



August 18, 2015

*Submitted electronically to the Federal eRulemaking Portal: <http://www.regulations.gov>*

Pension Benefit Guaranty Corporation  
1200 K St NW  
Washington, DC 20005-4026

**RE: RIN 1212-AB29; Partitions of Eligible 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 (PBGC) in response to a call for comments on the Interim Final Rule (Rule) issued on June 19, 2015 pertaining to the Partitions of Eligible Multiemployer Plans as enacted in the Multiemployer Pension Reform Act of 2014 (MPRA).<sup>1</sup>

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

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<sup>1</sup> 80 Fed. Reg. 35220 (June 19, 2015).

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.

## Introduction

In 2005, organized labor and the business community joined together to create a coalition to address the issues concerning multiemployer pension plans. The coalition created a proposal which was included in the Pension Protection Act of 2006 (PPA). As part of a compromise, the PPA multiemployer provisions were set to expire at the end of 2014. Again labor and the business community came together to lobby for comprehensive multiemployer pension reform. MPRA is a significant first step in comprehensive reform.

The enactment of MPRA was welcomed by the Chamber and its employer members that contribute to multiemployer plans. The precarious state of underfunding by many multiemployer plans threatens insolvency for such plans and for the PBGC and is a serious threat to participating employers. Among other changes, MPRA allows plan sponsors to apply to the PBGC to partition a plan. While the Chamber believes that more attention to the problem will be necessary, MPRA is a strong first step in addressing these issues.

In response to a request for information issued by the PBGC in February of this year, the Chamber submitted comments detailing a number of recommendations and suggestions. Our general recommendation in those comments was that PBGC remain flexible and focus on substance over form. We also made several specific recommendations including; allowing for both paper and electronic submissions; using information currently gathered and performed by plans; providing a model notice; and allowing concurrent applications for partitioning and the benefit suspension program.

The Chamber commends the PBGC for working quickly to establish the program to allow for partition of eligible plans and for incorporating a number of recommendations suggested by the Chamber. In particular, we applaud the ability to submit joint applications for the partition and benefit suspension programs and the inclusion of model notices. Moreover, the opportunity for information consultation will be very helpful to plan sponsors. Our comments below are offered to strengthen the program as currently drafted.

## Comments

### **The Chamber Reiterates the Need for Flexibility in the Application Process.**

The Rule states that “if any of the information is not included, the application will not be considered complete.”<sup>2</sup> The Chamber believes that this is inappropriately strict. There may be instances where not every document listed is required for the PBGC to make a determination. For example, as you may be aware, the Internal Revenue Service (IRS) is substantially reducing its determination letter program.<sup>3</sup> Consequently, providing the IRS determination letter may become more difficult for plans. At the same time, the determination letter does not seem to be an integral part of the partitioning calculation unless there is a specific question about the plan’s tax qualification. In such instance, the lack of a determination letter would undo the entire application even though it has little direct impact on the partition itself. As an alternative, we recommend that the Rule state that applications that do not include all of the listed information may require more time to determine whether the application is complete.

**The Chamber Recommends a Time Limit for the PBGC to Issue a Written Notice that an Application is Complete.** Under the Rule, the date that the PBGC issues a written notice that an application is complete starts the PBGC’s 270-day review period under ERISA section 4233(a)(1).<sup>4</sup> However, the Rule does not limit the amount of time that the PBGC has to issue this written notice. As such, the statutory 270-day review period could be substantially extended. While we understand that the PBGC needs time to ensure it has the necessary materials to make a determination, we also want to ensure that the review period is not unreasonably extended. In its temporary regulations, the IRS has a two business day limit to determine whether an application for the benefit suspension program is complete.<sup>5</sup> Consequently, we recommend that the same limit be used by the PBGC.

## Conclusion

Partitions are a critical component of the reform provisions implemented in MPRA and we again commend the PBGC for diligently working to implement this program.

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<sup>2</sup> 80 Fed. Reg. Section 4233.4(a).

<sup>3</sup> In [Announcement 2015-19](#) the IRS announced its intentions to stop reviewing most applications for amended individually designed plans.

<sup>4</sup> 80 Fed. Reg. Section 4233.10.

<sup>5</sup> 80 Fed. Reg. 35218, Section 1.432(e)(9)-1T(g)(1)(ii).

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,

A handwritten signature in black ink, appearing to read "Randel K. Johnson". The signature is stylized with a large, sweeping initial "R" and a long horizontal stroke at the end.

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

A handwritten signature in black ink, appearing to read "Aliya Wong". The signature is written in a cursive style with a large, looping "W" at the end.

Aliya Wong  
Executive Director  
Retirement Policy  
U.S. Chamber of Commerce