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November 20, 2017

Regulatory Affairs Division  
Office of the General Counsel  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington D.C. 20005-4026

Re: Collection of information for Annual Reporting (Form 5500 Series) under OMB Control Number 1212-0057

Dear Sir or Madam:

Thank you for the opportunity to respond to your recently published request for comments: "Proposed Submission of Information Collection for OMB Review; Comment Request; Annual Reporting (Form 5500) Series." It states that the Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval (with modifications), under the Paperwork Reduction Act of 1995, of its collection of information for Annual Reporting under OMB control number 1212-0057, which expires August 31, 2020, and asks for comments on the proposed modifications.

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 more multiemployer pension plans than any other consulting firm. Certain of the changes being proposed to the Schedule MB are of concern to us.

### **General Comments**

As an actuarial firm, we understand that PBGC would like to gather as much data as possible on multiemployer defined benefit plans. However, PBGC, as a government corporation, is required to weigh this wish against the constraints imposed by the Paperwork Reduction Act and President Trump's orders to reduce regulatory burden.

Last year, the three Employee Retirement Income Security Act (ERISA) agencies (the Internal Revenue Service, the Department of Labor, and the PBGC) proposed to greatly expand the information collected on the Form 5500 starting with the 2019 Form. Many commenters objected,

stating that the agencies had tipped the scales too far in favor of gathering information (regardless of cost or other burdens on the regulated community).

Here, PBGC is asking for OMB's approval of modifications to the Schedule MB that would, if approved, –

1. Require the plan administrator to provide an attachment to Form 5500 Line 3 that breaks down contributions between those that are withdrawal liability payments and those that are not; and
2. Require critical status plans (including those in critical and declining status) to provide supporting documentation for the response to Line 4f, including year-by-year cash flow projections for the period ending with the year in which the plan is projected to emerge from critical or critical and declining status, or the year the plan is projected to become insolvent, whichever is applicable, and a summary of the assumptions underlying those projections.

Item 1, the attachment to Line 3, appears to be a reasonable means of collecting readily available information that will allow PBGC to better analyze a plan's prospects for emergence or insolvency. We suggest, however, that the attachment should be prepared by the plan actuary, based on data from the plan administrator, in order to make sure that the attached information reconciles with the Line 3 information.

With regard to item 2, the attachment to Line 4f, Segal believes that PBGC's proposal tips the scales too far in favor of the agency's wish for information, and the remainder of our comments focus on that proposed attachment.

#### **Line 4f Supporting Documentation**

Pursuant to the requirements of ERISA and the Internal Revenue Code (IRC), the plan actuary must provide certain information to the trustees, in their capacity as multiemployer plan sponsor, in accordance with the actuarial standards of practice. These statutory information requirements are different for critical plans than they are for critical and declining (C&D) plans. In addition, the plan actuary provides other actuarial information for the trustees to consider in adopting a rehabilitation plan and making other decisions. This latter category of information is confidential and not available to the government or the public.

On Schedule MB, the actuary must enter Code C on Line 4b if the plan is in critical status and Code D on Line 4b if the plan is in C&D status. If the plan enters either of those codes, the actuary must complete Line 4f. The current instructions for Line 4f require the actuary to enter the plan year in which the plan is projected to emerge, if the rehabilitation plan projects emergence, from critical (or critical and declining) status. If instead, the rehabilitation plan is based on forestalling possible insolvency, the actuary must check the box and enter the plan year in which insolvency is projected.

If a plan is in C&D status, the actuary will have calculated detailed cash flow projections for 20 years for the solvency test portion of the zone certification. Requiring such plans to include those projections with the Schedule MB does not present a burden, and extending those calculations for a few additional years would be reasonable. The Schedule MB already requires attachment of

certain aspects of the zone certification, and this item (from the most recent certification, not that for the year for which the 5500 filing is being made) also could be appended.

For a non-C&D plan, however, which will generally have a rehabilitation plan stating that it will emerge from critical status by a specific date (such as the end of the rehabilitation period or at a delayed emergence target), the burden of providing a cash flow analysis is another matter. Many actuaries currently respond to Line 4f with that stated emergence goal. If the proposed attachment is approved, the plan actuary would be required to develop year-by-year cash flows expressly for Line 4f of the Schedule MB. Although these projections would not serve the purpose of demonstrating emergence from critical status, the projections as proposed would nonetheless have to be done even for plans where solvency was clearly not at issue, and would force the actuary to do work not required by ERISA or the IRC.

Further, a rehabilitation plan created and annually updated by the trustees is not certified by the plan actuary. Instead, to support the development of the rehabilitation plan and the annual update process, the actuary typically provides the trustees with various scenarios and sensitivity testing of the projected credit balance and/or funded ratio – not cash-flows – and does not determine a singular finding of a predicted emergence date.

Because providing this information, which is neither required by law nor currently created by the plans for other reasons, would be unnecessarily burdensome for the affected plans, and because PBGC has not articulated a clear need for this information, this portion of the modification request should be denied.

Thank you for the opportunity to comment. If you need further information, please contact Eli Greenblum, Senior VP & Chief Actuary, at [egreenblum@segalco.com](mailto:egreenblum@segalco.com) or 202-833-6480.



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