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August 18, 2015
Internal Revenue Service
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Room 5205
PO Box 7604
Ben Franklin Station
Washington, D.C. 20044

RE: Comments on Proposed Regulations on Suspensions of Benefits Under the Multiemployer Pension Reform Act of 2014

To Whom It May Concern:

The American Academy of Actuaries[1] Pension Practice Council and its Multiemployer Plans Subcommittee respectfully request your consideration of our comments regarding the proposed regulations (26 CFR Part 1) on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014 (MPRA).

As originally noted in our response to the Request for Information (RFI) on this topic, the practice council and subcommittee realize that the implementation of benefit suspensions under MPRA presents many complex challenges. We acknowledge the thoughtful and thorough effort by the Department of the Treasury in developing the proposed regulations to provide guidance to sponsors of multiemployer plans in critical and declining status, and we appreciate this opportunity to provide comments on the proposed regulations. As with our response to the RFI, we have focused our comments on areas where guidance might have the greatest impact where there is an actuarial component to the issue raised. Our comments, therefore, do not address every aspect of guidance in the proposed regulations.

1. ***Amount of information required.***

   The proposed regulations describe the certifications and other disclosures that must be prepared by the plan sponsor and its advisers (including the plan actuary) as part of the application for a suspension of benefits. This represents a large volume of required information, which will demand considerable time and plan resources. The level of resources required could serve to discourage some plan sponsors from pursuing benefit suspensions, particularly because they cannot be certain that their applications will be approved. This concern would be most acute for small plans, where the demands on resources will be higher when compared to their benefit payment obligations.

[1] The American Academy of Actuaries is an 18,500+ member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

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We ask the Department of the Treasury to consider whether some items required in the proposed regulations might not be necessary for determining whether an application should be approved or denied. For example, we understand why a reviewer would be interested in the sensitivity of the projections to various adverse investment returns and employment levels, but it is not clear to us how this information would contribute to an approval decision. Such sensitivities will likely show projected insolvency, given the limitation that suspensions must not materially exceed the level necessary to avoid insolvency. The same concern applies to the projection of funded percentage, except in cases where this projection is necessary to demonstrate compliance with paragraph (d)(5)(ii)(A)(3) of the proposed regulations. This funded percentage projection will be more complicated and time-consuming to prepare than the investment and employment sensitivities, because—unless guidance indicates otherwise—it would appear to involve production of separate closed-group projections of the benefit payments for each year throughout the extended period, which differ from the open-group benefit payment projections required for the actuarial projections under paragraph (d)(5)(iv)(C).

2. ***Annual plan sponsor determinations.***

Paragraph (c)(4)(i)(B) of the proposed regulations requires the plan sponsor to certify that it has determined the plan is not projected to avoid insolvency "unless the suspension of benefits continues (or another suspension of benefits under section 432(e)(9) is implemented) for the plan."

This paragraph does not require the plan sponsor to adjust the level of the suspension annually in response to favorable or unfavorable experience. Its effect is limited to a situation where the funding outlook has improved to such an extent that the plan would avoid insolvency even if the suspension were prospectively eliminated in its entirety. In that case, the plan sponsor would be required to eliminate the suspension prospectively.

If experience is sufficiently unfavorable that the plan is no longer projected to avoid insolvency under the suspension currently in effect, the proposed regulations do not require that the plan sponsor increase the level of suspensions so that the plan would be projected to avoid insolvency once again. This flexibility is provided by the parenthetical in the proposed regulations regarding "another suspension of benefits under section 432(e)(9)."

The proposed regulations, however, do not make it clear that the suspension shall remain in effect in the event that unfavorable experience creates a situation in which a suspension of benefits to the maximum extent allowed under section 432(e)(9) would not be sufficient to enable the plan to avoid insolvency. The plan sponsor in that situation would not be able to demonstrate that the plan is projected to avoid insolvency if "another suspension of benefits under section 432(e)(9)" were to be implemented.

As it would be illogical to require benefits to be *increased* (by eliminating the suspensions altogether) due to a deterioration of the projected solvency, we suggest the final regulations instead require the plan sponsor to determine annually that the plan would not be projected to avoid insolvency if the suspension of benefits were eliminated entirely and the original benefit levels were restored on a prospective basis.

3. Suspension not materially in excess of the level necessary to avoid insolvency.

Paragraph (d)(5)(iii) provides that a suspension of benefits will satisfy the requirement under paragraph (d)(5)(i)(B) only if the plan sponsor can demonstrate that the plan would not be projected to avoid insolvency if the *dollar amount* of the proposed suspension for each participant and beneficiary were reduced by 5 percent.

We believe that, while most plan sponsors should be able to provide the demonstration required in paragraph (d)(5)(iii), there may be unintended and unforeseen results stemming from the (in our view, too narrow) 5 percent threshold.

We offer the following suggestions to address this issue:

- We suggest the regulations treat the 5 percent rule as a safe harbor test. In other words, the regulations should provide that the suspension of benefits will satisfy the requirement under paragraph (d)(5)(i)(B) *if* (rather than *only if*) the plan sponsor demonstrates that the plan would not be projected to avoid insolvency if the dollar amount of the proposed suspension for each participant and beneficiary were reduced by 5 percent. The regulations should also specify that subject to approval from the Department of Treasury, plan sponsors may provide an alternate demonstration that the requirement under paragraph (d)(5)(i)(B) is satisfied, based on the facts and circumstances of the plan.

- As suggested in our response to the RFI, stochastic projections may be appropriate for demonstrating the requirement under paragraph (d)(5)(i)(B) is satisfied. For example, the plan sponsor could demonstrate that taking into account the proposed suspension, the probability that the plan will avoid insolvency does not exceed a certain level (such as 55 or 60 percent). This approach could constitute an alternative demonstration of compliance that could be approved for use in appropriate circumstances.

As a result of the 5 percent test being applied to the amount of benefit that was suspended, a plan requiring a modest suspension will have a smaller margin to satisfy the requirement under paragraph (d)(5)(iii) than a plan requiring a more substantial suspension. For example, a plan requiring a suspension of 60% of benefits would have a margin of 3% of the original benefit amount (60% x 5%) to satisfy the requirement under paragraph (d)(5)(i)(B), and 7.5% of the post-suspension benefit. A plan requiring a suspension of 20%, however, would have a margin of only 1% of the original benefit amount (20% x 5%), and only 1.25% of the post-suspension benefit. This difference would result in plans that require a relatively small suspension having an extremely narrow corridor within which to design their suspension programs.

To address this issue, we suggest that for the purposes of this requirement the final regulations permit the hypothetical lower suspension amount to be based on a percentage of either (a) the amount of the original benefit, or (b) the amount of the post-suspension benefit, rather than the amount of the proposed suspension. If this approach is followed, there should also be an override to ensure that the margin is never less than 5 percent of the amount of the suspension. This structure will provide plan sponsors with appropriate design latitude (and allowance for a very small degree of adverse experience) and greater consistency across plans requiring different levels of suspensions.

4. ***Reasonable actuarial assumptions.***

Paragraph (d)(5)(iv)(B) puts forward the actuarial assumptions and methods used to generate the projections that are necessary to satisfy the benefit suspension requirements. This paragraph states that the assumptions about future employment and contribution levels "may be based on information provided by the plan sponsor," as is the case for actuarial certifications under the Pension Protection Act of 2006. This is an important consideration, as in most cases the actuary does not have sufficient expertise and knowledge to choose reasonable employment and contribution assumptions without relying on significant input from the plan sponsor.

A similar situation exists in the selection of capital market assumptions for stochastic projections, which would be required for the first time by either statute or regulation. For these projections, the actuary needs to select not only expected return assumptions that vary by asset class, but also variances for each class and covariances among the different classes. In the same way that actuaries need to rely on input from the plan sponsor regarding the projection of employment levels and contributions, they will also need to rely on input from investment consultants with expertise in modeling the behavior of the capital markets. We suggest that the final regulations include a statement that actuaries may base the capital market assumptions in the stochastic projections on information provided by a qualified investment consultant.

5. ***Initial value of plan assets.***

Paragraph (d)(5)(iv)(C) states that the cash flow projections must be based on the fair market value of assets as of the end of the most recent calendar quarter. The regulations do not explicitly state whether this paragraph refers to the most recent calendar year quarter preceding the date of application, or the most recent calendar year quarter preceding the date of certification that the plan is projected to avoid insolvency if the suspensions are adopted.

Applying for benefit suspensions is a lengthy and complicated process. Doing so involves developing a series of possible benefit suspension approaches, evaluating the impact that each of these approaches would have on plan solvency and participant equity, a board of trustees vote to adopt an approach, preparing an application for benefit suspensions, calculating all participant benefits before and after the suspension, and preparing individual notices to participants of that impact.

If the actuary is required to base the projections on the market value of assets as of the end of the calendar year quarter preceding the application date, then the majority of the work that is necessary to apply for benefit suspensions will need to be completed in approximately 90 days. This timeframe would create undue burden on plan sponsors that are engaged in a very difficult process.

We therefore suggest that the final regulations clarify that the actuary should base the projections to certify that the proposed suspensions are sufficient to avoid insolvency on the market asset value as of the end of the calendar year quarter preceding the *date of certification*. In order to ensure that the projections are not based on a market asset value that is unreasonably outdated, the final regulations might also require that the certification date may not precede the application date by more than a specified, reasonable period of time needed for plan sponsor decisions, preparation of the application, and development of participant notification material.

The American Academy of Actuaries Pension Practice Council and its Multiemployer Pension Plans Subcommittee appreciate the opportunity to provide input to the Department of the Treasury on this important guidance. We would be happy to discuss any of these items with you at your convenience. Please contact Matthew Mulling, the Academy's pension policy analyst (202-223-8196, mulling@actuary.org) if you have any questions or would like to discuss these items further.

Sincerely,

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