AMERICAN ACADEMY of ACTUARIES

October 26, 2011

Ms. Constance Markakis
Legislative and Regulatory Department
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005

Re: Proposed Fixes to the Pension Protection Act of 2006 (PPA) with Actuarial Implications for Multiemployer Plans

Dear Ms. Markakis:

The American Academy of Actuaries[1] Multiemployer Pension Plans Subcommittee appreciated the opportunity to meet with you and your colleagues from the Pension Benefit Guaranty Corporation, the Internal Revenue Service, the Department of Labor, and the Department of the Treasury on July 15 and August 25 to discuss the actuarial implications of PPA for multiemployer pension plans.

As requested at the August 25 meeting, we are pleased to provide the following list of proposed modifications to the multiemployer provisions of PPA for your consideration. We welcome the opportunity to discuss with you the nature of these modifications and proposed solutions beyond the short descriptions below. Our subcommittee members have extensive experience working with multiemployer plan sponsors and participants and these recommendations are based on nearly four years of operational experience with the current PPA rules.

1. The funding improvement plan (FIP) target for an endangered status zone plan (that is, the funded percentage at the end of the funding improvement period) should be determined based on the more certain funded percentage certified by the actuary upon entering the so-called yellow (or orange) zone, rather than an *estimated* percentage as of the date the funding improvement period starts.

2. Some yellow/orange situations really are untenable—the plan clearly will become critical before the FIP can work. We recommend, therefore, permitting trustees in those situations to elect to move directly to critical status.

3. It would be helpful to have more fundamental statutory changes to the zone triggers to better classify levels of distress. Two options are:

[1] The American Academy of Actuaries is a 17,000-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.

(A) Extend the solvency test for critical status (to 10 years) and
(B) Allow an exemption for a plan that otherwise would enter endangered status simply because of a funding level below 80 percent, *if* that plan is projected (under best estimate assumptions and methods) to be above 80 percent within seven years (based on the currently bargained contribution rates and current plan provisions)

4. During the funding improvement period, drop the yellow zone prohibition against reducing the contribution rate, as this is counterproductive in some situations, such as when (a) an employer requires a temporary reprieve to avoid or work through bankruptcy; or (b) the FIP requires a temporary spike in contribution rates (to avoid a falling into critical status) but a lower rate subsequently is acceptable). The current restriction can have the effect of forcing employers out and reducing aggregate contribution income.

5. Plans should be deemed to eliminate (not suspend) lump sums based on the accrued benefit when in critical status. If a plan wants to restore accelerated benefit options upon emergence, the trustees can decide to do so at that time. (Currently, actuarial projections for emergence usually would not include the automatic restoration. There could be a circular problem with the restoration of those provisions driving plans right back into critical status.) Red zone plans, however, should be allowed to pay those lump sums to an estate when it is the beneficiary.

6. For a plan making a direct transition from the yellow into the red zone, the critical status rules should start as soon as the rehab plan is disseminated, rather continuing to operate under the Funding Improvement Plan for up to three more years until the rehab period starts.

7. Specify that the imposition of the default schedule will not occur until 180 days after receipt of the funding improvement or rehab plan schedules. Currently, it is unclear how to handle situations in which the CBA expired either before entering the red or yellow zone or soon thereafter but before the schedules were promulgated.

8. We understand that the current PBGC view is that critical status surcharges should be included in the determination of the withdrawal liability annual payment. Rather than wait for this to be litigated over the next few years, we suggest that the appropriate treatment be codified in some way.

9. Reevaluate the reorganization rules as they currently do not work and should be harmonized with the PPA critical status rules, including rehabilitation plan operation (especially prior to anticipated insolvency).

The Multiemployer Subcommittee appreciates the opportunity to share comments with the regulatory agencies on the actuarial implications for multiemployer pension plans of various corrections to PPA. We would be happy to further discuss our comments in more detail or to provide other technical assistance if needed. If you have any questions or need further information, please contact Jessica Thomas, senior pension policy analyst (Thomas@actuary.org; 202/223-8196).

Sincerely,

Eli Greenblum, MAAA, FSA, EA, FCA
Chair, Multiemployer Subcommittee
American Academy of Actuaries

Cc: Bruce Perlin, Pension Benefit Guaranty Corporation
Harlan Weller, Department of the Treasury
Zenaida Samaniego, Department of Labor
Diane Bloom, Internal Revenue Service