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April 6, 2015

Internal Revenue Service
CC:PA:LPD:PR (REG-102648-15)
Room 5205
PO Box 7604
Ben Franklin Station
Washington D.C. 20044

RE: Response to Request for Information (RFI) 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 Pension Plans Subcommittee respectfully request your consideration of our comments regarding the Request for Information on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014 (MPRA). The Practice Council and Subcommittee realize that the implementation of benefit suspensions under MPRA presents many complex challenges, and appreciate this opportunity to respond to the questions contained in the request. These comments address several, but not all, of the questions contained in the RFI. The subcommittee has focused on areas where guidance might have the greatest impact, and where there is an actuarial component to the issue raised. Our comments, therefore, do not address every question posed by the RFI.

As an introductory comment, the Subcommittee believes that it is important for the Treasury Department to consider the immediacy of the timing of benefit suspension implementation. It is important that critical and declining plans that need to implement benefit suspensions in order to remain solvent are able to take this action as soon as possible. Delays could lead to a necessity for larger benefit suspensions will be necessary in order for plans to survive.

1. How should future guidance address actuarial and other issues, including duration, related to the following certifications and determinations?

a. The actuary's certification under section 432(b)(3) that a multiemployer plan is in critical and declining status;

With two exceptions, the certification that a multiemployer plan is in critical and declining status is performed using the framework described in section 432(b)(3)(B)(i), (ii), and (iii). As the language of the statute, the proposed regulations under 1.432(b)-1, and the applicable Actuarial Standards of Practice (ASOP), have been sufficient to guide actuarial practice since the passage

[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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of the Pension Protection Act of 2006, the Treasury does not need to issue additional guidance to address these provisions.

The first exception is in section 432(b)(3)(B)(iv)(I):

> "(I) if reasonable, the plan actuary shall assume that each contributing employer in compliance continues to comply through the end of the rehabilitation period or such later time as provided in subsection (e)(3)(A)(ii) with the terms of the rehabilitation plan that correspond to the schedule adopted or imposed under subsection (e)"

And the second exception is in section 432(b)(3)(B)(iv)(II):

> ''(II) the plan actuary shall take into account any suspensions of benefits described in subsection (e)(9) adopted in a prior plan year that are still in effect.''

The subcommittee believes application of these provisions is sufficiently clear and thus does not believe that guidance is necessary. However, it would be appropriate in our view for future guidance to reflect that the plan actuary typically has neither the knowledge nor the expertise to evaluate the reasonableness of assuming any contributing employer's continued compliance with the contribution rate increases under the current schedule. Therefore, it would be appropriate and necessary for the actuary to rely on plan sponsor (trustee) input and information with respect to the reasonableness of assuming continued employer compliance.

To the extent Treasury is considering whether guidance should call for deterministic or stochastic projections for this purpose, we note the criteria for critical and declining status require a decision as to whether or not insolvency is projected to occur. This "yes or no" certification is inconsistent with stochastic projections, which provide estimates about the likelihood of future events rather than whether or not they are projected to occur. If guidance is issued in this area, it should therefore require, or at least permit, the use of deterministic projections for the purpose of this certification.

b. ***The actuary's section 432(e)(9)(C)(i) projection of continued solvency (taking into account the proposed suspension and, if applicable, a proposed partition under section 4233 of ERISA); and***

Because the statute does not specify the assumption criteria to be used for these projections, any guidance that is issued should confirm that the actuarial assumptions must be reasonable for this purpose. The regulations should also recognize that the projections for section 432(e)(9)(C)(i) purposes and projections for section 432(b) purposes may involve different assumptions, as the plan actuary will consider how the proposed suspension of benefits might influence participant and employer behavior and future investment returns.

With regard to the definition of "projected to avoid insolvency" under section 432(e)(9), the statute does not specify a minimum duration, and any guidance should address this provision without specifying a particular minimum duration for the projection. Typically, in evaluating this projected solvency requirement, actuaries would prepare detailed projections up to the limits of their available software tools, and then draw reasonable conclusions about the direction of projected funding levels beyond that point. If explicit guidance on this point is considered necessary, it could indicate that the detailed cash flow projections must extend sufficiently far to enable the actuary to reasonably conclude that the asset levels are expected to remain sufficient to pay benefits <u>indefinitely</u> beyond the projection period.

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The certification for section 432(e)(9) requires a decision as to whether or not the plan is projected to remain solvent. This is a "yes or no" certification and consequently, like the section 432(b)(3) certification, is inconsistent with stochastic projections and the estimated likelihood of future events. If guidance is issued with respect to section 432(e)(9) certifications, it should therefore require, or at least permit, the use of deterministic projections.

The requirement that, in order to implement benefit suspensions, the plan must be projected to remain solvent after the application of those suspensions, presents a practical issue. As part of the application process, actuaries would prepare this projection based on asset levels and other information measured as of a date that precedes the application and participant notification date. The application and ratification processes are then likely to require at least several months. By the time suspensions are implemented, changed economic conditions could result in the proposed suspensions being insufficient to avoid insolvency. Changed economic conditions could also cause the proposed suspensions to exceed the level needed to project continued solvency. Permitting or requiring updates to the proposed suspension process will not eliminate this issue, as updates will always require time to prepare, communicate, and obtain approval, and circumstances can always change again during this time. Any guidance issued on projections should therefore specify that once the benefit suspension application is filed, the projections included in that application, and the suspension terms, need not be updated to reflect economic conditions or events subsequent to the measurement date on which the application was based. This applies to section 432(e)(9) certification purposes and satisfaction of the suspension limitation provision that suspensions, in combination with any applicable partition, be "reasonably estimated to achieve, but not materially exceed, the level that is necessary to avoid insolvency."

Note that unlike projections for the section 432(b)(3) or 432(e)(9)(C)(i) "yes or no" certifications, stochastic projections can be appropriate and suitable for demonstrating compliance with the "avoid, but not materially exceed" limitation. If guidance is issued with respect to this limitation, the optional use of plan sponsor reliance upon either deterministic or stochastic projections prepared by the plan actuary should be permitted. The use of more than one deterministic projection, based on a range of reasonable actuarial assumptions, should also be permitted for this purpose. Any guidance should allow the plan sponsor to consider a plan's available resources and potential expenses in its decision as to the type and number of projections that are appropriate for an informed decision on the "avoid, but not materially exceed" decision.

c. ***The plan sponsor's section 432(e)(9)(C)(ii) determination that the plan is projected to become insolvent unless benefits are suspended?***

This determination is based a combination of two separate conclusions; (a) the plan sponsor's conclusion that all reasonable measures have been taken to avoid insolvency and (b) an actuarial projection (which includes the impact of those measures) that the plan will become insolvent without the implementation of benefit suspensions. We believe the statute is sufficiently clear in this regard that plan sponsors and actuaries do not require regulatory guidance for this certification, beyond pointing out that the basis for the determination must include those two conclusions.

3. For participants who have not yet retired:

a. ***What practical issues should be considered as a result of the fact that their benefits are not yet fixed (for example, their benefits could vary as a result of future accruals, when they decide to retire and which optional form of benefit they select)?***

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b. ***What practical issues should be considered in the case of a suspension of benefits that is combined with a reduction of future accruals or a reduction of section 432(e)(8) adjustable benefits (such as subsidized early retirement factors) under a rehabilitation plan?***

Section 432(e)(9)(F)(v) calls for the development of a model notice that plans can use when informing participants and beneficiaries that an application to suspend benefits is being concurrently filed. Section 432(e)(9)(F)(ii)(I) requires that this notice contains an individualized estimate of the impact of the suspension on each participant or beneficiary. For participants not in payment status, the individualized estimate requirement should apply only to the accrued benefit, determined as of a reasonable measurement date, payable at normal retirement age under a single life annuity or other normal form of annuity (e.g., age 65 and a single life annuity). The additional complexity of providing this estimate at multiple retirement ages, for different optional forms of payment (based on assumed ages of assumed future spouses), for retirements from both active and inactive status, or with estimated future benefit accruals included will make it more difficult for participants to understand the information. Plans should be permitted to include additional estimates or examples in the notice if they conclude doing so will enhance participants' understanding. To the extent that the proposed suspensions could affect plan features that are not illustrated by numerical estimates, plans should be able to provide narrative descriptions of the operation of those aspects of the plan, both pre- and post-suspension.

4. For participants who have retired, what practical issues should be considered regarding the section 432(e)(9)(D)(ii) age limitations on suspensions, the application of the section 432(e)(9)(E) rules on benefit improvements, or other provisions?

The participant notices will illustrate the estimated impact of the suspensions on benefits, taking into account the section 432(e)(9)(D)(ii) age limitations, under the assumption that the suspensions go into effect on the proposed suspension date. If the suspensions go into effect later than the planned effective date, the population of participants who are affected by the age limitations will differ from what was shown in the notices. Such a change will result in participants being older than anticipated on the suspension effective date, causing more benefits to be protected by the age limitations. The guidance shouldn't require the plan sponsor to issue revised notices with updated estimates, as this will create confusion that does not benefit the plan participants and beneficiaries at additional expense.

When designing the proposed benefit suspensions, the plan sponsor will rely on actuarial projections that will be based on the proposed effective date for benefit suspensions. If the actual effective date is different from the proposed effective date, a program of benefit suspensions that satisfied the projected solvency requirements when the application was filed might not satisfy those requirements as of the actual effective date. A change in the effective date is only one reason why projections prepared at the actual suspension effective date might differ from the projections included in the application. As discussed in our response to Question 1 above, changes in economic conditions between the measurement date used to develop the projections in the application and the date of the suspensions will have a similar effect. Just as guidance requiring that projections be updated to reflect changing economic conditions is ill advised, guidance should also not require updating the projections or application to reflect a change in the effective date of the suspensions. However, with a delayed effective date, implementation of the suspension would reflect the required benefit protections measured as of the actual date of suspension.

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5. With respect to the section 432(e)(9)(F) requirement to provide notice of the proposed suspension to plan participants and beneficiaries concurrently with the submission of the application for approval:

a. What suggestions do commenters have for the steps that are needed to satisfy the requirement to provide notice to the plan participants and beneficiaries ''who may be contacted by reasonable efforts,'' including the application of that requirement to terminated vested participants?

b. What practical issues do plan sponsors anticipate in providing individual estimates of the effect of the proposed suspensions on each participant and beneficiary?

As discussed in our response to Question 3, plan sponsors and participants would welcome an individual estimate that is simple and easy to understand. These estimates should be calculated based on a balanced consideration for the need for education with the reality that the benefit suspension issues are quite complicated. Well-intentioned individual estimates could very well provide too much detail, too much data, or too many implementation scenarios for participants to readily derive useful and objective information applicable to their circumstances.

Although the effect of the suspension on a non-retired participant's benefit will ultimately depend on factors that include the timing and optional form selected, the required individualized estimates for non-retired participants should be limited to showing the accrued benefit payable in a single life annuity (or the plan's normal form) at the normal retirement age. To the extent that the suspensions could affect benefits payable at other ages or in other payment forms, plans should be allowed to provide narrative descriptions and illustrative examples of how these aspects of the suspensions work.

Guidance from Treasury should also consider what is practical for plan sponsors to administer and implement. A consideration that is particularly important relates to the service data needed to estimate or determine Pension Benefit Guaranty Corporation (PBGC) guaranteed benefits, which might no longer be readily available (or even available at all) for some participants and beneficiaries in pay status. Plan sponsors need to have the ability to make reasonable good-faith estimates of this missing data for the individualized estimates in the participant notices. Guidance on this issue should require that all such missing data assumptions be fully disclosed for both projection and individualized estimate purposes. Plan sponsors should be given the opportunity to use the additional time between the suspension application and implementation to retrieve or recreate the missing service (or in certain cases where this is no longer possible, to at least develop better estimates for missing data).

c. If the suspension is combined with other reductions as described in request number 3.b, how will the notice of proposed suspension interact with the notices required for those other reductions?

d. What issues arise in coordinating benefit protections that are measured as of the date of suspension (such as the restriction on suspensions that apply to a participant or beneficiary who has attained age 75 as of the effective date of the suspension) with the timing of the application, notice, and voting process?

As noted in the response to Question 4, a change in the effective date of the benefit suspensions will result in the notices overstating the impact of the suspensions submitted for Treasury approval due to benefits becoming eligible for additional protection under the age limitations. Guidance does not need to require the production of revised individualized estimates. However,

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advance notice to pay status participants alerting them to their actual benefit change would be appropriate shortly before the final implementation date. As noted in our response to Question 4, guidance requiring revised actuarial projections due to a delayed effective date is unnecessary and impractical. While a delayed effective date need not require any change to the terms of the suspension, implementation of the suspension would reflect the required benefit protections measured as of the actual date of suspension. This will be challenging for plan sponsors; therefore, the initial Treasury approval should set a final effective date that (assuming participant ratification will occur, and that there is no pending partition application) is not expected to change under any reasonable circumstances.

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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Chair, Pension Practice Council
American Academy of Actuaries