible. Plan administrators rarely need to amend their filings currently, and as a result, should not be required to do so merely because the data changed with respect to these transactions after it was reported. The Instructions should be modified to make this clear.

B. Additional time should be provided between the date of the lump sum window or annuity purchase and the collection of the data.

The 2015 Instructions provide that information must be provided for lump sum windows that end and annuities that are purchased at least 30 days before the premium filing is made. Plan administrators may have difficulty obtaining information about a lump sum window that occurred or annuity that was purchased only 30 days before the filing is due. Additionally, there may be circumstances where the plan administrator may need additional time to resolve eligibility issues. ERIC urges the PBGC to provide that the data to be provided relates to lump sum windows that occur and annuities that are purchased 60 days before the filing is due to provide plan administrators with the necessary time to provide reasonably accurate data to the PBGC.

C. The labels used in the 2015 Instructions are confusing and could result in inconsistent responses.

The 2015 Instructions request information about participants who are “offered” and “elected” lump sums. These terms could be interpreted in multiple ways. For example, materials may have been sent to a participant who was eligible for the lump sum window, but who never received the materials because they failed to provide the plan with a current address (i.e., a missing participant). If the plan administrator cannot locate a missing participant during the lump sum window, it is unclear whether that participant was “offered” a lump sum. Additionally, some plans do not ordinarily provide for mandatory cash-outs of up to $5,000, but may include such amounts in a lump sum

window. These plans may also automatically cash-out these individuals during the lump sum window. As a result, they would not be considered to have elected lump sums. We suggest that the PBGC use the term "eligible for lump sum" instead of "offered lump sum" and the phrase "received lump sum" instead of "elected lump sum" to address these issues. We also urge the PBGC to confirm in the instructions that mandatory cash-outs are not included in the reporting.

Furthermore, the use of the term "participants" will be confusing to some plan administrators as lump sums may be made available to participants as well as beneficiaries and alternate payees. Plans often do not distinguish between these categories of individuals in their records. We urge the PBGC to provide in the instructions that the information collected for this purpose relates to participants, beneficiaries and alternate payees collectively.

Also, the 2015 Instructions refer to "certain former employees". We anticipate that the PBGC is referring to those former employees who are eligible for the lump sum window or annuities. We recommend that the PBGC clarify this issue when it finalizes the instructions.

Additionally, it is unclear whether situations involving regularly recurring opportunities and/or reminders about available options would be reported. Some plans provide for a designated period of time each year during which eligible participants may elect lump sums. Other plans send a periodic reminder to eligible participants that lump sums are available under the plan. Some plans may offer an enhanced pension benefit as a lump sum to terminated employees whereby only the enhanced benefit is available as a lump sum. ERIC urges the PBGC to confirm that these situations would not be included for purposes of the lump sum windows under the 2015 Instructions.

ERIC urges the PBGC to support the efforts of plan sponsors to continue to sponsor defined benefit plans. In addition, we recommend that the PBGC adopt procedures to ensure that defined benefit plans accurately report information related to payments of certain former employees. The PBGC should maximize its efforts to support the well-reasoned efforts companies that currently sponsor defined benefit plans use to minimize the risks associated with these plans. We believe that these efforts will actually support the continuation of defined benefit plans for future generations and workers.

ERIC appreciates the opportunity to provide comments on the Information Collection Request. If the PBGC has any questions concerning our comments, or if we can be of further assistance, please contact us at (202) 789-1400.

Sincerely,

Kathryn Ricard
Senior Vice President, Retirement Policy

cc: Connie Donovan, Participant and Plan Sponsor Advocate

EXHIBIT A

Draft 2015 PBGC Comprehensive Premium Filing

Part VI – Miscellaneous Information

18. Risk transfer activity – Skip this item if this is the last filing for this plan

a Lump sum windows: If, during the time period described in the instructions, the plan offered a limited duration opportunity for certain former employees to receive a lump sum, provide the following participant count information:

(1) Participants not in pay status when lump sum was offered: Offered lump sum ______ Elected lump sum ______

(2) Participants in pay status when lump sum was offered: Offered lump sum ______ Elected lump sum ______

b Annuity purchases: If, during the time period described in the instructions, the plan purchased annuities for a group of former employees, provide the following participant count information with respect to the participants for whom annuities were purchased:

(1) Participants not in pay status when annuity was purchased: ______ **(2**) Participants in pay status when annuity was purchased ______

Description of Data Elements

17 Risk transfer activity – Skip this item if this is the final filing for the plan

a Lump sum windows – Enter the requested information with respect to lump sum windows offered during:

- the premium payment year, excluding windows for which the time period for electing a lump sum under the window ended fewer than 30 days before the premium filing is made, or
- the prior premium payment year.

b Annuity purchases – Excluding annuities purchased for participants upon retirement as part of routine plan operation, enter the requested information with respect to annuities purchased during:

- the premium payment year, excluding annuities purchased fewer than 30 days before the premium filing is made, or
- the prior premium payment year.